



PUBLIC NOTICE SPECIAL CITY COUNCIL MEETING

A special meeting of the City Council of Falls City, OR will be held as follows:

Posted: 8/23/19- Frink's, City Hall, Community Center, Website

Meeting Date: Tuesday, August 27, 2019

Meeting Time: 6:00 pm

Meeting Location: Falls City Community Center

Meeting Address: 320 N Main Street, Falls City, Oregon 97344

AGENDA

1. CALL TO ORDER

2. ROLL CALL

Jeremy Gordon, Mayor____ Dennis Sickles ____ Lori Jean Sickles____
Jennifer Drill ____ Tony Meier____ Cliff Lauder____ David Radke ____

3. PLEDGE OF ALLEGIANCE

4. MOTION TO ADOPT THE ENTIRE AGENDA

5. CONSENT AGENDA

a. 7/22/19 Work Session Minutes..... pg. 1-4

6. WORK SESSION

- a. Financial Condition Project
 - i. Overview and Status.....pg. 9-12 (wb)
- b. Presentation: System Development Charges
 - i. Sean O'Day, Mid-Willamette Valley Council of Governments
 - ii. SDC Informational Materialspg. 13-55 (wb)
- c. Review Draft Master Utility Right of Way Ordinance & Associated Documents
 - i. Introduction/Explanation.....pg. 56-81 (wb)
 - ii. Q&A Session
- d. DLCDC Planning Grant Information
 - i. Announcement and Eligible Projects pg. 7-8

7. NEW BUSINESS

- a. Camping Permit Request..... pg. 5-6
- b. Community Center Climate Control update
- c. Set Date for Goal Setting

8. ADJOURN

The City of Falls City does not discriminate in providing access to its programs, services, and activities on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, physical or mental disability, or any other inappropriate reason prohibited by law or policy of the state or federal government. Should a person need special accommodations or interpretation services, contact the City at 503.787.3631 at least one working day prior to the need for services and every reasonable effort to accommodate the need will be made.

City of Falls City
City Council Special Meeting Minutes
July 22, 2019 6:00 PM
Meeting Location: 320 N Main Street, Falls City, Oregon 97344

Council Present: Jennifer Drill, Tony Meier, Cliff Lauder, David Radke. Councilor Lori Jean Sickles arrived at 6:10 PM.

Staff Present: Mac Corthell, City Manager; Jamie Ward, City Clerk.

1) Call to Order

Mayor Gordon called the meeting to order at 6:02 pm.

2) Roll Call

Clerk Ward took roll call. Councilor Dennis Sickles was absent

3) Pledge of Allegiance

Mayor Gordon led the pledge.

4) Motion to adopt the entire Agenda

A motion was made by Councilor Radke and seconded by Councilor Drill to adopt the entire agenda with the amendment, that New Business item a. to be moved to the front of the agenda. Motion carried 5-0-0-1 Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Cliff Laude, David Radke

5) Recognition

a. City of Albany and the Albany fire department

The City of Falls city sent a certificate of appreciation to the City of Albany and the Albany Fire Department. More specifically, Shane Castle a former Falls City Firefighter and Paramedic. It was with Shane's guidance that Falls City was granted ten (10) "Life Saving" air packs. The air packs cost approximately \$2,500.00 apiece when new for a total cost savings of approximately \$25,000.00.

b. North Santiam Paving Co.

The City of Falls City gave a Certificate of appreciation to North Santiam Paving Co. for work beyond the call of duty, while performing paving overlays of multiple streets in Falls City.

6) New Business

a. Public Hearing: Resolution 20-2019 CBDG Housing Rehabilitation Grant

City Manager Corthell introduced Diana Cvitanovich and her role with Polk CDC. City Manager Corthell explained what CDC does and how it will work for our Community and surrounding areas. Polk CDC is a non-profit HUD that provides different kinds of resources to the community that helped develop it, such as housing rehab grants. They also manage a Fall City specific fund that is strictly for Falls City residents. We have been a consistent sider in memorandum of understanding surrounding this and each time an individual City takes the reins they serve as the grantee. With all of the changes in the way things are being run in our city government and because of well defended guiding and nurturing our partnership with Polk CDC, Falls City has been asked to take the lead as Grantee for the upcoming CBDG Housing Rehabilitation Grant. City Manager Corthell explained that these grants would be assessable to lower Income, owner occupied, single-family homes for all of Polk County. The output for this is about an hour of City Manager Corthell's time each month. All other resource implications would be that in doing this it would cost the City two preference points for our next CBG Grant however; those two points

would be recouped in experience points by managing the Grant so Falls City would have the same amount of preference points in the end.

Public Hearing opened at 6:18PM

MS. Cvitanovich read the public notice into the record and provided a brief explanation regarding the CBDG housing rehabilitation (HR) Program (*see attached Notice*).

Public comments

Steve and Peggy Carter, Waymire Rd. Dallas are very interested in applying for a grant to bring their septic tank up to standard when funds are available. Ms. Cvitanovich responded that grant funds are still available through the 2018/2019 CBDG grant fund housed out of the City of Independence.

Wes Richardson of Falls City wanted to know when the deadline is for this Grant.

Ms. Cvitanovich answered that after this meeting if there is a Resolution passed by council that the application is due by the end of September. The program will begin in 2020. Mr. Richardson said that he knew many people that could benefit from this grant and was excited about sharing the news to them.

Mayor Gordon disclosed that he is on the Polk CDC board and that he will not be involved in oversight of the project, will not benefit from it, and will not sign disbursement requests or invoices. He will serve on the Board as a public service. He will also recuse himself from vote on whether or not to apply.

The Public Hearing closed at 6:28PM

Councilor Drill asked Cvitanovich how much of the \$400,000 goes to Polk CDC? Ms. Cvitanovich answered that an award to Falls City and prior to any HR activity Polk CDC will enter into a sub-grant agreement (contract) with Falls City (the grantee) wherein Polk CDC will administer the grant, prepare the Environmental Assessment and Review Record (ERR) which is approved by the Certifying Officer (CO) prior to submittal to IFA and manage the program over the two-year period of housing rehabilitation activity. Polk CDC receives \$25,000 for Administration, \$15,000 for preparing the ERR and conducting the environmental assessment throughout the two year period, and \$75,000 for managing the program which includes working with program applicants through the entire process.

A motion made by Councilor Lauder and Seconded by Councilor Meier that the City Council of the City of Falls City adopt Resolution 20-2019, A RESOLUTION AUTHORIZING THE CITY MANAGER TO: APPLY FOR THE 2019 CBDG HOUSING REHABILITATION GRANT, PARTNERWITH POLK CDC AS SUBGRANTEE, AND SERVE AS THE CERTIFYING OFFICER FOR THE GRANT. Motion carried 5-0-0-1. Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Cliff Lauder, David Radke.

- b. Resolution 21-2019; A Resolution authorizing the City manager to Apply for the 2020 special city allotment grant to fund improvement of bridge street and chamberlain street. This Resolution was moved to the end of the meeting after the work session.

7) Work Session

- a. Revenue Project

i. Revenue shortfalls

The one hundred and fifty thousand dollar (\$150,000.00) gap in revenues is due in large part to the passage of Property Tax Measure's five (5) and fifty (50), and the loss of timber revenues due to a series of measures. Those included with our 2.92 frozen tax rate has not helped the City's financial situation. City Manager Corthell brought in a chart from the City of Salem Alternate Revenue Options to show how shortfalls are in every city and to give a bigger picture of more options we could use for our advantage.

Councilor Drill asked what kind of revenue we could gather from Weyerhaeuser for driving through our streets. City Manager Corthell said that is a great idea to look in to and they should be paying for the use of our two major access roads.

Councilor Radke asked about any available grant funds. City Manager Corthell said that there are a few for law enforcement for instance but because of a legal matter, those have been put on hold. Mayor Gordon added that we are already supplementing with Grants a lot and that we need to find a more permanent solution.

Councilor Lauder asked are most of these additional taxes or fees, to help gap this short fall. In addition, if so do we ask the Community to take the added tax or do we as a Council make the added tax mandatory? How much thought has been put into our fire department joining Southwest Polk, dollar wise not management wise? City Manager Corthell answered from dollars prospective it would be a benefit for the department but that it is hard to say management wise. Dollar wise it would be additional funding. The problem is that there is a lot of change going on and that creates a lot of turmoil now. City Manager Corthell stated that would be a long conversation that takes years to develop Mayor Gordon suggested we table the discussion on fire for now and talk more on the City operation fee. City Manager Corthell explained that a City operating fee is a general fund fee used for City operations and that It would come as a tax to the residents. Other fees such as transportation fees, stone water, and public safety fees are commonly on utility bills. Those are for a specific purpose. Councilor Lauder asked how the City would get that money. City Manager Corthell stated that is something Council would enact but Council needs to keep in mind that many people could see this as taxation without representation. Council decided to continue discussion on this in the next couple of meetings along with bringing the budget committee in with comments and or suggestions.

ii. Sewer Rate Discussion

City Manager Corthell is only that we have a \$50 K deficit there and eventually the rest of the city will have to foot that bill. As of now, what we would need is a twenty dollar and fifty cent (\$20.50) monthly increase to close that gap. City manager Corthell is hoping council will direct him to a rate structure analysis, so he can do some research with surrounding Cities. City Manager Corthell also stated that we need to look into how septic pumping is being billed and grasp a better process on that.

A motion made by Councilor Drill and Seconded by Councilor L. Sickles that the City Council of the City of Falls City direct City Staff to conduct a rate adjustment study related to pumping costs. Motion carried 5-0-0-1. Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Cliff Lauder, David Radke

iii. System Development Charge Reminder

City manager Corthell asked council to Preview the SDC material and develop questions, comments for the next meeting.

- b. Resolution 21-2019; A Resolution authorizing the City Manager to Apply for the 2020 special city allotment grant to fund improvement of bridge street and chamberlain street.

City Manager Corthell explained that it is next year’s allotment grant for one hundred thousand dollars (\$100,000.00). The PW committee and Don Poe, Public Works Supervisor spoke about repaving Bridge Street and Chamberlain Street. A brief explanation of why we keep paving already paved streets is that it costs more to replace a street that has been paved rather than to just do an overlay on a gravel St. An already paved street has to be ripped out and repaved.

A motion made by Councilor Drill and Seconded by Councilor L. Sickles that the City Council of the City of Falls City adopt Resolution 21-2019, A RESOLUTION AUTHORIZING THE CITY MANAGER TO: APPLY FOR AND ACCEPT THE 2020 SPECIAL CITY ALLOTMENT GRANT TO FUND IMPROVEMENT OF BRIDGE STREET AND CHAMBERLAIN STREET.

Motion carried 5-0-0-1. Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Cliff Lauder, David Radke

8) Old Business

- a. Franchise & Right of Way Ordinance Development

City Manager Corthell suggests that we should go with a Master Utility Right of Way Ordinance and the reason for that are that it is a much more user-friendly policy for staff.

A motion made by Councilor Drill and Seconded by Councilor Meier that the City Council of the City of Falls City directs City Staff to work with the City Attorney to draft a Master Utility Right of Way Ordinance and develop policy and procedure to administer it. Motion carried 5-0-0-1. Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Cliff Lauder, David Radke

9) Late Additions

None

10) Adjourn

The meeting adjourned at 7:40 pm.

_____ Mayor, Jeremy Gordon

Attested: _____ City Clerk, Jamie Ward



**INDIVIDUAL CAMPING PERMIT
8/30/19 - 9/2/19**

CITY OF FALLS CITY
299 MILL ST
FALLS CITY, OR 97344
PH. (503) 787-3631
MANAGER@FALLSCITYOREGON.GOV

CITY MANAGER'S
OFFICE

From: From Falls City Council via City Manager
To: Applicant, and Whom it May Concern
Date: August 27, 2019
Re: Individual Camping Permit for August 30 – September 2, 2019 (2 nights).

If approved by the City Council, this document shall serve as the overnight camping permit for George Kitchen Upper Park.

