

ORDINANCE 1526

***AN ORDINANCE AMENDING GLADSTONE MUNICIPAL CODE (GMC)
TITLE 12, CHAPTER 12.24 – UTILITY SERVICES***

WHEREAS, the City has the authority pursuant to its Charter and the Oregon Constitution and statutes to manage its rights-of-way and to receive compensation for use of the rights-of-way consistent with applicable state and federal law, and

WHEREAS, the City adopted GMC, title 12, Chapter 12.24 in 2016 and updated the Chapter in 2018; and

WHEREAS, the City has revised its fees to comply with several changes in federal laws since 2018, however the provisions of the Chapter have not been reviewed or updated since that time and the City has determined that amendments are required; and

WHEREAS, the City finds it is in the public interest to enact the updates to the Gladstone Municipal Code as set forth in this Ordinance; and

NOW, THEREFORE, the City of Gladstone ordains as follows:

Section 1. Gladstone Municipal Code Chapter 12.24, Utility Services, is amended as shown on Exhibit “A”. New language is underlined in **red**; deleted language appears as ~~strikethrough~~ text.

Section 2. All remaining provisions of Gladstone Municipal Code Chapter 12.24 are reaffirmed in their entirety.

Section 3. This Ordinance takes effect 30 days from its adoption.

Adopted by the Gladstone City Council this 10th day of October, 2023.

ATTEST:



Michael Milch, Mayor



Hayley Kraatz, Office Assistant

ORDINANCE 1526

EXHIBIT "A"

12.24.010 Purpose and intent.

The purpose and intent of this chapter is to:

- (1) Permit and manage reasonable access to the rights-of-way of the city for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the city consistent with applicable state and federal law;
- (2) Ensure that the city's current and ongoing costs of granting and regulating access to and the use of the rights-of-way are fully compensated by the persons seeking such access and causing such costs;
- (3) Secure fair and reasonable compensation to the city and its residents for permitting use of the rights-of-way by persons who generate revenue by placing, owning, using or operating facilities therein or charging residents for services delivered;
- (4) Ensure that all utility companies, persons and other entities owning or operating utility facilities and/or providing utility services within the city comply with the ordinances, rules and regulations of the city;
- (5) Ensure that the city can continue to fairly and responsibly protect the public health, safety and welfare of its residents;
- (6) Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the city; and
- (7) Comply with applicable provisions of state and federal law.

12.24.020 Jurisdiction and management of the public rights-of-way.

- (1) The city has jurisdiction and exercises regulatory management over all rights-of-way within the city under authority of the City Charter and Oregon law.
- (2) The city has jurisdiction and exercises regulatory management over each right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- (3) The exercise of jurisdiction and regulatory management of a right-of-way by the city is not official acceptance of the right-of-way and does not obligate the city to maintain or repair any part of the right-of-way.
- (4) The provisions of this chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

12.24.030 Regulatory fees and compensation not a tax.

(1) The fees and costs provided for in this chapter, and any compensation charged and paid for use of the rights-of-way provided for in this chapter, are separate from, and in addition to, any and all other federal, state, local, and city charges, including but not limited to: any permit fee, or any other generally applicable fee, tax, or charge on business, occupations, property, or income as may be levied, imposed, or due from a utility operator, utility provider or licensee, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

(2) The city has determined that any fee or tax provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

(3) The fees and costs provided for in this chapter are subject to applicable federal and state laws.

12.24.040 Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive.

“Cable service” is to be defined consistent with federal law and means the one-way transmission to subscribers of: (1) video programming, or (2) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“City” means the City of Gladstone, 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 Gladstone, Oregon.

“City facilities” means structures or equipment located within the right-of-way or public easement that are owned, managed, maintained or operated by the City and used for governmental purposes, including, but not limited to, sanitary sewer, storm sewer or water infrastructure such as pipes, wires, conduit, valves, vaults and appurtenances.

“City standards” means the Gladstone Design and Construction Standards and any other applicable city construction, engineering and design standards and policies in effect at the time of any work.

“Communications services” means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself.

“Communications service” includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as

defined in [47 C.F.R. 76](#); (3) public communications systems; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996, [Pub. L. 104-104](#), 110 Stat. 56 (1996).

“Days” mean calendar days unless otherwise specified.

