

City of Eugene Ordinance No. 20083

ORDINANCE NO. 20083

AN ORDINANCE CONCERNING TELECOMMUNICATIONS; ADDING SECTIONS 3.400, 3.405, 3.410, 3.415, 3.420, 3.425, AND 3.430 TO THE EUGENE CODE, 1971; AMENDING SECTIONS 3.005, 7.290, 7.295, 7.297, 7.299, 7.300, AND 7.302 OF THAT CODE; AND DECLARING AN EMERGENCY.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 3.005 of the Eugene Code, 1971 is amended by adding the following caption and definitions in alphabetical order in the Licensed Businesses section therein:

Telecommunications:

Cable service:

(a) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable System. A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community. A reference to a cable system includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the cable system. As used herein, cable system does not include:

(a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) A facility that serves subscribers without using any public right-of-way or public utility easements;

(c) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers;

(d) Any facilities of any electric utility used solely for operating its electric utility systems;
or

(e) An open video system that is certified by the FCC.

Communications facility. Refers to a telecommunications facility, cable system, or open video system.

License. Refers to the authorization granted by the city to an operator of a communications facility, giving the operator the non-exclusive right to provide, through facilities maintained or operated upon, across, beneath, or over any public right-of-way in the city, a specified service within a license area. Any such authorization, in whatever form granted, shall not exempt the licensee from the need to obtain any other permit, registration or authorization required by this code, including but not limited to:

(a) The registration required by section 3.405 of this code;

(b) Any permit, agreement or authorization required in connection with operations in the public right-of-way or on other public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along public rights-of-way.

FCC. The Federal Communications Commission or its designee.

Gross Revenues. Any and all revenue, of any kind, nature or form, without deduction for expense.

Open Video System, or "OVS". A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, which includes video programming, which is provided to multiple subscribers within a community, and which the Federal Communications Commission or its successor has certified as compliant with Part 76 of the Rules of the Federal Communications Commission, 47 C.F.R., Part 76, as amended from time-to-time.

Operator. A person who provides telecommunications services. When used with reference to a system, refers to a person:

(a) Who provides, or intends to provide, service over a communications facility and directly or through one or more affiliates owns a significant interest in such facility; or

(b) Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.

A person that leases a telecommunications facility or a specific portion of a telecommunications facility to provide telecommunications services shall be treated as an operator for purposes of this code.

Person. Includes any individual, corporation, partnership, association, joint stock company, trust, limited liability company, or any other legal entity.

Private communications system. A facility placed in whole or in part in the public right of way for the provision of communications solely in connection with a private communications system owner's business, but not encompassing the provision of telecommunications services for hire to others or in any respect the provision of telecommunications services.

Registration. The provision of information to the city by an operator or other person engaged in telecommunications activities, pertaining to telecommunications activity within the city. The information shall be submitted on a form provided by the city and in such additional documents as the city may require, and shall be accompanied by an application fee in an amount set by the city manager pursuant to section 2.020 of this code.

Reseller. Any person that provides telecommunications service using a telecommunications facility for which service a separate charge is made, where that person does not own, lease, control or manage the telecommunications facility used to provide the service.

Telecommunication activities. Telecommunication activities include telecommunication services, cable service, OVS services, and private communication system services.

Telecommunications facility. A facility that is used to provide one or more telecommunications services. The term telecommunications facility includes radio transmitting towers, other supporting structures, and associated facilities, including fiber, used to transmit telecommunications signals. An open video system is not a telecommunications facility to the extent that it provides only video services; a cable system is not a telecommunications facility to the extent that it provides only cable service.

Telecommunications services. The transmission for hire, of information in electromagnetic frequency, electronic or optical form, including, but not limited to, voice, video, or data, whether or not the transmission medium is owned by the provider itself, and whether or not the transmission medium is wireline or wireless.

Telecommunications service includes all forms of telephone services and voice, data and video transport, but does not include: (1) cable service; (2) OVS service; (3) private communications system services; (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.

Section 2. The following caption, and Sections 3.400, 3.405, 3.410, 3.415, 3.420, 3.425, and 3.430 are added to the Eugene Code, 1971, to provide:

Telecommunications

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3.400 Telecommunications - General. The provisions of sections 3.400 to 3.430 of this code and the rules adopted by the city manager pursuant to section 2.019 of this code are intended to authorize and regulate telecommunication activities in the city to the extent permitted under laws of the United States and the State of Oregon. Except as these sections specifically provide to the contrary, the procedures and requirements of sections 3.015 to 3.075 of this code apply to the activities authorized by sections 3.400 to 3.430.

3.405 Telecommunications Activities - Registration Required.

(1) No person may, without first registering with the city and then paying the fee required by section 3.415(1), engage in any telecommunications activity through a communications facility located in the city.