If granted, this permit allows camping on the indicated dates subject to, and contingent upon all of the rules and conditions below, and any additional added by the City Council. ***Failure to abide by these rules or conditions will result in immediate revocation of your camping privilege, potential trespass from the park, and/or legal action.***

• **Conditions:**

- Any camper may have their camping privilege immediately revoked by the Camp Host, an authorized City Staff Member, the Oregon State Police, and the Polk County Sheriff's Office, for a suspected or actual violation of any of the below rules or conditions.
- This permit authorizes Holly Mott, one additional adult, and one minor child, to tent camp overnight at George Kitchen Upper Park.
- Camping under this permit shall not begin until 7am on 8/30/19, and shall cease entirely by dusk on 9/2/19.
- The point of contact for this permit is **Holly Mott**, her contact information is on file at City Hall with this permit.
- This permit authorizes one camp site, for tent or open-air camping only.

• **Camp Rules:**

- All campers at the George Kitchen Upper Park must abide by all park rules, and all local, state, and federal laws, even if not listed here.
- All campers will be respectful to staff, guests, and other campers, at all times.
- Open flame fires are not currently allowed by order of the forest service, propane stove cooking is permitted.
- Quiet time, in accordance with Falls City Ordinances, is 10pm – 7am. We ask that all noise be kept reasonable, even outside the quiet time window as there is a neighborhood adjacent to the grounds.

- Campers must take out, or properly dispose of, everything you bring in!
- Campers must use on-site or approved restroom facilities for bodily movements of all varieties.
- Campers will set camp in cooperation with the camp host.
- Campers MUST keep this permit at their camp site at all times.

- **Information:**

- Falls City Camp Host, Wayne Scott, is located next to the restrooms in an RV. His phone number is (971) 209-5653.
- Water is available at multiple locations on the grounds.

- **Council Action:**

- I move the City Council of Falls City ***Grant/Deny/Amend*** the camping request contained herein.
- Ayes _____ Nays _____ Abstain _____

- This permit is (granted/denied) _____ ON (date) _____.

City Clerk's Signature _____ (not valid unless signed).



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



DATE: August 9, 2019

TO: Oregon cities, counties, and regional governments
Oregon Tribes
Oregon councils of government

FROM: Jim Rue, Director
Gordon Howard, Community Services Division Manager

SUBJECT: 2019-2021 Technical Assistance Grants

The Department of Land Conservation and Development is pleased to offer grant awards for land use planning projects in Oregon communities during the 2019-2021 biennium. If your community or organization is considering a planning project that is eligible for Technical Assistance grant funding, please complete and submit an application. The form and instructions are available at <https://www.oregon.gov/lcd/CPU/Pages/Community-Grants.aspx>. If you experience difficulty accessing the materials, please contact Gordon Howard, Community Services Division Manager at 503-934-0034 or DLCD.GFGGrant@state.or.us.

Please contact the DLCD regional representative for your region or community for guidance prior to submitting the application. You can find a current list of regional representatives at <https://www.oregon.gov/lcd/CPU/Pages/Regional-Representatives.aspx>.

Technical assistance grant applications are due no later than October 1, 2019. The grant awards will be determined through a competitive process based on program priorities contained in the Grants Allocation Plan approved by the Land Conservation and Development Commission and evaluation criteria explained in the application packet.

This memo addresses Technical Assistance grants only. Other grants from the department's general fund (*e.g.*, Periodic Review, Planning Assistance, and Columbia River Gorge grants) are offered separately. NOTE:

1. For the 2019-2021 biennium, the department has grant funds available for implementation of [HB 2001](#) and [HB 2003](#), adopted by the 2019 Legislature. These bills involve provision of needed housing in Oregon's medium and large cities, as well as in Metro area counties. Those grant funds are available for a more limited scope of housing projects. If your proposal qualifies for one of these sources of grant funding, DLCD staff will contact you to provide information and discuss the matter.
2. Also, for the 2019-2021 biennium, the department is reserving a set amount of grant funds for implementation of [SB 2](#), also adopted by the 2019 Legislature. This bill provides additional economic development opportunities within ten eastern Oregon

counties. Criteria for these grants will be issued in September 2019. Technical assistance grant applications pursuant to SB 2 will not be due until November 1, 2019.

cc: Grants Advisory Committee

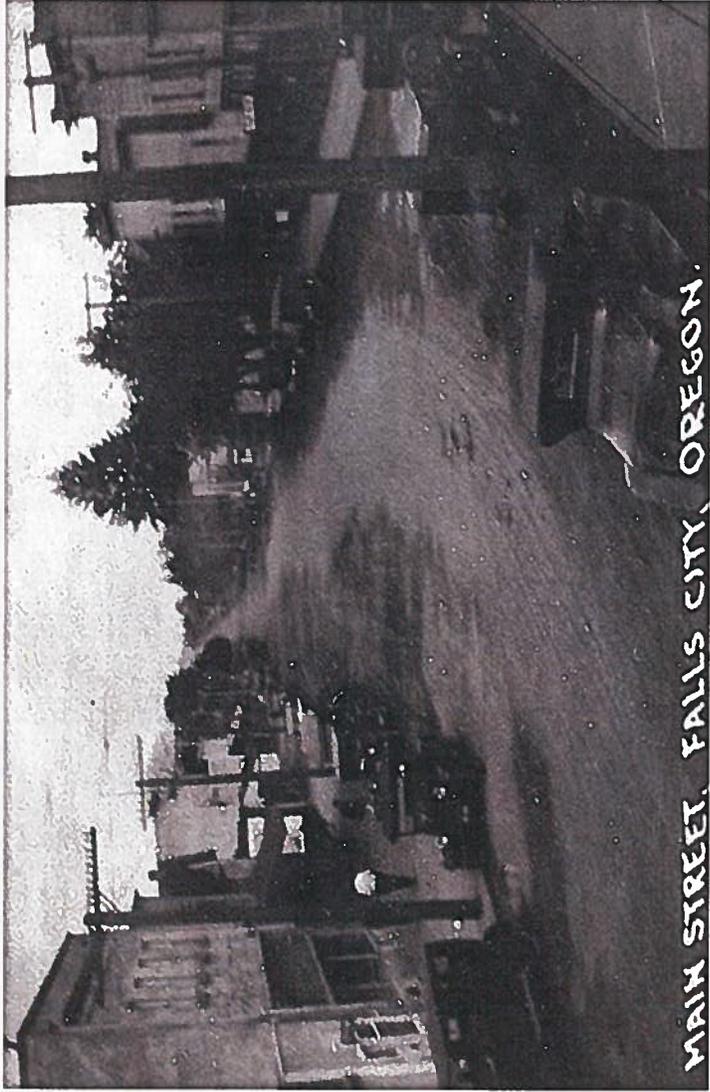
ELIGIBLE PROJECTS AND EVALUATION CRITERIA

Technical Assistance grants are used to help complete projects that update comprehensive plans and implementing regulations, plan for specific areas, or support planning activities. The *2019-2021 Grants Allocation Plan*, approved by the Land Conservation and Development Commission, lists the program priorities for use of Technical Assistance grant funds as follows (additional detail in “Program Priorities,” below):

1. Promote economic development
2. Promote provision of affordable and workforce housing
3. Plan for resilience to natural hazards and climate change
4. Provide infrastructure financing plans for urbanizing areas
5. Update comprehensive plans and implementing codes to respond to changes in state law or advance regulatory streamlining.

These are listed in priority order. Those planning projects that do not match these priorities are eligible; grants for these projects will be awarded based on the merits of the application as funds allow.

FALLS CITY FINANCIAL CONDITION PROJECT



Prepared by:
Mac Corthell
City Manager
Falls City, OR

Re-centering:

What are we doing, why are we doing it?

A Financial Condition Project with 3 goals:

- To correct a \$150k revenue deficit;
- To financially plan for present and future needs;
- To determine the intersection between services and willingness/ability to pay for them.

3 Phase Process for Achieving the goals:

- I. Resource Utilization Phase- ensure all capital, human, and cash resources are achieving maximum returns.
 - **Correct underdeveloped revenue streams**
 - Master Right of Way Ordinance
 - New and updated franchise and licensing agreements
 - Sewer User Fees
 - Rate Study
 - Updated rates; CPI element?
 - **Delliberate on non-existent revenue streams**
 - SDC's, Various Operating Fees on Utility Bills (e.g. Street Maintenance, Parks, Street Lights, Code Services), LID's, Bonds, sale of real property, and so on.
 - **Organizational Development**
 - Conduct work load analysis for all paid employees.
 - Distribute work to ensure maximum efficiency.
 - Ensure continuity through development of job descriptions, and corresponding SOP's to efficiently meet responsibilities.

FINANCIAL CONDITION PROJECT:

Overview

3 Phase Process for Achieving the goals:

- I. Resource Utilization Phase- ensure all capital, human, and cash resources are achieving maximum returns.
- II. Financial Condition Analysis- Analyze the City's Financial condition to determine the most critical areas to address.
 - **Define Financial Condition: Informs the Assessment.**
 - **Assess Financial Condition: Trends, Ratios, Etc.**
 - **Evaluate Financial Condition: Typically a comparative analysis of other cities' condition.**
 - **Corrective Action: We picked off some of the easy stuff here already. This is our segway to Phase III.**

FINANCIAL CONDITION PROJECT:

Overview

3 Phase Process for Achieving the goals:

- I. Resource Utilization Phase- ensure all capital, human, and cash resources are achieving maximum returns.
- II. Financial Condition Analysis- Analyze the City's Financial condition to determine the most critical areas to address.

III. Finding the intersection- between resource capability and service levels.

- **Decision Time:**
- Review income projections against operating expenses, capital improvement plans, and council goals.
- Define which programs and related expenses can be cut, or moved to a separate district (parks, cemeteries, Fire).
 - Identify and discuss all available options to maintain service levels.
- Make necessary cuts, adjustments, or other option, as selected by the City Council.

FINANCIAL CONDITION PROJECT:

Overview



May 2004
Volume 2, Issue 1

Inside this Brief

- **Background**
- **SDC Calculations**
- **Current Use of SDCs**
- **Court Challenges**
- **Recent Legislation**
- **Staff and Agency Contacts**

Legislative Committee Services
State Capitol Building
Salem, Oregon 97301
(503) 986-1813

Background Brief on...

System Development Charges

Prepared by: Janet Adkins

Background

System Development Charges (SDCs) are one-time fees charged on new development, and certain types of redevelopment, to help pay for existing and planned infrastructure to serve the development. SDCs are one means of financing growth available to local governments. State law authorizes local governments to assess SDCs and specifies how, when, and for what improvements they can be imposed. Under ORS 223.297 – 223.314, SDCs may be used for capital improvements for:

- Water supply, treatment and distribution
- Waste water collection, transmission, treatment and disposal
- Drainage and flood control
- Transportation
- Parks and recreation

The fees may be a reimbursement by new development for a portion of unused infrastructure capacity and/or an improvement fee for planned infrastructure. The fees may not include an improvement fee portion if there is sufficient existing capacity. SDC revenues may be levied and used for capital costs, but not for ongoing facility or system maintenance or for projects that either fix existing system deficiencies or replace existing capacity.

State law also specifically prohibits SDCs to be based on numbers of employees or to be increased with the addition of employees.

Cities must establish their SDCs by ordinance or resolution. The methodology must provide a credit for any qualified capital improvement financed by the developer. The calculation methodology must be adopted through a public process and the ordinance must set up a review procedure through which anyone may challenge an expenditure of SDC revenue if it is out of compliance with state restrictions.

Prior to imposing SDCs the local body must have in place:

- A capital improvement plan
- A public facilities plan or comparable plan that lists improvements to be funded with the improvement fee portion of the SDC

- An estimate of the cost and timing for each listed improvement

Such plans may be modified by the jurisdiction.

SDCs are typically assessed when development or building permits are issued, but they can be collected at a later date, such as at the time of occupancy. They are collected from builders who may include the costs in their charges.

Local governments collected SDCs as early as the 1970s, originally for water and sewer improvements. Corvallis enacted an SDC ordinance in 1972. The state law regulating local SDCs was passed in 1989 in order to provide consistency in process and to limit SDC application to certain capital improvements.

Some jurisdictions have related fees, such as street maintenance or traffic impact fees, which do not necessarily meet SDC requirements.