“Gross revenue” means any and all amounts, of any kind, nature or form, without deduction for expense, less net uncollectables, derived directly or indirectly from the operation of utility facilities in the city and/or the provision of utility service in the city, subject to all applicable limitations in federal or state law.

“License” means the authorization granted by the city to a utility operator pursuant to this chapter.

“Licensee” means any person that has a valid license issued by the city pursuant to this chapter.

“Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, municipality, special district, government entity or other organization, including any natural person or any other legal entity.

“Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the State of Oregon pursuant to [ORS 283.140](#). “Public communications system” does not include any system used for sale or resale, including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

“Public utility easement” means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. “Public utility easement” does not include an easement (1) that has been privately acquired by a utility operator, (2) solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of city facilities, or (3) where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the city.

“Rights-of-way” means the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, 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 and authority to grant a license to occupy and use such areas for utility facilities.

“Utility facility” or “facility” means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment

and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

“Utility operator” means any person who owns, places, controls, operates or maintains a utility facility within the city.

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

“Utility service” means the provision, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer, and/or storm sewer to or from customers within the city limits, or the transmission or provision of any of these services through the city whether or not customers within the city receive those transmissions or services.

“Work” means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

12.24.050 Utility provider registration.

(1) Registration Required. Every person that desires to provide utility services to customers within the city shall register with the city prior to providing any utility services to any customer in the city. Every person providing utility services to customers within the city as of the effective date of this chapter shall register within 30 days of the effective date of this chapter.

(2) Annual Registration. After registering with the City pursuant to subsection (1) of this section, the registrant shall, by December 31st of each year, file with the City a new registration form if it intends to provide utility service at any time in the following calendar year. Registrants that file an initial registration pursuant to subsection (1) of this section on or after September 30th shall not be required to file an annual registration until December 31st of the following year.

(3) Registration Application. The registration shall be on a form provided by the City, and shall be accompanied by any additional documents required by the City to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and list the facilities over which the utility services will be provided.

(4) Registration Fee. Each application for registration shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the city council sufficient to fully recover all of the City’s costs of administering the registration program.

12.24.060 Right-of-way license.

(1) License Required.

(a) Except those utility operators with a valid franchise from the city, every person that wishes to be a utility operator shall obtain a license from the city prior to conducting any work in the ROW.

(b) Every person that owns or controls utility facilities in the rights-of-way as of the effective date of this chapter shall apply for a license from the city within 30 days of the later of: (A) the effective date of this chapter, or (B) the expiration of a valid franchise agreement granted by the city, unless a new franchise agreement is granted by the city pursuant to subsection (6) of this section.

(c) The provisions of this section do not apply to any person subject to and in compliance with the cable television franchise requirement of GMC Chapter [5.16](#), except that subsection (11) of this section shall apply to the extent such person provides multiple services.

(2) License Application. The license application shall be on a form provided by the city, and shall be accompanied by any additional documents required by the application or the city, in the city's sole discretion, to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the utility facilities in the rights-of-way or to be installed in the rights-of-way, a description of type of utility service provided or to be provided by the applicant, if any, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter.

(3) License Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the City Council.

(4) Determination by City. The city shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this chapter, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

(5) Changes to Information Contained on the License Application. Within 30 days of a change to the information contained in the application, the licensee shall notify the city in writing of such change(s).

(6) Franchise Agreements. If the public interest warrants, as determined by the city in its sole discretion, the city and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this chapter with the review and approval of City Council. The franchisee shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with the express provisions of any such franchise. In the event of a conflict between the express provisions of a franchise and this chapter, the franchise shall control.

(7) Rights Granted.

(a) The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the city codes and other applicable provisions of state or federal law, in effect and as may be subsequently amended, to construct, place, maintain, upgrade, repair and operate utility facilities in the rights-of-way for the term of the license for the provision of utility service(s) authorized in the license. In the event the licensee offers different service(s) than those authorized in the license, the licensee shall inform the city of such changes no later than 30 days after the change.

(b) Any license granted pursuant to this chapter shall not convey equitable or legal title in the rights-of-way and may not be assigned or transferred except as permitted in subsection (12) of this section.

Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, including, without limitation, the police power or regulatory power of the city.

(8) Term. Subject to the termination provisions in subsection (14) of this section, the license granted pursuant to this chapter will be effective as of the date it is issued by the city will have a term ending five calendar years from: (a) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (b) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

(9) License Nonexclusive. No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for utility facilities, delivery of utility services or any other purpose. The city expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the city's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

(10) Reservation of City Rights. Nothing in the license shall be construed to prevent the city from grading, paving, repairing and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing city facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights-of-way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in GMC Sections [12.24.090](#)(3), (4) and (5), in a manner acceptable to the city and consistent with city standards, industry standard engineering and safety codes.

(11) Multiple Services.

(a) A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and ROW use fee requirements of this chapter for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection (11)(a) requires a utility operator to pay the ROW use fee, if any, owed to the city by another person using the utility operator's facilities.

(b) A utility operator that provides or transmits more than one utility service to customers in the city is not required to obtain a separate license or franchise for each utility service, but is required to file separate remittance forms and submit any ROW use fees due for each utility service provided.

(12) Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the city prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless:

(a) The proposed transferee or assignee is authorized under all applicable laws to own or operate the utility facilities; and

(b) The transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment.

The licensee requesting the transfer or assignment must provide documentation, as the city deems necessary, in the city's sole discretion and at no cost to the city, to evaluate the transferee's ability to comply with the provisions of the license.

If the city approves such transfer or assignment, the transferee or assignee shall become responsible for fulfilling all obligations under the license. A transfer or assignment of a license does not extend the term of the license.

(13) Renewal. At least 30 days, but no more than 180 days, prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the city, including all information required in subsection (2) of this section and the application fee required in subsection (3) of this section. The city shall review the application as required by subsection (4) of this section and grant or deny the license within 90 days of submission of the application. If the city determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the city may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the city, before the city will consider the application and/or grant the license. If the city requires the licensee to cure or submit a plan to cure a violation, the city will grant or deny the license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

(14) Termination.

(a) Revocation or Termination of a License. The City Council may terminate or revoke the license granted pursuant to this chapter for any of the following reasons:

(A) Violation of any of the provisions of this chapter;

- (B) Violation of any provision of the license;
- (C) Misrepresentation in a license application;
- (D) Failure to pay taxes, compensation, fees or costs due the city after final determination by the city, of the taxes, compensation, fees or costs;
- (E) Failure to restore the rights-of-way after work as required by this chapter or other applicable state and local laws, ordinances, rules and regulations;
- (F) Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
- (G) Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.

(b) Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

- (A) The egregiousness of the misconduct;
- (B) The harm that resulted;
- (C) Whether the violation was intentional;
- (D) The licensee's history of compliance; and/or
- (E) The licensee's cooperation in discovering, admitting and/or curing the violation.

(c) Notice and Cure. The city shall give the licensee written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the licensee to demonstrate that the licensee has remained in compliance, that the licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the licensee is in the process of curing a violation or noncompliance, the licensee must demonstrate that it acted promptly and continues to actively work on compliance. If the licensee does not respond or if the City Administrator or designee determines that the licensee's response is inadequate, the City Administrator or designee shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked and if any penalties or sanctions will be imposed.

(d) Termination by Licensee. If a licensee ceases to be required to have a license under this chapter, the licensee may terminate its license by giving the city 30 days prior written notice. Licensee may reapply for a license at any time. No refunds or credits will be given for licenses terminated by the licensee or the city. Within 45 days of surrendering a license, the licensee shall file a final remittance form with the city stating "final remittance" and shall pay all fees due

under this chapter through the date of termination. The licensee shall also remove its utility facilities from the rights-of-way as required by GMC Section 12.24.090(4).

12.24.070 Construction and restoration.

(1) Construction Codes. Utility facilities shall be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including but not limited to the National Electrical Code and the National Electrical Safety Code and the city standards, in effect at the time of the work. When a utility operator, or any person acting on its behalf, does any work in or affecting the rights-of-way, the utility operator shall, at its own expense, promptly restore the rights-of-way as directed by the city consistent with applicable city codes, rules and regulations in effect at the time of the work. A utility operator, 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(s), vehicle or property by reason of such work in or affecting the rights of way or property.

(2) Construction Permits.