SDC Calculations

The state law does not specify the method of calculating SDC rates, but some standard methodologies have evolved. For instance, transportation SDCs are generally based on a standard trip-generation calculator for the type of dwelling, business, or facility. The methods calculate a maximum charge, and communities often charge some percentage of the maximum. The League of Oregon Cities has developed a model SDC ordinance. It does not specify a calculation method, but contains parameters and standard language establishing the authority.

Current Use of SDCs

Cities

The League of Oregon Cities conducted a survey of the state's 240 cities in 2001 regarding their SDCs. They found 134 cities with SDCs, including 73 for parks, 121 for sewer, 120 for water, and 70 for transportation. These totals may be incomplete because not all cities responded. Fee levels vary by jurisdiction, being generally higher in cities with higher populations. Where multiple SDCs are assessed, the total can range from several thousand dollars to over \$20,000 on a single-family home. A 20,000 square-foot office building may be assessed from \$30,000 to over \$80,000. The variation is due to differences between cities in level of growth and extent of existing and planned infrastructure. Some city websites contain their SDC ordinances and rates.

Counties

At least five of Oregon's 36 counties impose SDCs. County SDCs are typically for roads or parks. Examples are park SDCs in Lane and Yamhill Counties and transportation SDCs in Clackamas, Jackson, and Marion Counties.

Special Districts

The most common types of special districts that collect SDCs are water, sewer, and parks districts. Except for the smaller districts, most water and sewer districts collect SDCs. Park district use of SDCs is less common.

Court Challenges

Several cases involving SDCs were brought in the past few years. Fees were reduced in Bend and Newberg under challenges by builders' associations. A court found in favor of the Tualatin Hills Park and Recreation District in a challenge based partly on how current levels of service are calculated and applied to new development.

Recent Legislative Action

Senate Bill 939 (2003) allowed an SDC to be a combination of improvement fee and reimbursement fee so long as the charge is not based on providing the same system capacity. The bill also strengthens the tie between the improvement plan and the list of projects eligible for SDCs, requiring local governments to provide notice and hold a hearing if requested when changes to list of projects results in an increase in the SDC. Further, the bill allows local governments to include an inflation index in their SDCs, and requires the locality to "demonstrate" that certain factors were taken into account in establishing fees.

Staff and Agency Contacts:

Michele Deister	League of Oregon Cities 503-588-6550
Art Schlack	Association of Oregon Counties 503-585-8351
Burton Weast	Oregon Special Districts Assoc. 503-650-1181
Janet Adkins	Legislative Committee Services 503-986-1621

System Development Charges

Basic Principles

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Forward



This document contains general principles that local governments may want to consider when enacting system development charges. The principles contained herein are compiled from Oregon Revised Statute, published articles from various sources, and presentations by James C. Nicholas, a leading authority on impact fees. The circumstances and needs of each community will influence the particulars of their SDC program. Local governments should consult with their municipal attorneys when enacting and revising their system development charges to ensure that their system development charges are appropriate for their community.

SDC Act

 ORS 223.297 - 223.314, known as the *SDC Act*, provides a “uniform framework for the imposition of system development charges by governmental units to provide **equitable funding for orderly growth and development in Oregon's communities** and to establish that the charges may be used only for capital improvements.”

 Statute establishes that SDCs may be used only for capital improvements, defined as facilities or assets used for:

- Water; - Storm Water; - Parks
- Waste Water; - Transportation;

Should A City Enact SDCs?

 SDCs are *a* tool to finance infrastructure needed as a result of growth.

 How much growth a city has, plans and expects should be contained in the city's comprehensive plan.

 Some communities may want to consider alternatives to SDCs.

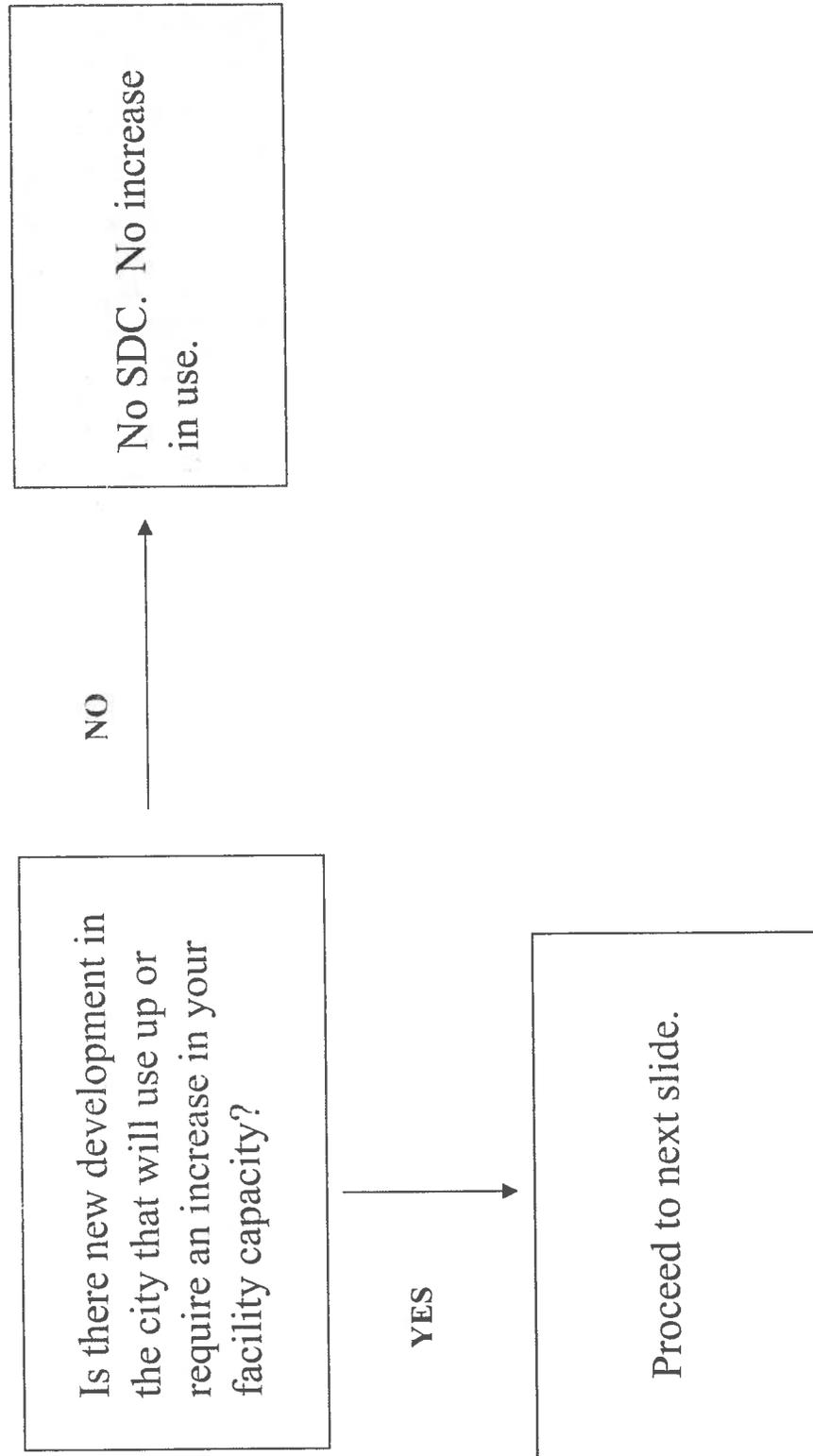
BEFORE You Enact SDCs:

 ORS 223.309: “Prior to the establishment of a system developmental charge by ordinance or resolution, a governmental unit shall prepare a capital improvement plan, public facilities plan, master plan or comparable plan that includes a list of the capital improvements that the governmental unit intends to fund, in whole or in part, with revenues from an improvement fee and the estimated cost, timing and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement.

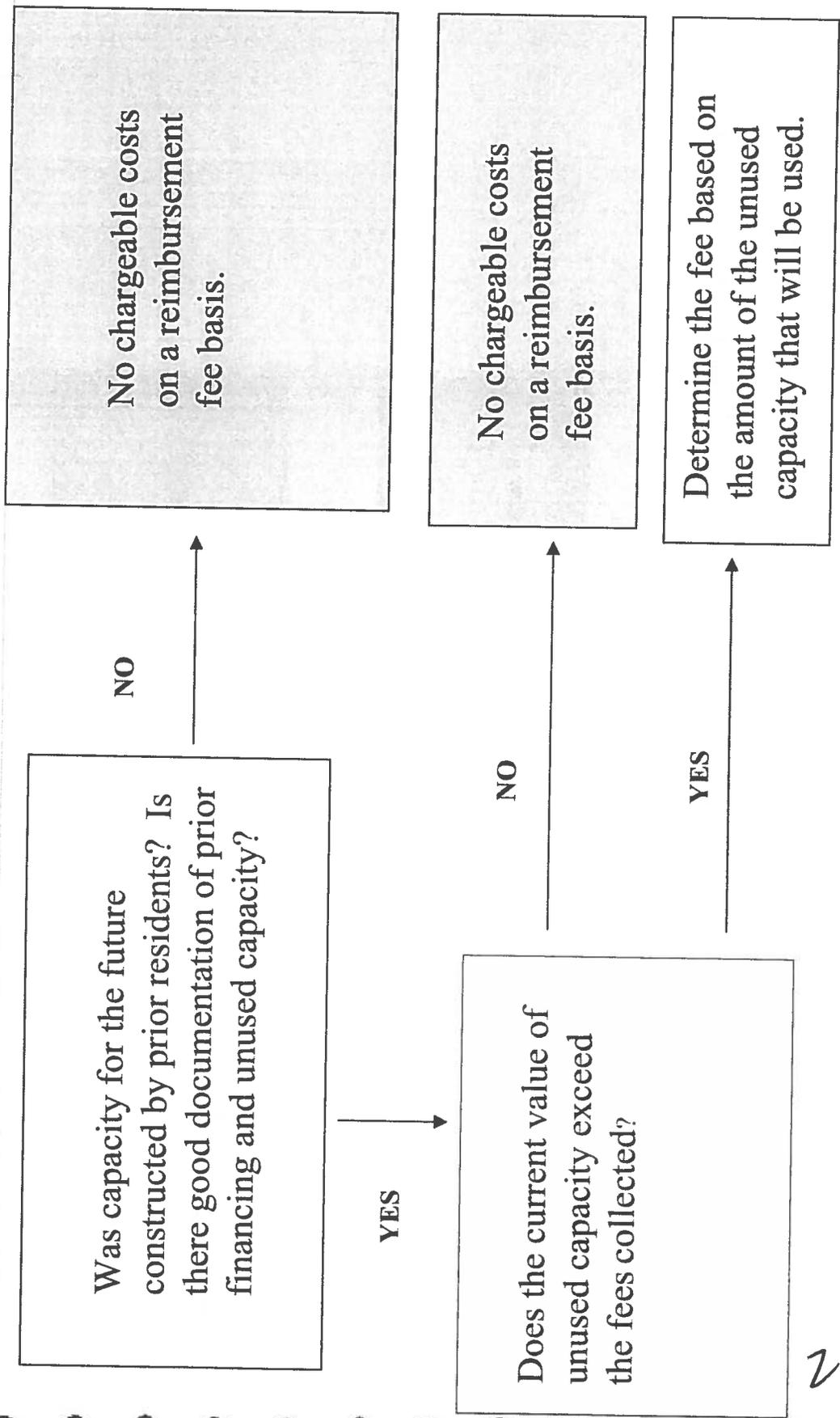
— A Plan (preferably coordinated with your land use plan) and a list of SDC eligible projects

To SDC or Not to SDC?