(a) No person shall perform any work within the rights-of-way without first obtaining all required permits, including but not limited to any wireless siting permits required in GMC Chapter 17.61. The city shall not issue a permit for work unless the utility operator of the facilities has applied for and received a valid license as required by this chapter or a valid franchise agreement, and all applicable fees have been paid. No permit is required for routine maintenance or repairs to customer service drops where such repairs or maintenance do not require cutting, digging, or breaking of, or damage to, the right-of-way and do not result in closing or blocking any portion of the travel lane for vehicular traffic, bicycle lanes or sidewalks.

(b) In the event of an emergency, a utility operator with a license pursuant to this chapter or a valid franchise agreement, or the utility operator's contractor, may perform work on its utility facilities without first obtaining a permit from the city; provided, that, to the extent reasonably feasible, it attempts to notify the city prior to commencing the emergency work and in any event applies for a permit from the city as soon as reasonably practicable, but not more than 48 hours after commencing the emergency work. For purposes of this subsection (2), "emergency" means a circumstance in which immediate work or action is necessary to restore lost service or prevent immediate harm to persons or property.

(c) Applications for permits to perform work within the rights-of-way 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 utility facilities will be constructed in accordance with all applicable codes, rules and regulations, including city standards.

(B) The location and route of all utility facilities to be installed aboveground or on existing utility poles.

(C) The location and route of all utility facilities on or in the 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 that are within the rights-of-way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. The city may require additional information necessary to demonstrate that the proposed location can accommodate the utility facilities, as determined by the city. A cross-section shall be provided showing the applicant's new and existing utility facilities in relation to the street, curb, sidewalk, or rights-of-way.

(D) The construction methods to be employed for protection of existing structures, fixtures, and utility facilities within or adjacent to the rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate and, if deemed necessary by the city, methods to be employed for protection of existing structures, fixtures, and utility facilities within or adjacent to the rights-of-way.

(E) The applicant has an adequate traffic control plan that complies with subsection (2)(1) of this section.

(c) All permit applications shall be accompanied by the verification of a qualified and duly authorized representative of the applicant that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. The city may, in its sole discretion, require the verification of a registered professional engineer at no cost to the city.

(d) All permit applications shall be accompanied by a written work schedule, which shall include an estimated start date and a deadline for completion of work. The work schedule is subject to approval by the city.

(e) In addition to the requirements of this chapter, the applicant shall, at all times, comply with all other applicable city requirements.

(f) If satisfied that the applications, plans and documents submitted comply with all requirements of this chapter, the city shall issue a permit authorizing the work in the rights-of-way, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the city may deem necessary or appropriate.

(g) Except in the case of an emergency, the permittee shall notify the city not less than two working days in advance of any work in the rights-of-way.

(h) All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the utility facilities. The city and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

(i) All work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter shall be removed or corrected at the sole cost and expense of the permittee. The city is authorized to stop work in order to ensure compliance with the provisions of this chapter. If the permittee fails to remove or correct work as

required in this subsection, the city may remove or correct the work at the cost and expense of the permittee, after notice and opportunity to cure, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations.

(j) The permittee shall be responsible for providing correct and complete information on the permit application and in any related information provided to the city. If the city believes the permittee misrepresented, misstated, or omitted any material fact(s) in or related to its permit application, the city may deny or revoke the permit. The city may at any time require the permit holder to take additional measures to protect the health, safety, and welfare of the public. The permit holder shall be responsible for and pay all costs and expenses for such measures.

(k) The permittee shall promptly complete all work so as to minimize disruption of the rights-of-way and other public and private property. All work within the rights-of-way, including restoration, must be completed within 60 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the city.

(l) The permittee shall protect the work area with sufficient traffic controls reviewed and accepted by the city before work begins. The permittee shall at all times ensure the presence of such workers, tools and materials, flaggers, barricades, and other safety devices as may be necessary to properly protect bicyclists, pedestrians, construction personnel, and vehicular traffic upon the roadway, and to warn and safeguard the public against injury or damage resulting from the work.

(m) Any supervision or control exercised by the city shall not relieve the permittee or utility operator of any duty to the general public nor shall such supervision or control relieve the permittee or utility operator from any liability for loss, damage or injury to persons or property.

(3) Performance Surety.

(a) The city may require a utility operator or permittee to provide a performance bond or other form of surety acceptable to the city equal to at least 125 percent of the estimated cost of the work within the rights-of-way, which bond shall be provided before work is commenced.

(b) If required, the performance bond or other form of surety acceptable to the city shall remain in force until 60 days after substantial completion of the work, as determined in writing by the city, including restoration of rights-of-way and other property affected by the work.

(c) If required, the performance bond or other form of surety acceptable to the city shall guarantee, to the satisfaction of the city:

(A) Timely completion of the work;

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

(C) Proper location of the utility facilities as specified by the city;

(D) Restoration of the rights-of-way and other property affected by the work; and

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

(d) The release of the performance bond or other surety pursuant to subsection (3)(a) of this section does not relieve the utility operator from its obligation to restore rights-of-way or other property as required in subsection (5) of this section regardless of when the failure to restore rights-of-way or other property as required by this chapter occurs or is discovered.

(4) Injury to Persons or Property. A utility operator, or any person acting on its behalf, shall preserve and protect from injury or damage other utility operators' facilities in the rights-of-way, the public using the rights-of-way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.

(5) Restoration.

(a) When a utility operator, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly restore such rights-of-way to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations in effect at the time of the work unless otherwise directed by the city.

(b) If weather or other conditions beyond the utility operator's control do not permit the complete restoration required by the city, the utility operator shall temporarily restore the affected area. Such temporary restoration shall be at the utility operator's sole cost and expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the work schedule may be subject to approval by the city.

(c) If the utility operator fails to restore rights-of-way as required in this chapter, the city shall give the utility operator written notice and provide the utility operator a reasonable period of time which shall be not less than 10 days, unless an emergency or threat to public safety is deemed to exist, and shall not exceed 30 days unless agreed to in writing by the city, to restore the rights-of-way. If, after said notice, the utility operator fails to restore the rights-of-way as required in this chapter, the city shall cause such restoration to be made at the cost and expense of the utility operator. If the city determines a threat to public safety exists, the city shall provide necessary temporary safeguards, at the utility operators' sole cost and expense, and the utility operator shall have 24 hours to commence restoration. If the utility operator does not commence work in 24 hours, the city, at its sole option, may commence restoration at the utility operator's sole cost and expense.

(6) Inspection. Every utility operator's utility facilities shall be subject to the right of periodic inspection by the city to determine compliance with the provisions of this chapter and all other applicable state and city codes, ordinances, rules and regulations. Every utility operator shall

cooperate with the city in permitting the inspection of utility facilities upon request of the city. The utility operator shall perform all testing, or permit the city to perform any testing at the utility operator's cost, required by the city to determine that the installation of the utility operator's facilities and the restoration of the rights-of-way comply with the terms of this chapter and applicable state and city codes, ordinances, rules and regulations.

(7) Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their work schedules with those of the city and other users of the rights-of-way.

(a) Prior to January 1st of each year, utility operators shall provide the city with a written schedule of known proposed work activities for that year in, around or that may affect the rights-of-way.

(b) Utility operators shall meet with the city annually, or as determined by the city, in its sole discretion, to schedule and coordinate work in the rights-of-way.

(c) All work locations, activities and schedules within the rights-of-way shall be coordinated as may be ordered by the city, to minimize public inconvenience, disruption, or damages.

(8) Contractors. A utility operator may authorize a qualified contractor to perform any of the work authorized or required in this chapter on the utility operator's behalf. Any contractor performing work on behalf of a utility operator shall be subject to applicable provisions of this chapter, except that a contractor that is not a utility operator shall not be required to obtain a license. In the event a utility operator authorizes a contractor to perform work on its behalf, the utility operator shall remain responsible and liable for compliance with the provisions of this chapter.

12.24.080 Location of facilities.

(1) Location of Facilities. Unless otherwise agreed to in writing by the city:

(a) Whenever any existing electric utilities, cable facilities or communications facilities are located underground within the rights-of-way of the city, the utility operator with permission to occupy the same rights-of-way shall install all new facilities underground at no cost to the city. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts ("high voltage lines") unless otherwise directed by the city, or to antennas, pedestals, cabinets or other above-ground equipment of any utility operator, subject to applicable City requirements, including but not limited GMC Chapter 17.61, and the City's written approval. The city reserves the right to require written approval of the location of any such above-ground equipment in the rights-of-way.