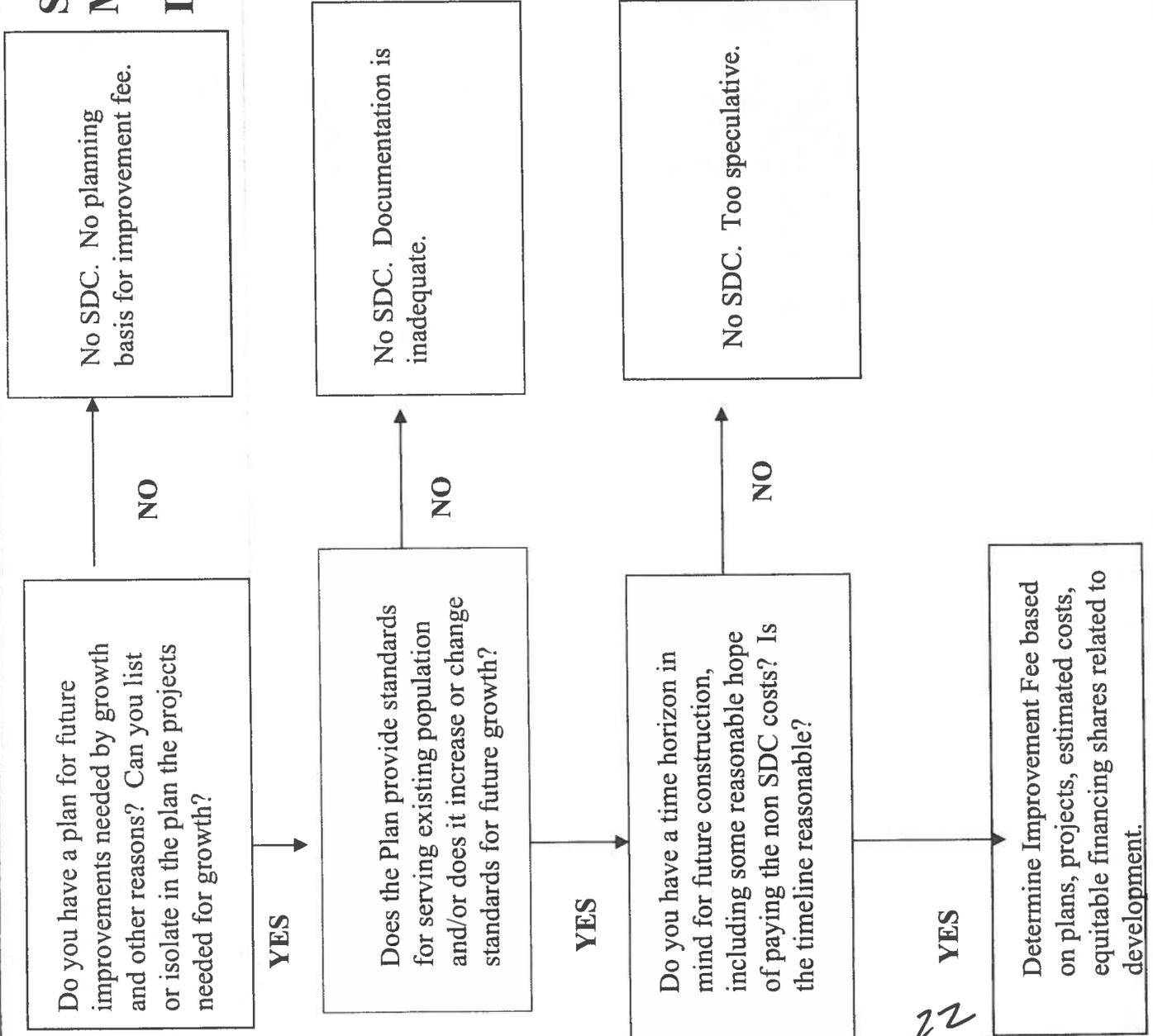
That is the question.



Sample Decision Matrix: Reimbursement Fee



Sample Decision Matrix: Improvement Fee



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Alternatives to SDCs

 Development Exactions

 Reimbursement/Recoupment Contracts

 Local Improvement Districts

 Tax Increment Financing (Urban Renewal)

 General Obligation Bonds

 Revenue Bonds

 Public Purpose Lenders (State or Federal

grants/low interest loans)

Improvement Fee

☞ “A fee for costs associated with capital improvements to be constructed.” *ORS 223.299*
(2)

☞ “Improvement fees must be established or modified by ordinance or resolution that is available for public inspection and *demonstrates consideration of:*

- Projected cost of improvements identified in plan and list;
- The need for increased capacity in system to which the fee is related that will ...serve demands ...by future system users.

Combined Fees

- You can't charge development twice for the same capacity
 - "A GU may establish or impose a SDC that is a combination...if the methodology demonstrates that the charge is not based on providing the same system capacity." (ORS 223.304 (3))

Reimbursement Fee

📄 “A fee for costs associated with capital improvements already constructed or under construction when the fee is established, for which the GU determines that capacity exists” ORS 223.299 (3)

📄 “...must be established or modified by ordinance or resolution setting forth a methodology that, when applicable, is based on:

- *Rate making principles*
- *Prior contributions by existing users*
- *Gifts and grants*
- *The value of unused capacity available to future system users*
- *The cost of the facility (ORS 223.304 (1))*

General Principles

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 SDCs calculate the equalization of relative financial burden

- Taxes and charges of existing residents should not increase because of new development
- New development should not be charged to the extent that the taxes and charges of residents decrease

- Bottom line: PROPORTIONATE SHARE

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Reimbursement Fee (cont.)

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 The methodology must: “Promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities.”

ORS 223.304 (1)(A)

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General Principles (Continued)

Reasonable Relationship

- There must be a reasonable connection between the need for additional facilities and the growth generated by new development;
- There must be a reasonable connection between the expenditure of the fee collected and the benefits received by the development paying the fee.

General Principles (Continued)

Equalization of Relative Financial Burden

- The charges or fees imposed on new development should be no more than a PROPORTIONATE SHARE of the local government's cost of new facilities needed to serve such new development.

General Principles (Continued)

 SDCs must be based on a Plan

- The plan must precede the SDC;
- Comprehensive plan, capital improvement plan, etc.;
- The plan should be consistent with the comprehensive plan, which is a blueprint of the growth the community anticipates - helps to show that SDC financed improvements are needed to accommodate new development;
- If the Plan is a mess, the SDCs will be, too.

General Principles (Continued)

SDCs Must Be Implemented

- If a city is collecting improvement fees for a facility, the facility needs to be built.
- However, if the basis for the facility changes, you can amend the plan.
- Periodic updates are necessary.

General Principles (Continued)

SDCs Must Fit With Broader System & Facilities

- Standards -- translate the plan's growth and development projections into improvements;
- Apply the same standards to existing development;
- SDC revenue cannot be used to remediate existing facility deficiencies.

General Principles (Continued)

Justifiable SDCs must be:

- Rational - developed through a rational, fair and open process;
- Empirical - based on real data, not speculation;

Establishing the Cost of Improvements

- After standards have been established and improvements have been linked to plans, establish the cost and timing of the improvements.

Cost Estimates Must Be Supportable

- Follow engineering and other professional standards when estimating costs;
- Those making estimates should be qualified to do so;
- Estimates should be reasonable and consistent;
- If data is shaky, cost estimates should be low, and data should be updated as estimates become firmer.

Establishing the Cost of Improvements (Continued)

- Q: How much should be paid by new development?
- A: Whatever is reasonable

7 Factors for Determining the Cost of

Improvements:

- What is the cost of *existing* facilities?
- How were existing facilities paid for?
- To what extent has development already paid these costs (e.g. property taxes on undeveloped land, etc.)

Establishing the Cost of Improvements (Continued)

7 Factors for Determining the Cost of Improvements (continued):

- To what extent will Development pay in the future (through property taxes, bond levies, etc.) -- development cannot be charged twice for the same thing.
- To what extent have extraordinary costs been considered?
- To what extent has consideration been given of prime price differentials inherent in the fair comparison of amounts paid at different times? (Present Value)

Calculating Improvement Fees

Determine Existing Facility Standards (!)

- Examples:
 - Acres of Park Land per 1,000 population
 - Sewage Treatment - Gallons per day per 1,000 population
 - Geographic considerations/standards.
- (You don't have to be stuck with deficient facilities)
 - You may consider remediating existing facilities to get them up to the standards being imposed on new development, provided that SDC revenues are not used to do so. There should be a **logical strategy** to remediation.

Calculating Improvement Fees (Continued)

 Determine the Quantities of Facilities
Needed to Accommodate New
Development

– Standards X Growth Assumptions in plan =
Quantities

 Determine Total Cost of Facilities Needed
to Accommodate New Development

– Costs must be reasonable and defensible, not
arbitrary

Calculating Improvement Fees (Continued)

 Determine What Revenue Will Be Available

– Facility Cost minus Available Non-Local Revenues = Net Cost of Facility to Local Government.

– Discount the cost of the facility by the amount of Federal and other non-local government funds needed to pay for it.

Calculating Improvement Fees (Continued)

 Break the net cost of the facility into Individual Demand Units

- Single family residence, etc.
- Use previously developed standards:
 - A city of 50,000 has 75 acres of parkland (1.5 acres per 100,000);
 - A single family residence has 2.5 persons (per US census);
 - So one home requires 0.1875 acres (816 square feet) of parks.

Calculating Improvement Fees (Continued)

 Determine what the facility will cost per unit or facility.

— e.g. Cost of park acquisition and development per acre.

 Where does the cost data come from?

- Public Works Department;
- Historic records;
- Catalogues;
- RFPs, designed and prototyped facilities

 Keep copies of this data.

Credits for Qualified Public Improvements

 Statute requires that municipalities provide for a credit against improvement fees for the construction of a “qualified public improvement”:

- A capital improvement required as a condition of development approval and not located on or contiguous to the development; or
- Located in whole or in part on or contiguous to the development and required to be built with greater capacity than needed to serve the particular development.

 Credits for cost of that portion that exceeds the minimum standard facility size or capacity needed to serve the particular development.

 Credits may be carried forward to subsequent phases of the development.

Calculating Reimbursement Fees

Reimbursement Fees are simpler:

- The cost of the facility being (partially) recovered is already known - math takes over.
- RFs should be based on the actual cost incurred by the local government to build the facility.
 - If local government did not incur a particular cost to build a facility, local government should not be recovering for it.

Implementing the SDC

 Whatever you implement has to be administered

- Keep it simple, or at least rational

Ordinance

- Sample Ordinance - adopted ordinance needs to be customized and specific.

45 Notice

- Notice requirements, ORS 223.304 (6)

Implementing the SDC (Cont.)

Ordinance (continued)

- Define specific terms and examples;
- Do not make the ordinance discretionary (change “may” to “shall”, etc.);
- Name the planning document on which the SDC is based;
- Consider including a penalty for failure to obtain required permits;
- Consider including a local process for challenging calculation.

Implementing the SDC (Cont.)

Waiving the SDC?

- Exempt nothing, not even city facilities
- Low income housing, city owned facilities, etc. have an impact on infrastructure.
- Subsidize them some other way (GF).

Implementing the SDC (Cont.)

Writ of Review

- Requires the establishment of a written record
 - Prove that the SDC is an equalization of relative financial burden and how the city arrived at the calculations and conclusions.
- A challenge to methodology must be filed within 60 days of establishment/adoption of the SDC
 - But the city can be challenged for up to 2 years on SDC expenditures.
- 58 - Document, Document Document!
 - Save supporting data in case of challenges

Implementing the SDC (Cont.)

Writ of Review (continued)

- SDCs may be overturned when a municipality:
 - Exceeds its jurisdiction;
 - Fails to follow procedure;
 - Makes a finding or order not supported by substantial evidence in the whole record;
 - Improperly interpreted the applicable law; or
 - Renders a decision that is unconstitutional.

Implementing the SDC (Cont.)

Challenges

- Consider “independent calculation” provision
 - Gives the developer an opportunity to submit an independent study and calculations if they “don’t fit”.
 - Make sure the ordinance specifies that it’s done using professional standards.
- Beware of Exceptions - everybody will want

50

one.

Implementing the SDC (Cont.)

Increases to Charges

- Inflation factor (when incorporated into methodology/ordinance) is okay- this is not a change to methodology
 - Must be a factor developed by a recognized, independent source
- Addition of a project to the list that increases a charge = provide notice prior to adoption. Hold hearing if requested (ORS 223.309(2)).

Implementing the SDC (Cont.)

Expenditures

- Improvement fee revenue may be spent on:
 - Projects that increase facility capacity;
 - Projects that benefit the development; and
 - Projects that comply with statute (water, sewer, stormwater, parks, transportation); and
 - Projects that are related to your plan;
- Reimbursement fee revenue may be spent on:
 - Paying down debt incurred for building facilities that benefit new development; and
 - Repaying accounts which fronted money for such facilities.