(2) Interference with the Rights-of-Way. No utility operator or other person may locate or maintain any utility facilities so as to unreasonably interfere with the use of the rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the rights-of-way. Utility facilities shall not be located in a manner that restricts the line of sight for vehicles or pedestrians nor interferes with the proper function of traffic control signs, signals,

lighting, or other devices that affect traffic operation. All use of the rights-of-way shall at all times be consistent with city codes, ordinances, rules and regulations.

(3) Relocation of Utility Facilities.

(a) A utility operator shall, at no cost or expense to the city, temporarily or permanently remove, relocate, change or alter the position of any utility facility within the rights-of-way, including relocation of aerial facilities underground, when requested to do so in writing by the city. The requirement to relocate aerial facilities underground shall not apply to high voltage lines unless otherwise directed by the city.

(b) Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements; provided, that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

(c) The city shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, change, alter or underground any utility facility as requested by the city and by the date reasonably established by the city, the utility operator shall pay all costs incurred by the city due to such failure, including but not limited to costs related to project delays, and the city may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facility to be removed, relocated, changed, altered or undergrounded at the utility operator's sole cost and expense. Within 30 days of receipt of a detailed invoice from the city, the utility operator shall reimburse the city the full invoiced amount.

(d) The city will cooperate with the utility operator in identifying alternate locations within the rights-of-way for its utility facilities. The city shall not bear any responsibility, incur any costs or otherwise compensate the utility operator in relocation of its facilities, including instances in which the utility operator must relocate outside the rights-of-way.

(4) Removal of Unauthorized Facilities.

(a) Unless otherwise agreed to in writing by the city, within 30 days following written notice from the city, or such other time agreed to in writing by the city, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within the rights-of-way shall, at its own cost and expense, remove the facility and restore the rights-of-way as provided in GMC Section [12.24.080](#).

(b) A utility facility is unauthorized under any of the following circumstances:

(A) The utility facility, or any portion of the facility, is outside the scope of authority granted by the city under the license or franchise. This includes utility facilities that were never licensed or franchised and utility facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include

any utility facility for which the city has provided written authorization for abandonment in place.

(B) The utility facility has been abandoned and the city has not provided written authorization for abandonment in place. A utility facility is abandoned if it is not in use and is not planned for further use. A utility facility will be presumed abandoned if it is not used for a period of 12 consecutive months. A utility operator may overcome this presumption by presenting plans for future use of the utility facility.

(C) The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this chapter.

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

(5) Removal by City.

(a) The city retains the right and privilege to cut or move any utility facilities located within the rights-of-way, without notice, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency. The city will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the city's response to the emergency. The city will use best efforts to provide the utility operator with notice prior to cutting or moving utility facilities. If prior notice is not possible, the city will provide such notice as soon as reasonably practicable after resolution of the emergency.

(b) If the utility operator fails to remove any utility facility when required to do so under this chapter, the city may remove the utility facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the city in removing the utility facility and obtaining reimbursement. Within 30 days of receipt of a detailed invoice from the city, the utility operator shall reimburse the city for the costs and expenses the city incurred. The obligation to remove and to reimburse the city for any failure to remove utility facilities shall survive the termination of the license or franchise.

(c) The city shall not be liable to any utility operator for any damage to utility facilities, or for any incidental or consequential losses resulting directly or indirectly therefrom, by the city or its contractor in removing, relocating, changing or altering the facilities pursuant to subsection (2), (3) or (4) of this section or undergrounding its facilities as required by subsection (1) of this section, or resulting from the utility operator's failure to remove, relocate, change, alter or underground its facilities as required by those subsections, unless such damage arises directly from the city's negligence or willful misconduct.

(6) Engineering Record Drawings. The utility operator shall provide the city with two complete sets of record drawings in a form acceptable to the city showing the location of all its utility facilities in the rights-of-way after initial construction if such plan changed during construction.

The utility operator shall, at no cost to the city, provide updated complete sets of as built plans upon request of the city, but not more than once per year.