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Implementing the SDC (Cont.)

Expenditures (continued)

- If facility has already been constructed, SDC can be used for debt reduction (RF), or for capacity expansion (IF).
- SDC Revenue should not be used to remediate existing deficiencies.
- SDC Revenues should be spent on infrastructure.

SDC Expenditures can be challenged:

- If a GU expends SDC revenues in violation of limits of ORS 223.307, \$\$ must be replaced from another source (ORS 223.302(1)).

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Implementing the SDC (Cont.)

Annual Accounting

- By Jan. 1 of each year
- Include from the previous year:
 - Total amount of SDC revenues collected for each type of SDC (by project);
 - List of each project funded in whole or in part with SDC revenues, by project; and
 - Amount of SDC revenues spent on each project.
 - Cost of administration and compliance with statute.

The End

 A League of Oregon Cities Production

55

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FALLS CITY, OREGON, GOVERNING THE USE AND OCCUPATION OF THE PUBLIC RIGHT OF WAY BY COMMUNICATIONS PROVIDERS AND ESTABLISHING AN APPLICATION PROCESS, FEES, AND TERMS FOR SUCH USE

Section 1. Short Title. This Ordinance shall be referred to as the "Right of Way Management Ordinance."

Section 2. Jurisdiction and Management of the Public Rights of Way.

- A. The City has jurisdiction and exercises regulatory management authority over all City Public Rights of Way pursuant to the City Charter and State law. The City's purpose for exerting its management authority over the Public Rights of Way is to protect and efficiently manage the public's resources and to ensure fair and non-discriminatory access to the Public Right of Way.
- B. The City has jurisdiction and exercises regulatory management over each Public Right of Way whether the City has a fee, easement, or other legal interest in the Right of Way. The City has jurisdiction and regulatory management of each Right of Way whether the legal interest in the Right of Way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. No Person may occupy or encroach on a Public Right of Way without the permission of the City. The City grants permission to use Rights of Way through Franchise Agreements and Construction permits.
- D. The exercise of jurisdiction and regulatory management of a Public Right of Way by the City is not official acceptance of the Right of Way, and does not obligate the City to maintain or repair any part of the Right of Way.
- E. The City retains the right and privilege to cut or move any Communications Facilities located within the Public Rights of Way as the City may determine to be necessary, appropriate or useful in response to a public health or safety Emergency.
- F. The City desires ~~champion~~ the ready availability of Communication services for all its residential and commercial citizens by providing infrastructure and amenities that make ~~Stayton~~ Falls City a better place to do business. The City is committed to authorizing the private access and use of the Public Right of Ways for such services so long as such use is consistent with and does not unduly burden or interfere with the principal purpose of the Public Ways, which is to facilitate the free transit of Persons and goods in commerce.
- G. The City holds the health, safety, quality of life and opportunities to prosper, as well as such physical assets such as the Public Right of Way, in trust for all of its citizens and has a fiduciary responsibility to assure that any use of City resources, especially its Public Ways, benefits all of the citizens and, where it is deemed appropriate, allows for

the recovery of a fair and reasonable compensation from private entities using public resources.

- H. If Communications Providers make "percentage of gross revenue" payments which include only portion of the communications services they provide within the City, then they are not compensating the City fairly for their private use and enjoyment of public assets and resources. Such Communications Providers may derive an unfair advantage and their failure to compensate may place similarly-situated Communications Providers in an inferior and unfair competitive position. Unfair competition does not foster the City's desired technological and business growth. Among the purposes of this chapter is not only to ensure that the public is properly compensated for the private use and enjoyment of City assets and resources, but also to ensure that all similarly-situated Communications Providers are treated similarly and fairly in order to foster technological growth and innovation.

Section 3. Regulatory Fees and Compensation Not a Tax.

- A. The fees and costs addressed in this Ordinance, and any compensation charged and paid for regarding the use of the Public Rights of Way addressed in this Ordinance, are separate from and in addition to any and all other federal, State, local, and City fees, taxes, or charges as may be levied, imposed, or due from a Communications Provider, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of Communications Services.
- B. The City has determined that any fee provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners.
- C. The fees and costs provided for in this Ordinance are subject to applicable federal and State laws.

DEFINITIONS

Section 4. Definitions. For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Communications Act of 1934, as amended, the Cable Act, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act. If not defined there, the words shall be given their common and ordinary meaning.

Cable Act - shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, *et seq.*

Cable Service - is to be interpreted consistent with federal law and means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, required for the selection or use of such video programming or other programming service.

Cable Service Provider - means any provider of Cable Service.

City - means the City of ~~Stayton~~Stayton Falls City, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.

City Council - means the elected governing body of the City of ~~Stayton~~Stayton Falls City, Oregon.

Control - means actual working control in whatever manner exercised.

City Property - means and includes all real property owned by the City and all property held in a proprietary capacity by the City but does not include Public Rights of Way and Utility Easements as defined herein.

Communications Facilities or Facilities - means all plant, equipment and systems, other than customer premises equipment, used by any Communications Provider. For the purposes of this Ordinance, Facilities used by Cable Service Providers to provide Cable Service are Communications Facilities.

Communications Provider(s) or Provider(s) - means any provider of Communications Services and includes, but is not limited to: every Person who directly or indirectly owns, controls, operates or manages Communications Facilities within the City and Cable Service Providers.

Communications Service(s) or Service(s) - 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, 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 and expressly includes Cable Service offered by a Cable Service Provider, but does not include: (1) open video system service, as defined in 47 C.F.R. 76; (2) private Communications System services provided without using the Public Rights of Way; (3) over-the-air radio or television broadcasting to the public-at-large from Facilities licensed by the Federal Communications Commission or any successor thereto; and (4) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

Conduit - means any structure, or portion thereof, containing one or more Ducts, Conduits, manholes, bolts, cables, fiber, or other infrastructure used by or for any telegraph, telephone, electrical utility, conductors, or Cable Service.

Construction - means any activity in the Public Rights of Way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing Facilities.

Days - means calendar Days unless otherwise specified.

Duct - means a single enclosed raceway for conductors or cable.

Emergency - has the meaning provided for in ORS 401.025.

Facilities - means Communications Facilities as defined herein.

Federal Communications Commission - means the federal administrative agency, or its lawful successor, authorized to regulate and oversee Communications or Cable Service Providers on a national level.

Franchise or Franchise Agreement - means an agreement between the City and a Communications Provider which grants a privilege to the Communications Provider to use Public Right of Way within the City for a limited, dedicated purpose and in return for specific compensation.

Franchisee – means a Communications Provider who is a non-breaching party to an unexpired Franchise Agreement ~~which authorizes all Communications Services the Communications Provider provides within the City.~~

Comment [MAW1]: Not necessary

OPUC - means the statutorily created State agency in the State of Oregon responsible for licensing and regulation of certain Communications Providers as set forth in Oregon law, or its lawful successor.

Overhead Facilities - means utility poles, Utility Facilities and Communications Facilities above the surface of the ground, including the underground supports and foundations for such Facilities.

Person - means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

Private Communications Network - means a system, including the Construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a Person for their own use and not for resale, directly or indirectly. "Private communications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

Public Rights of Way or Right of Way - include, but are not limited to: City streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and other public ways generally open to travel, including the subsurface under and air space over these ways; but does not include parks, parkland or other City Property not generally open to the public for travel. This definition applies only to the extent of the City's right, title, interest or authority to grant a Franchise to occupy and use such areas for Communications Facilities. "Public Rights of Way or Right of Way" shall also include Utility Easements as defined below.

Right of Way Use Fee- means the fee imposed upon a Communications Provider for its occupation of or use of the City's Public Right of Way without an unexpired Franchise Agreement which authorizes all Communications Services provided and imposes a Franchise Fee on such services.

State - means the State of Oregon.

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.*

Underground Facilities - means Utility and Communications Facilities located under the surface of the ground, but does not include underground foundations or supports for "Overhead Facilities."

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Utility Easement - means any easement granted to or owned by the City and acquired, established, dedicated, or devoted for public utility purposes. "Utility Easement" does not include any easement dedicated solely for City use or Facilities or any easement where the proposed use is inconsistent with the terms and conditions of the easement granted to or owned by the City.

Utility Facilities - means the plant, equipment and property, including but not limited to the poles, pipes, mains, Conduits, Ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the Public Right of Way of the City and used or to be used for the purpose of providing utilities, Cable or Communications Service.

SCOPE OF CHAPTER; REGISTRATION OF COMMUNICATIONS PROVIDERS

Section 5. Scope of Ordinance; Purpose of Registration. This Ordinance shall apply to all Communications Providers who use or occupy the Public Rights of Way whether or not they provide Communications Services to Persons within the City. The purpose of registration is:

- A. To assure that all Communications Providers who have Facilities within the City Rights of Way and/or who provide Communications Services within the City using the Public Right of Way comply with the ordinances, rules and regulations of the City.
- B. To provide the City with accurate and current information concerning Communications Providers who offer Communications Service within the City or who own or operate Communications Facilities within the City.
- C. To assist the City in the enforcement of this Ordinance, management and caretaking of the Public Right of Way, and the collection of any City Franchise fees or Right of Way Use Fees or charges.

Section 6. Registration Required.

- A. Unless excepted in this Section 6. B., all Communication Providers who own, operate or use Facilities within the City's Public Right of Way and all Communication Providers who provide Communication Services to any customer within the City, shall register with the City, on a form provided by the City, within forty-five (45) Days of the effective date of this Ordinance. Any prospective Communications Providers who want to install or use Communications Facilities within the City's Public Right of Way or want to provide Communications Services within the City after the effective date of this Ordinance shall register with the City, on a form provided by the City, prior to installing Facilities or providing Services.
- B. After registering with the City pursuant to subsection 6.A, the Communication Provider shall, by December 31st of each year, file with the City a new annual registration form if it intends to maintain Facilities or provide Services at any time in the following calendar year.
 - 1. Communications Providers who file an initial registration pursuant to subsection 6.A on or after September 30th shall not be required to file an annual registration until December 31st of the following year.

2. Communications Providers who are a non-breaching party to an unexpired Franchise Agreement which obligates the Provider to pay a Franchise Fee on all the Services it provides within the City are not required to file an annual registration during the term of the Franchise Agreement.

Comment [MAW2]: This highlight shows that Franchisee's that pay a percentage of gross revenue for ALL services it provides, are except from this section. We don't have to do this, but this worked for this particular city.

I highlighted the other sections similar to this.

Comment [FCH3]: I like provision. I think it, along with the other waived requirements for current franchisees, incentivizes franchise agreements. The longer term of Franchise Agreements lowers the administrative burden and improves relations.

C. In lieu of filing the City's registration form, a Communications Provider may submit to the City a copy of the its application and approved license from either: a) the Oregon Public Utility Commission (PUC); or b) the Federal Communications Commission. To the extent not included in the application and license materials submitted pursuant to this subsection 6.C, registrants also shall provide the following information:

1. The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information.
2. The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an Emergency.
3. A description of the registrant's existing or proposed Facilities within the City, a description of the Facilities that the registrant intends to construct, and a description of the Communications Service that the registrant intends to offer or provide to Persons, firms, businesses, or institutions within the City.

Section 7. Registration Fee. Unless excepted in Section 7. A., each registration form shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council. The registration fee required by this Section shall be subject to all applicable limitations imposed by federal or State law.

Comment [FCH4]: Completely agree.

Comment [MAW5]: This is set up for all fees to be set via resolution.

The other option is to set the fees directly in this Ordinance.

Resolutions are easier to update/change if the City wants to increase fees later on. I recommend setting it up the way it's written now.

A. Communications Providers who are a non-breaching party to an unexpired Franchise Agreement which obligates the Provider to pay a Franchise Fee on all the Services it provides within the City shall not be required to pay a Registration Fee.

Section 8. Exemptions from Registration. The following Communications Providers and Facilities are exempted from registration:

- A. Communications Facilities owned and operated exclusively by the State or a political subdivision of this State, for their own use.
- B. A Private Communications Network, provided in a manner that does not occupy any Public Rights of Way.