(7) Within 30 days of a written request from the city, or as otherwise agreed to in writing by the city, every utility operator shall make available for inspection by the city at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the rights-of-way. Access shall be provided within the city unless prior arrangement for access elsewhere has been made with the city.**12.24.090 Leased capacity.**

A utility operator may rent, sell, lease or otherwise provide capacity or space on or in its utility facilities to others; provided, that, upon request, the utility operator provides the city with the name and business address of any such person. A utility operator is not required to provide such information if disclosure is expressly prohibited by applicable law; provided, that the utility operator takes reasonable steps to ensure that such persons are in compliance with this chapter.

12.24.100 Maintenance.

(1) Every utility operator shall install and maintain all utility facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own cost and expense, repair and maintain utility facilities from time to time as may be necessary to accomplish this purpose.

(2) If, after written notice from the city of the need for repair or maintenance as required in subsection (1) of this section, a utility operator fails to repair and maintain utility facilities as requested by the city and by the date reasonably established by the city, the city may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole cost and expense. Within 30 days of receipt of a detailed invoice from the city, the utility operator shall reimburse the city the full invoiced amount.

12.24.110 Vacation.

If the city vacates any rights-of-way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its utility facilities from the vacated rights-of-way unless (i) the city reserves a public utility easement, which the city shall make a reasonable effort to do provided that there is no expense to the city, or (ii) the utility operator obtains an easement for its utility facilities. If the utility operator fails to remove its utility facilities within 30 days after a right-of-way is vacated, or as otherwise directed or agreed to in writing by the city, the city may remove the utility facilities using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole cost and expense. Within 30 days of receipt of an invoice from the city, the utility operator shall reimburse the city the full invoiced amount.

12.24.120 Right-of-way use fee.

(1) Except as set forth in subsection (2) of this section, every person that owns utility facilities in the city and every person that uses utility facilities in the city to provide utility service, whether or not the person owns the utility facilities used to provide the utility services, shall pay the applicable ROW use fee(s) in the amount determined by resolution of the City Council. A utility provider shall pay the applicable ROW use fee for every utility service provided in the city.

(2) A person that is a utility operator and a utility provider shall be subject to the ROW use fee(s) applicable to utility operators and, in addition, to the ROW use fee(s) applicable to utility providers; provided, however, that the person must pay only the greater of the two fees, or, if the two fees are the same, the utility operator ROW use fee.

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

(4) Right-of-way use fee payments required by this section shall be reduced by any franchise fee payments received by the city, but in no case will be less than \$0.00.

(5) Unless otherwise agreed to in writing by the city, the ROW use fee set forth in subsection (1) of this section shall be paid quarterly, in arrears, within 45 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable on a remittance form provided by the city. A utility operator or utility provide shall provide, at no cost to the city, any additional reports or information the city deems necessary, in its sole discretion, to ensure compliance with this section. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the city limits, or any other information needed for the city to readily verify compliance.

(6) The calculation of the ROW use fee required by this section shall be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

(7) The city reserves the right to enact other fees and taxes applicable to the utility providers and utility operators subject to this chapter. Unless expressly permitted by the city in enacting such fee or tax, or required by applicable state or federal law, no utility operator or utility provider may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the ROW use fee or any other fees required by this chapter.

12.24.130 Penalties and interest on right-of-way usage fee.

(1) ROW usage fees not received by the city on or before the due date are subject to the following penalties:

(a) Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided in GMC Section [12.24.130](#) shall pay a penalty listed below in addition to the amount due:

(A) First occurrence during any one calendar year: 10 percent of the amount owed, or \$25.00, whichever is greater.

(B) Second occurrence during any one calendar year: 15 percent of the amount owed, or \$50.00, whichever is greater.

(C) Third occurrence during any one calendar year: 20 percent of the amount owed, or \$75.00, whichever is greater.

(D) Fourth occurrence during any one calendar year: 25 percent of the amount owed, or \$100.00, whichever is greater.

(b) If the city determines that the nonpayment of any remittance due under this section is due to fraud or intent to evade the provisions hereof, an additional penalty of 25 percent of the amount owed, or \$500.00, whichever is greater, shall be added thereto in addition to other penalties stated in this section.

(c) In addition to the penalties imposed, any person who fails to remit any fee when due as provided in GMC Section [12.24.130](#) shall pay interest at the rate of 1.5 percent per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties), from the date on which the remittance first became delinquent, until received by the city.

(d) Every penalty imposed, and such interest as accrues under the provision of this section, shall be merged with, and become part of, the fee required to be paid.