CONSTRUCTION STANDARDS

Section 9. General. No Person shall commence or continue with the Construction, installation or operation of Facilities within a Public Right of Way except as provided in Sections 12 through 28, and in compliance with all applicable City and State codes, rules, and regulations.

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Section 10. Construction Codes. Facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, State and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

Section 11. Construction Permits Requests. Except in the event of an emergency, no Person shall construct or install any Facilities within a Public Right of Way without first obtaining a Construction permit and paying the Construction permit fee, ~~as established~~

~~if~~. No permit shall be issued for the Construction or installation of Communications Facilities within a Public Right of Way unless:

- A. The requestor, if so required, has first filed a registration form with the City as required by Sections 5 through 8 of this Ordinance; and
- B. The requestor has applied for and received a Franchise pursuant to Sections 29 through 45 of this Ordinance.

In the event of an emergency and in compliance with City Code, a permittee or its contractor may perform work on its Facilities to address the emergency without first obtaining a permit from the City provided it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City and pays any applicable permit fee as soon as reasonably practicable. As used in this Section 11, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning Facilities is necessary to restore lost service or prevent immediate harm to Persons or property.

Section 12. Construction Permits. Requests for permits to construct Communications Facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- A. That the Facilities will be constructed in accordance with all Federal, State, and City applicable codes, rules and regulations.
- B. That the Facilities will be constructed in accordance with any applicable Franchise Agreement.
- C. The location and route of all Facilities to be installed aboveground or on existing utility poles.
- D. The location and route of all Facilities on or in the Public Rights of Way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route within the City. Existing Facilities shall be differentiated on the plans from new Construction. If requested, a cross section shall be provided showing new or existing Facilities in relation to the street, curb, sidewalk or Right of Way.
- E. The Construction methods to be employed for protection of existing structures, fixtures, and Facilities within or adjacent to the Public Rights of Way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

Section 13. Verification. All Construction permit requests shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized

Comment [FCH6]:

2 Issues:

1)Our construction permit fees are also established by Resolution, should this read similar to section 7 in that regard?

2)We (the city) issue "building permits" based on a reconciliation of the application with our zoning and development ordinance, we do not issue nor inspect for compliance with the Oregon Building Code, we use the County's building inspector for that. Thus an applicant has to gain "planning" approval from us, then get structural, electrical, etc., permits/approvals from the County.

I'm not certain there's a need for any structural type permits for most encroachments (e.g. telephone poles), though as I say this I'm imagining some liability attached to that policy? And there would certainly be a need if they are constructing a building.

So, basically they must pay for our permit, then pay for their county permits to construct a building, but the poles have traditionally been approved in-house (not the installation, just the permission to install) - I suppose the question is whether the Oregon Building Code requires a structural permit for that, and I'm guessing it does.

Thoughts or recommendations?

TO Mac: Let's talk and figure out the best approach here. I struck "as established in" above.

Comment [MAW7]: We need to cite to your City code here.

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representative affirming that the drawings, plans and specifications submitted comply with applicable technical codes, rules and regulations.

Section 14. Construction Schedule. All Construction permit applications shall be accompanied by a written Construction schedule, which shall include an estimated date for completion of Construction. The Construction schedule is subject to approval by the Public Works Director.

Section 15. Construction Permit Fee. Prior to issuance of a Construction permit, the requestor shall pay a permit fee in an amount established in _____ by resolution, otherwise, by the City Council. Such fee shall be designed to defray the costs of City administration of the Construction. The City shall waive the Construction Permit Fee if the requestor is a non-breaching party to an unexpired Franchise Agreement with the City and that Franchise Agreement obligates the Franchisee to pay a Franchise Fee on all the Services it provides within the City or if the requestor is a Provider acting in compliance with this Chapter, including Right of Way use Fee payment obligations.

Comment [FCH8]: Shouldn't just be established by resolution of the City Council?

To Mac: This should work.

Comment [MAW9]: To Mac: I added this but this is optional. WE can discuss.

Section 16. Issuance of Permit. If satisfied that the plans and documents submitted comply with all requirements of this Ordinance and with any applicable Franchise Agreement, the Public Works Director shall issue a permit authorizing Construction of the Facilities, subject to such further conditions affecting the time, place and manner of performing the work.

Section 17. Notice of Construction. Except in the case of an Emergency, the permittee shall notify the Public Works Director not less than two (2) working Days in advance of any excavation or Construction in the Public Rights of Way.

Section 18. Compliance with Permit. All Construction practices and activities shall be in accordance with the permit and the approved final plans and specifications for the Facilities. The Public Works Director and representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

Section 19. Noncomplying Work. Subject to the notice requirements in Section 27, all work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Ordinance, shall be removed at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with the provision of this Ordinance.

Section 20. Completion of Construction. The permittee shall promptly complete all Construction activities so as to minimize disruption of the Public Rights of Way and other public and private property. All Construction work within Public Rights of Way, including restoration, must be completed within one hundred twenty (120) Days of the date of issuance of the Construction permit unless an extension or an alternate schedule has been approved by the appropriate City official.

Section 21. As-Built Drawings. Unless otherwise provided in an unexpired Franchise Agreement, if requested by the City, the permittee shall furnish the City with up to two (2) complete sets of plans drawn to scale and accurately depicting the location of all Facilities constructed pursuant to the permit. These plans shall be submitted to the City Engineer or City Manager or designee within sixty (60) Days after completion of Construction, in a format acceptable to the City.

Comment [MAW10]: We can modify this. Should this be the City Manager?

Comment [FCH11R10]: Yes we should

Section 22. Restoration of Public Rights of Way and City Property.

A. When a permittee, or any Person acting on its behalf, does any work in or affecting any Public Rights of Way or City Property, it shall at its own expense promptly restore such ways or property to as good an order and condition as existed prior to the work, unless otherwise directed by the City. **Repairs guaranteed by permittees shall meet all of the following conditions in order to remain in conformance with this ordinance:**

1. The entire area shall be free from delamination of the approved surface material.
2. No distortion of one-half inch (1/2") or greater shall exist over more than five percent (5%) of the total surface area of the repair.
3. No cracks of one-quarter inch (1/4") or greater shall exist in the surface or edges of the repair totaling more than five percent (5%) of the repair perimeter.
4. Distortion conditions over one inch may necessitate that full repairs be completed within twenty-four (24) hours of notification by the City.

Unless otherwise provided in an unexpired Franchise Agreement, the permittee shall, for a period of five (5) years thereafter, be fully liable for all defects in materials and workmanship relating to such Construction or Restoration.

Comment [FCH12]: These look pretty good, but I'm having the PW Director take a look to see if he agrees.

Comment [MAW13]: Mac, these specifications were from a different city. We can modify these to what you require. Please review or have someone familiar with Public Works review.

- B. If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore the affected Rights of Way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. If the permittee fails to restore Rights of Way or property to good order and condition, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) Days to restore the Rights of Way or property. If, after notice, the permittee fails to restore the Rights of Way or property to as good an order and condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.
- D. A permittee or other Person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle or property by reason of such work in or affecting such Rights of Way or property.

Section 23. Performance and Completion Bond. Unless otherwise provided in an unexpired Franchise Agreement, a performance bond or other form of surety acceptable to the City equal to at least 100% of the estimated cost of Constructing permittee's Facilities within the Public Rights of Way of the City shall be provided to the City before Construction is commenced.

A. Unless otherwise provided in an unexpired Franchise Agreement, the surety shall remain in force until sixty (60) Days after substantial completion of the work, as

determined in writing by the City, including restoration of Public Rights of Way and other property affected by the Construction.

- B. Unless otherwise provided in an unexpired Franchise Agreement, the surety shall guarantee, to the satisfaction of the City:
1. Timely completion of Construction;
 2. Construction in compliance with applicable plans, permits, technical codes and standards;
 3. Proper location of the Facilities as specified by the City;
 4. Restoration of the Public Rights of Way and other property affected by the Construction; and
 5. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

LOCATION OF FACILITIES

Section 24. Location of Facilities. All Facilities located within the Public Right of Way shall be constructed, installed and located in accordance with the terms of the Construction permit and approved final plans and specifications for the Facilities, and all applicable City codes, rules and regulations. Whenever any existing electric utilities or Communications Facilities are within a Public Right of Way and are located underground or required to be located underground by City Code, a Communications Provider occupying or proposing to occupy the same Public Right of Way must also locate its Facilities underground at its own expense.

Section 25. Interference with the Public Rights of Way. No Communications Provider may locate or maintain its Facilities so as to interfere with the City's use of the Public Rights of Way or to unreasonably interfere with use by the general public or by other Persons authorized to use or occupy the Public Rights of Way. All use of Public Rights of Way shall be consistent with City codes, ordinances and regulations.

Section 26. Relocation or Removal of Facilities.

- A. A Communications Provider shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any Facilities within the Public Rights of Way, including relocation of aerial Facilities underground, when requested to do so in writing by the City.
- B. Nothing in this Section 26 shall be deemed to preclude a Communications Provider from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the Communications Provider shall timely comply with the requirements of this Section 26 regardless of whether or not it has requested or received such reimbursement or compensation.
- C. The City shall provide at least 30 days written notice of the time by which the Communications Provider must remove, relocate, change, alter or underground its

Facilities. The City may grant extensions upon the Communications Provider's request. If a Communications Provider fails to remove, relocate, alter or underground any Facility as requested by the City and by the date established by the City, the Communications Provider shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays. Upon such failure, the City may cause the Facility to be removed, relocated, altered or undergrounded at the Communications Provider's sole expense and shall use qualified personnel or contractors consistent with applicable State and federal safety laws and regulations. Upon receipt of a detailed invoice from the City, the Communications Provider shall reimburse the City for the costs the City incurred within thirty (30) Days.

Section 27. Removal of Unauthorized Facilities. Within thirty (30) Days following written notice from the City or at a later date agreed upon by the parties, any Communications Provider or other Person who owns, controls or maintains any unauthorized system, Facility, or related appurtenances within the Public Rights of Way shall, at its own expense, remove such system, Facilities and/or appurtenances from the City Public Rights of Way. A system, Facility, or appurtenance is subject to removal under this Section in the following circumstances:

- A. One (1) year after the expiration or termination of the Communications Provider's Franchise Agreement, unless the City has provided written authorization for abandonment in place.
- B. Upon abandonment of a Facility within the Public Rights of Way. A Facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety (90) Days or longer. A Facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the Facility is being replaced. The City shall contact the Provider before concluding that a Facility is abandoned. A Facility may be abandoned in place and not removed if the City authorizes such abandonment and non-removal in writing and there is no apparent risk to the public safety, health, or welfare.
- C. If the Facility was Constructed or installed without the appropriate prior authority at the time of Construction or installation.
- D. If the Facility was Constructed or installed at a location not authorized by the Communications Provider's Franchise or other legally sufficient permit.

Section 28. Coordination of Construction Activities. A Communications Provider is required to make a good faith effort to cooperate with the City.

- A. By January 1 of each year, a Communications Provider shall provide the City with a schedule of their known proposed Construction activities in or near the Public Rights of Way or affecting the Right of Way.
- B. If requested by the City, a Communications Provider shall meet with the City to schedule and coordinate Construction in the Public Rights of Way.
- C. All Construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

COMMUNICATIONS FRANCHISE AGREEMENTS REQUIRED

Section 29. Registration, Franchise Application and Franchise Agreement Required.

- A. Prior to occupying City Public Rights of Way, all Communications Providers shall register with the City pursuant to Section 6, shall file a Franchise Application with the City pursuant to Section 30 below, and shall enter into a Franchise Agreement with the City.
- B. Multiple Franchises Not Required. Notwithstanding anything to the contrary in this Ordinance, a Communications Provider who is a non-breaching party to an unexpired Franchise Agreement for a Service it provides within the City shall not be required to enter into a multiple or different Franchise Agreements for its provision of a different Service within the City as long as the Provider has registered all its Services with the City pursuant to Section 6 of this Ordinance. Further, nothing in this subsection waives a Provider's duty to pay Franchise Fees or Right of Way Use Fee as required under Section 36 of this Ordinance
- C. Any Person whose Communications Facilities occupy the Public Right of Way, with or without a valid Franchise Agreement from the City, must comply with all provisions of this Ordinance, specifically including payment of any applicable Right of Way Fees pursuant to Section 36.