(2) The City Administrator or designee, in their sole discretion, shall have the authority to reduce or waive the penalties and interest due under this section.

(3) Penalties and interest imposed pursuant to this section are in addition to any penalties that may be assessed under other sections or chapters of the Gladstone Municipal Code.

12.24.140 Audits.

(1) Within 30 days of a written request from the city, or as otherwise agreed to in writing by the city, every utility operator and utility provider shall furnish the city, at no cost to the city, with information sufficient to demonstrate compliance with all applicable requirements of this chapter and its franchise agreement, if any, including but not limited to payment of any applicable fees.

(2) If the city's audit of the books, records and other documents or information of the utility operator or utility provider demonstrates that the utility operator or utility provider has underpaid the ROW use fee or any other fee or payment by three percent or more in any one year, the utility operator, or utility provider shall reimburse the city for the cost of the audit, in addition to any interest and penalties owed pursuant to GMC Section [12.24.130](#).

(3) Any underpayment, including any interest, penalties or audit cost reimbursement, shall be paid within 30 days of the city's notice to the utility operator or utility provider of such underpayment.

(4) The utility provider or utility operator shall maintain records subject to this subsection for not less than six years.

12.24.150 Insurance and indemnification.

(1) Insurance.

(a) All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the city, as well as the city's officers, agents, and employees:

(A) Comprehensive general liability insurance with limits not less than:

(i) Three million dollars for bodily injury or death to each person;

(ii) Three million dollars for property damage resulting from any one accident; and

(iii) Three million dollars for all other types of liability.

(B) Commercial automobile liability insurance for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.

(C) Worker's compensation within statutory limits and employer's liability with limits of not less than \$1,000,000.

(D) If not otherwise included in the policies required by subsection (1)(a)(A) of this section, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.

(E) Utility operator may utilize primary and umbrella liability insurance policies to satisfy the preceding insurance policy limit requirements.

(b) The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, with the exception of worker's compensation, as additional insureds the city and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The insurance shall not be canceled or materially altered without 30 days prior written notice first being given to the city, and the certificate of insurance shall include such an endorsement. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the city with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

(c) The utility operator shall maintain on file with the city a certificate of insurance, or proof of self-insurance acceptable to the city, certifying the coverage required above.

(2) Financial Assurance. Unless otherwise agreed to in writing by the city, before a franchise granted or license issued pursuant to this chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security or assurance, in a form acceptable to the city, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required by GMC Section [12.24.080](#)(3).

(3) Indemnification.

(a) Each utility operator shall defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligence, carelessness, wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the work, construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this chapter or by a franchise agreement. The acceptance of a license under GMC Section [12.24.070](#), or of a franchise granted by the city, shall constitute such an agreement by the applicant whether the same is expressed or not, unless expressly stated otherwise in the license or franchise. Upon notification of any such claim the city shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

(b) Every utility operator shall also indemnify the city for any damages, claims, additional costs or expenses assessed against or payable by the city arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights-of-way in a timely manner, unless the utility operator's failure arises directly from the city's negligence or willful misconduct.

12.24.160 Compliance.

Every utility operator and utility provider shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the city, heretofore or hereafter adopted or established.

12.24.170 Confidential/proprietary information.

If any person is required by this chapter to provide books, records, maps or information to the city that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the city (“confidential information”), the city shall take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the city receives a public records request to inspect any confidential information and the city determines that it will be necessary to reveal the confidential information, to the extent reasonably possible the city will notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The city shall not be required to incur any costs to protect any confidential information, other than the city’s routine internal procedures for complying with the Oregon Public Records Law.

12.24.180 Penalties.

(1) Any person found in violation of any of the provision of this chapter or the license shall be subject to a penalty of not less than \$150.00, nor more than \$2,500 for each offense. A violation shall be deemed to exist separately for each and every day during which a violation exists.

(2) Nothing in this chapter shall be construed as limiting any judicial or other remedies the city may have at law or in equity, for enforcement of this chapter.

12.24.190 Severability and preemption.

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

(2) If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining article, section, subsection, sentence, clause, phrase, term, provision, condition and portion of this chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the city.

12.24.200 Application to existing agreements.

To the extent that this chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this chapter shall apply to all existing franchise agreements granted to utility operators by the city.