Section 30. Franchise Application.

Comment [MAW14]: We have an application we can modify for Falls City.

- A. Any Person who desires a Franchise Agreement with the City must first file a Franchise Application with the City Manager. The purpose of a Franchise Application is to provide the City with necessary information regarding the Communications Provider's Services and Public Right of Way needs. The Franchise Application shall include, at minimum, the following information:
 - 1. The identity of the applicant.
 - 2. A description of the services to be offered or provided by the applicant over its Facilities, including an indication of whether the applicant will provide solely Cable Service.
 - 3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the Facilities located or to be located within the Public Rights of Way in the City, including the location and route requested for applicant's proposed Facilities.
 - 4. The area or areas of the City the applicant desires to serve and a preliminary Construction schedule for build-out to the entire Franchise area.
 - 5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the Facilities and to offer or provide the Communications Service proposed.
 - 6. An accurate map showing the location of any existing Facilities in the City that applicant intends to use or lease.

- B. Any Communications Provider occupying the Public Rights of Way without a Franchise Agreement as of the effective date of this Ordinance shall file a Franchise Application pursuant to this Section within forty-five (45) Days of the effective date of this Ordinance.

Section 32. Determination by the City. The City shall issue a written preliminary determination granting or denying the Franchise application in whole or in part. If the Franchise Application is denied, the written determination shall include the reasons for denial. The City shall evaluate the Franchise Application based upon: the continuing capacity of the Public Rights of Way to accommodate the prospective Franchisee's proposed Facilities; the prospective Franchisee's legal, technical and financial ability to comply with the provisions of this Ordinance; and the prospective Franchisee's compliance with applicable Federal, State and local laws, rules, contractual obligations and regulations.

Section 33. Scope of Franchise Agreement; Effect of Ordinance on Franchise Agreement.

- A. No Franchise granted pursuant to this Ordinance shall convey any right, title or interest in the Public Rights of Way, but shall be a non-exclusive grant to use and occupy the Public Rights of Way for the limited purposes, terms, and conditions provided in the Franchise Agreement.
- B. The rights granted by any Franchise Agreement are limited to the right to use the Public Rights of Way for the provision of Communications Services as defined herein. Nothing in the Franchise shall be construed to prevent the City from grading, paving, repairing and/or altering any Public Rights of Way, constructing, laying down, repairing, relocating or removing City infrastructure or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City Infrastructure. If a Franchisee's Facilities interfere with the Construction, repair, replacement, alteration or removal of any Public Rights of Way, public work, City utility, City improvement or City infrastructure, except those used to provide competing Communications Services, such Facilities shall be removed or relocated as provided in Section 26 and 27 of this Ordinance, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.
- C. Application to Franchise Agreements Adopted After this Ordinance. A Franchise Agreement granted hereunder shall at all times comply with the requirements of this Ordinance unless this Ordinance expressly authorizes different terms. In this Ordinance, such authorization is indicated by the introductory phrase, "Unless otherwise specified in an unexpired Franchise Agreement...."
- D. Application to Franchise Agreements Adopted Prior to this Ordinance. To the extent that this Ordinance can be implemented consistently with an unexpired Franchise Agreement adopted prior to this Ordinance, the terms of this Ordinance shall prevail. To the extent that this Ordinance conflicts with and cannot be implemented consistently an unexpired Franchise Agreement adopted prior to this Ordinance, the terms of the unexpired Franchise Agreement shall prevail.

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Section 34. Term of Grant. Unless otherwise provided in an unexpired Franchise Agreement, a Franchise granted hereunder shall be in effect for an initial term of five (5) years and may be renewed subject to Sections 38 and 39 of this Ordinance.

Section 35. Franchise Territory. Unless otherwise provided in an unexpired Franchise Agreement, a Communications Franchise granted hereunder shall be limited to a specific geographic area of the City to be served by the Franchisee and the Public Rights of Way necessary to serve such areas and may include the entire City.

Section 36. Franchise Fee and Right of Way Use Fee.

Comment [MAW15]: NOTE to Self: Need to include a Minimum Fee and/or a Per Linear Foot Fee.

- A. A Franchise Agreement granted hereunder shall require the Franchisee to pay a Franchise Fee in an amount determined by resolution of the City Council.
- B. Every Communications Provider occupying or using the Public Rights of Way without an unexpired Franchise Agreement which imposes a Franchise Fee, whether or not the Provider owns the Facilities used to provide its Services, shall pay a Right of Way Use Fee in the amount of the Franchise Fee determined by resolution of the City Council.
- C. Credit and Waiver.
 - 1. The City shall provide a Right of Way Use Fee Credit to any Communications Providers who, pursuant to a Franchise Agreement, pays to the City Franchise Fees due and owing. The amount of the Right of Way Use Fee Credit shall be equal to the Franchise Fees paid to the City during that Right of Way Use Fee billing period.
 - 2. The City Manager or designee may, at his or her sole discretion and through the adoption of a written rules, grant a full or partial Right of Way Use Fee annual waiver for a Communications Provider who can demonstrate that it has received, earned, or derived (or expects to receive, earn or derive) little or no gross revenues from its use or occupation of the Right of Way during that year. Such written rule shall establish the maximum threshold gross revenue amounts necessary for such waiver to apply.
- D. If the Communications Provider's sole use of the Public Right of Way is to place wireless Facilities above the ground on existing poles or similar structures in the Public Right of Way and the operator does not install or use lines, wires or cables, such Communications Provider is not required to pay a Right of Way Use Fee or a Franchise Fee under this Section, as long as it complies with all other applicable requirements of this Ordinance and all other applicable City codes, regulations and rules. Nothing in this Subsection C limits the City's authority to charge reasonable rental or pole attachment rates for the private use of City property.
- E. Unless otherwise specified in an unexpired Franchise Agreement, the Franchise Fees required by this Section shall be paid within thirty (30) Days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues and a calculation of the amount payable. Unless otherwise specified in an unexpired Franchise Agreement, the Franchisee shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date.
- F. The Franchise Fee or Right of Way Use Fee required in this Section remain subject to any applicable limitations imposed by federal or State statutes.

Section 37. New Facilities or Services.

Ordinance No. ____

- A. A new registration shall be required of any Franchisee who desires to extend or locate its Facilities within Public Rights of Way if such Facilities are not previously included in an unexpired Franchise Agreement with the City.
- B. A new registration shall be required of any Franchisee who desires to provide an additional Communication Service which was not previously included in an unexpired Franchise Agreement with the City.

Section 38. Franchise Term Renewals. Unless otherwise provided in an unexpired Franchise Agreement and unless prohibited under State or federal law, a Franchise, if renewed, shall be renewed in the following manner. Franchisees who desire to renew an unexpired Franchise under this Ordinance shall, not less than one hundred eighty (180) Days before expiration of the current Franchise Agreement, file a request for renewal with the City, which shall include the following information:

- A. The information required pursuant to **Section 30** of this Ordinance.
- B. Any additional information required pursuant to the existing Franchise Agreement between the City and the Franchisee.
- C. Any desired amendments to the existing Franchise Agreement, including the desired renewal term, provided that such amendments do not violate or conflict with this Ordinance.

Section 39. Renewal Determinations. Within ninety (90) Days after receiving a complete renewal request under Section 38, the City shall issue a written determination granting or denying the renewal request in whole or in part. Such renewal shall be for a renewal term or terms to be mutually decided on by the parties. If the renewal request is denied, the written determination shall provide the reasons for non-renewal. The City shall evaluate the renewal based upon the capacity of the Rights of Way to accommodate the Franchisee's Facilities; the Franchisee's legal, technical and financial ability to comply with the provisions of this Ordinance; and Franchisee's compliance with any applicable federal, State and local laws, contractual obligations, rules, or regulations.

Section 40. Obligation to Cure As a Condition of Renewal. The City shall not renew a Franchise Agreement unless the Franchisee has cured any violations or defaults in the Franchisee's performance of the Franchise Agreement, this Ordinance, or has provided the City with a City-approved plan detailing the corrective action to be taken.

Section 41. Assignments or Transfers of Franchise. A Franchise granted under this Ordinance may not be directly or indirectly transferred, assigned or disposed of by sale, lease, merger, consolidation or by other act of the Franchisee, by operation of law or otherwise, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. City consent conditions shall include, but shall not be limited to:

- A. The Franchisee and the proposed assignee or transferee of the Franchise shall agree in writing to assume and abide by all of the provisions of the Franchise Agreement.
- B. No transfer shall be approved unless the City determines the assignee or transferee has the legal, technical and financial ability to comply with the provisions of this Ordinance and applicable Federal, State and local laws, rules, regulations.

- C. The Franchisee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a Franchise, unless City is expressly prohibited from requesting such reimbursement by state or federal statutes.
- D. Any transfer or assignment of a Franchise, system or integral part of a system without prior City approval or without a valid Franchise Agreement shall be void and is cause for revocation of the Franchise.

Section 42. Termination of Franchise Agreement. A Franchise Agreement to use or occupy Public Rights of Way may be terminated by the City for the following reasons:

- A. Construction or operation in the City or in the Public Rights of Way without a Construction permit.
- B. Construction or operation at an unauthorized location or in violation of any required City approvals or permits.
- C. Failure to comply with Section 41 herein with respect to sale, transfer or assignment of a system or Franchise.
- D. Misrepresentation by or on behalf of a Franchisee to the City in any Registration request or Franchise Application or Franchise Renewal Request.
- E. Unauthorized abandonment of Facilities in the Public Rights of Way.
- F. Failure to relocate or remove Facilities as required in this Ordinance.
- G. Failure to pay taxes, compensation, fees or costs when and as due the City under this Ordinance or under an applicable Franchise Agreement.
- H. Insolvency or bankruptcy of the Franchisee.
- I. Violation of material provisions of this Ordinance.
- J. Violation of the material terms of a Franchise Agreement.

Section 43. Notice and Duty to Cure. In the event that the City believes that grounds exist for termination of a Franchise Agreement, the City shall give the Franchisee written notice of the alleged violation and shall provide a short and concise statement of the nature and general facts of the violation. City shall provide the Franchisee a reasonable period of time, not exceeding thirty (30) Days, to furnish evidence that:

- A. Corrective action has been or is being expeditiously pursued to remedy the violation;
- B. Rebuts the alleged violation; and/or
- C. Explains why it would be in the public interest to impose a penalty or sanction less than termination.

Section 44. Public Hearing. In the event that a Franchisee fails to provide evidence reasonably satisfactory to the City as provided in Section 43, the City Manager shall refer the alleged violation to the City Council. The City Council shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.

Section 45. Standards for Termination or Lesser Sanctions. If persuaded that the Franchisee has violated a material provision of this Ordinance or of a Franchise Agreement or has committed the violations listed in Section 42 above, the City Council may terminate the Franchise or may establish some lesser sanction and cure, including but not limited to the assessment of penalties pursuant to Section 60. In doing so, the City Council shall consider the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors, whether:

- A. The violation was egregious.
- B. Substantial harm resulted.
- C. The violation was intentional or repeated.
- D. There is a history of prior violations of the same or other requirements.
- E. There is a history of overall compliance.
- F. The violation was voluntarily disclosed, admitted or cured.

Section 46. Other City Costs. All Franchisees or Communications Providers shall, within thirty (30) Days after City's written demand therefore, reimburse the City for all reasonable direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the Franchise or any Franchise Agreement, unless the City is expressly prohibited from requesting such reimbursement by federal or state statute.

Section 47. Damage to Communication Provider's Facilities. Unless otherwise provided in an unexpired Franchise Agreement, the City shall not be liable for any damage or injury to or loss of any Facility, property, or Person as a result of or in connection with any City public works, public improvements, Construction, excavation, grading, filling, or work of any kind in the Public Rights of Way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom unless such damage or injury is directly caused by the City's negligent, intentional or malicious acts. City liability hereunder shall at all times be limited by Oregon's statutory and constitutional tort claim limits.

Section 48. Duty to Provide Information.

- A. Except in emergencies, within sixty (60) Days of the City's written request, a Communications Provider shall provide the City with the following:
 - 1. Information sufficient to demonstrate that Communications Provider has complied with all requirements of this Ordinance and any applicable Franchise Agreement, including but not limited to the Franchise Fee or Right of Way Use Fee payments required by Section 36.

2. Unless otherwise provided in an unexpired Franchise Agreement, all books, records, maps, and other documents, maintained by the Communications Provider with respect to its Facilities within the Public Rights of Way.

C. Unless otherwise provided in an unexpired Franchise Agreement, if the City's audit or review of the Communications Provider's books, records and other documents or information demonstrates that the Communications Provider has underpaid the applicable Franchise Fee or the Right of Way Use Fee by three percent (3%) or more in any one fiscal year, the Communications Provider shall reimburse the City for the cost of the audit or review, in addition to correcting the underpayment and paying any interest or penalties owed. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) Days of the City's notice to Communications Provider of such underpayment, unless other payment timelines are otherwise provided in an unexpired Franchise Agreement.

Section 49. City Use of Provider's Services or Facilities. Unless otherwise provided in an unexpired Franchise Agreement, if the City contracts for the use of a Communications Provider's Facilities, services, installation, or maintenance, the Communications Provider shall offer the City its' most favorable current rate charged to similar Oregon users for similar services. With the City's written permission, the Communications Provider may deduct the agreed-upon applicable City charges for such City use of the Provider's Facilities or services any Franchise Fees or Right of Way Use Fees due and owing. The terms and conditions of the City's use of such services or facilities shall be specified in a written Franchise Agreement or other agreement between the City and the Communications Provider.

Section 50. Compensation for City Property. If any right is granted by lease, Franchise Agreement, or other manner, to use and occupy City Property (not Right of Way) for the installation of Facilities or other infrastructure, the compensation to be paid for such right and use shall be fixed by the City through a separate agreement with the Communications Provider.

Section 51. Cable Franchise. Cable Service Providers shall be subject to this Ordinance to the extent not inconsistent with the Cable Act. The City and the Cable Provider shall enter into a Cable Franchise Agreement with the City, subject to all applicable provisions of State and federal law, including the Cable Act.

Section 52. Leased Capacity. A Communications Provider may, without prior City approval, offer or provide capacity or bandwidth to its customers by lease, use agreements or otherwise, provided that the Communications Provider shall notify the City of the following: that such lease or use agreement has been granted and the type or nature of the use or lease granted.

Section 53. Insurance. Unless otherwise provided in an unexpired Franchise Agreement, each Communications Provider shall, as a condition of the grant, secure and maintain liability insurance policies in amounts and types satisfactory to the City which insure both the Communications Provider and the City and its elected and appointed officers, officials, agents and employees as additional insured. Unless otherwise provided in an unexpired Franchise Agreement, the liability insurance policies required by this Section shall be maintained by the Communications Provider throughout the term of the Franchise Agreement, and any such other period of time during which the Communications Provider is operating or has Facilities within the Public Rights of Way. Unless otherwise provided in an unexpired Franchise Agreement, each Communications Provider shall maintain continuous uninterrupted coverage and shall provide such policies upon City's request. As an alternative to the insurance requirements contained

herein, a Communications Provider may provide evidence of self-insurance, subject to written acceptance by the City.

Section 54. General Indemnification. Each Franchise Agreement shall include, unless prohibited by law, the Franchisee's express promise to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, relating to, resulting from or alleged to arise out of, relate to or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Franchisee or its affiliates, officers, employees, agents, contractors or subcontractors in the Construction, operation, maintenance, repair or removal of its Facilities or related to the Communication Provider's provision of Services over the Facilities, whether or not such acts or omissions are authorized, allowed or prohibited by this Ordinance or by a Franchise Agreement.

Section 55. Performance Surety. Unless otherwise provided in an unexpired Franchise Agreement, before a Franchise granted pursuant to this Ordinance is effective, and as necessary thereafter, the Communications Provider shall provide a performance bond, in form and substance acceptable to the City, as security for the full and complete performance of a Franchise Agreement granted under this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Franchisee to comply with the City Code, ordinances, rules, regulations or permits. This obligation is in addition to the performance surety required by Section 23 for Construction of Facilities.

GENERAL PROVISIONS

Section 56. Governing Law. Any Franchise Agreement granted under this Ordinance is subject to the provisions of the constitutions and laws of the United States and the State of Oregon and the ordinances and Charter of the City.

Section 57. Written Agreement. No Franchise Agreement shall be granted hereunder except by a writing duly executed by the Franchisee and the City.

Section 58. Nonexclusive Grant. No Franchise Agreement granted under this Ordinance shall confer any exclusive right, privilege, license or Franchise to occupy or use the Public Rights of Way for delivery of Communications Service or any other purposes.

Section 59. Severability and Preemption. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, or superseded by State or federal legislation, rules, regulations or decision, the remainder of the Ordinance 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 of the Ordinance, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted only to the extent required by law. In the event such federal or State law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall

thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the City.

Section 60. Penalties. Any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Ordinance or a valid Franchise Agreement shall ~~be subject to penalties pursuant to the Falls City Municipal Code, pursuant to Section 14-2 of the City Code.~~ A separate and distinct offense shall be deemed committed each day on which a violation occurs.

Comment [FCH16]: ?
Good catch. This sentence doesn't mean anything as written.

Section 61. Other Remedies. Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance.

Section 62. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

Section 63. Compliance with Laws. Any Communications Provider under this Ordinance shall comply with all federal and State laws and regulations, as well as all ordinances, resolutions, rules and regulations of the City.

FIRST READING by the Council this ____ day of _____, 201__.
SECOND READING by the Council this ____ day of _____, 201__.
ADOPTED by the Common Council this ____ day of _____, 201__.
APPROVED by the Mayor this ____ day of _____, _____.

ATTEST:

Recorder

RESOLUTION NO. _____

A RESOLUTION SETTING RIGHT OF WAY USE FEES FOR ALL COMMUNICATIONS PROVIDERS OCCUPYING OR OPERATING WITHIN THE CITY'S PUBLIC RIGHT OF WAY

WHEREAS, pursuant the Falls City Ordinance # [REDACTED] (referred to herein as the Right of Way Management Ordinance) and the City's home rule authority under the Oregon Constitution Article XI, Section 2, the City Council has the authority to establish fees for all Communications Providers using or occupying City right of ways to provide Communications Services within the City; and

WHEREAS, pursuant to the Falls City Municipal Code and the City's home rule authority under the Oregon Constitution Article XI, Section 2, the City Council has the authority to set registration fees or application fees for all such Providers; and

WHEREAS, it is fair and just to ask users or occupiers of City's publicly-owned and financed Rights of Ways to compensate the City for the private, for-profit use of a valuable public asset which is essential to transit throughout our City; and

WHEREAS, the City Council desires to establish non-discriminatory, generally-applicable, fair Right of Way Use Fees and Franchise Fees which are consistent with federal and state law for the purpose of protecting the health safety and welfare of its citizens and managing important City infrastructure; and

WHEREAS, the Cable Communications Policy Act of 1984 (47 USC 521 et seq) authorizes City's to impose a Franchise Fee on Cable Providers for the use and occupation of the public right of way; and

WHEREAS, the Telecommunications Act of 1996 (47 USC 151 et seq) authorizes City's to impose a Franchise Fee on Telecommunication Carriers for the use and occupation of the public right of way; and

NOW, THEREFORE, it is resolved as follows:

1. The City Council hereby sets the Right of Way Use Fee and Franchise Fee for provide Cable Service Providers occupying the City rights of way and providing Cable Services within the City at five percent (5%) of the Provider's Gross Revenues derived from the provision of Cable Services within the City.

Comment [MAW1]: This is the Cap. This is standard and what you currently charge Charter/Spectrum, correct?

2. The City Council hereby sets the Right of Way Use Fee and Franchise Fee for all Communications Service Providers who occupy the City rights of way to provide Communications Services other than Cable Service within the City at XX percent (XX%) of the Provider's Gross Revenues derived from the provision of Communications Services other than Cable Services within the City.

Comment [MAW2]: You can go up to 7%. Some cities match the 5% limit to cable companies. Others choose 7%.

3. **Set a minimum fee and backhaul fee.**

4. As used herein, Gross Revenues shall mean any revenue derived in any way by the Provider from the operation of their Facilities to provide Communications Services, as that term is defined in the City's Right of Way Management Ordinance, in the City including, but not limited to: amounts for premium cable services, advertising, home shopping channels, revenue-sharing arrangements or use or rental agreements, installation and all leased-access payments to Grantee. However, that "Gross Revenues" shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal administrative fees or sales or utility taxes; (2) uncollectible bad debt; (3) refunds or deposits paid to subscribers; and (4) other applicable exclusions available under applicable State or federal statutes.

5. The City Council hereby delegates to the City Administrator or his or her designee the authority to establish fair and reasonable rules and pole attachment fees for Communications Providers who attach equipment onto City-owned poles or onto poles within the City's right of way.

6. The City Council hereby sets the Registration Fee for Communications Providers at **\$200**.

7. The City Council hereby sets a Franchise Application Review Fee for Communications Providers at **\$200**.

8. The City Council delegates to the City Administrator or his or her designee the authority to develop and adopt reasonable administrative rules for the purpose of fairly and impartially implementing the City's Right of Way Management Ordinance in compliance with the Falls City Municipal Code.

DATED this _____ day of _____, 20____.

Mayor

City Recorder

FRANCHISE APPLICATION AND REGISTRATION

DATE RECEIVED: _____

Original Application Review Fee: \$ _____

Received

Registration Fee: \$ _____ Received

Provider's Name: _____

Legal Status (e.g. partnership, corporation) _____

Mailing Address _____

Business Telephone # _____ EMAIL: _____

Website: _____

Name, address and telephone number of duly authorized officer, agent or employee responsible for accuracy of information and to be contacted in case of an emergency:

Name _____ Title _____

Address _____

Telephone # _____ EMAIL: _____

Applicant is the following type of provider per Falls City Municipal Code (FCMC) _____:

_____ Telecommunications Utility per ORS 759.005 _____ Private Telecommunications Network

_____ Telecommunications Utility with no City Customers (Backhaul Provider)

Does applicant currently have a franchise with the City? _____yes _____no

Provide a description of the applicant's existing or proposed telecommunications facilities within the City, a description of the telecommunications facilities that the applicant intends to construct, and a description of all telecommunications services that the applicant intends to offer or provide to persons, firms, businesses, or institutions with the City. If the applicant plans to lease existing telecommunications facilities within the City, please provide a description of the facilities it will lease, a description of the services it will provide using the facilities, and the name of the entity that it will lease the facilities from. If a Private Telecommunications Network or Telecommunications Utility with no City Customers, include the number of linear feet of right-of-way occupied or proposed to be occupied (if any) by applicant's facilities and specify when you intend to service customers within the City: _____

Continued from Page 1

Provide information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided, or to be provided, by the applicant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided _____

Type of customers you will serve in the City: ___ End Users ___ Other Telecommunications Providers

Note: The City requires engineering plans, specifications and a network map (in a form customarily used by the applicant) of facilities located or to be located within the public rights-of-way in the City, including the location and route requested for applicant's proposed telecommunication facilities. If provider owns facilities in the City's right-of-way, a preliminary construction schedule for build-out to the entire franchise area must be provided.

STATEMENT OF COMPLIANCE: By signing and submitting this application, I hereby certify that the foregoing information is true and correct. I have received a copy of the City's ordinances concerning telecommunications providers, have read and understand the same and agree to fully comply with all terms and conditions set forth therein, including, but not limited to: providing an annual update of the information herein provided. I further acknowledge that, subject to applicable state law, applicant must reimburse the City for such reasonable costs as the City incurs in entering into this franchise agreement. Proof is attached that the appropriate license from the Oregon Public Utility Commission (PUC) or the Federal Communications Commission (FCC) has been obtained.

Applicant's Signature: _____ Date: _____

Office Use Only Original Application Review Fee Amount \$ _____ Receipt # _____

Registration Amount \$ _____ Receipt # _____

**APPLICANT HAS MET THE REQUIREMENTS FOR A TELECOMMUNICATIONS PROVIDER'S
FRANCHISE**

Signed: _____
CITY RECORDER