(2) Registration under this section shall be submitted pursuant to section 3.020, on a form provided by the city. The registration shall be accompanied by any additional documents required therein or in rules issued by the city manager pursuant to section 2.019 of this code.

3.410 Telecommunications - License Required.

(1) No operator may, without first applying for and receiving a license from the city, construct, place or locate any facility in, upon, beneath, over or across any public right-of-way or on other public property to:

- (a) Construct a cable system or provide cable service;
- (b) Construct a telecommunications facility or provide telecommunications service;
- (c) Construct an open video system or provide services via an open video system; or
- (d) Construct or operate a private communications system.

(2) An application for a license under this section shall be submitted pursuant to section 3.020, on a form provided by the city. The application shall be accompanied by any

additional documents required by the application or in rules issued by the city manager pursuant to section 2.019 of this code.

(3) The fact that a particular communications facility may be used for multiple purposes does not obviate the need to obtain a license for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a license to construct, install or locate a cable system to provide cable services, and, should it intend to provide telecommunications services over the same facilities, must also obtain a separate license.

(4) So long as it registers with the city as required by section 3.405 and pays the registration and license fees required by section 3.415, a reseller may use another person's facilities to engage in telecommunications activities in the right-of-way without obtaining a license, providing the reseller does not, either itself or through an affiliate, own or lease, control or manage any facilities in the right-of-way and is not involved in construction or repair of facilities in the right-of-way. For purposes of calculating the registration and license fees to be paid by a reseller, the amount of compensation paid by the reseller to the owner or manager of facilities in the right-of-way for the services it resells shall be deducted from the reseller's gross revenues before applying the percentage rates described in section 3.415(1) and (2).

(5) So long as it registers with the city as required by section 3.405 and pays the annual registration fee required by section 3.415(1) as well as other applicable fees, an operator is not required to obtain a license under this section or pay an annual license fee under section 3.415(2) if the operator's only use of the public right-of-way is to place wireless transmitting or receiving facilities above the ground on existing poles or similar structures in the right-of-way and the operator does not install or use lines, wires or cables.

(6) An operator holding an outstanding permit or franchise from the city for a communications facility to provide specified services, or for a private communications system, may continue to operate under its existing permit or franchise to the conclusion of its present term (but not for any renewal or extension thereof) with respect to those activities expressly authorized by the permit or franchise. Any such permittee or franchisee may elect to apply for a superseding license under sections 3.400 to 3.430 of this code, and must apply for a license under those sections if intending to provide services other than, or in addition to, the services authorized under its existing permit or franchise. All such permittees and franchisees shall register and pay registration fees as required by sections 3.405 and 3.415(1) and be subject to the provisions of sections 3.400 to 3.430 and 7.290 to 7.309 to the full extent permitted by law. Any permits or licenses that are revocable shall be automatically revoked as of July 1, 1997, and the permittee or licensee required to obtain a new license pursuant to the provisions of sections 3.400 to 3.430.

(7) A license granted pursuant to this section shall not convey equitable or legal title in the rights-of-way.

(8) The license may not be assigned or transferred without the prior written consent of the city.

(9) Neither the issuance of a license hereunder nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the city as may exist at the time the license is issued or thereafter obtained.

3.415 Telecommunications - Annual Registration and License Fees.

(1) Annual Registration Fee. Each person required to register under section 3.405 of this code, except an operator of a private communications system, shall pay to the city an annual registration fee in the amount of 2% of the licensee's gross revenues derived from its telecommunication activities within the city. In addition, the first annual registration fee paid by a registrant shall include an additional charge, in an amount set by the city manager pursuant to section 2.020 of this code, that is calculated to recover all of the city's costs incurred in processing the registration, as well as a share of the city's costs in preparation of the city's telecommunications plan, this ordinance, and the implementing rules.

(2) Annual License Fee. As compensation for use of right-of-way, each operator required to obtain a license pursuant to section 3.410 of this code shall pay, in addition to the registration fee described in subsection (1) of this section, a fee in the amount of 7% of the licensee's gross revenues derived from telecommunications activities within the city, to compensate the City for the use of the rights-of-way.

(3) Private Communications System. In lieu of the fees required by subsections (1) and (2), a private communications system licensee shall pay to the city a fee based on a per foot rate to be established pursuant to section 2.020 of this code in an amount not less than the amount needed to ensure no degradation of the right-of-way.

(4) Effect of Federal and State Law. To the extent that federal or state law, or an existing franchise agreement, limits the amount of fees which the City may impose on, or the compensation it may require from, an operator, nothing in this section shall require the payment of any greater amount, unless and until the federal or state limits are raised, or the franchise agreement expires or is otherwise terminated.

(5) Other Fees. Payment of fees required by this section shall be in addition to both application fees required by this chapter, and any other fees required pursuant to chapters 7, 8 or 9 of this code.

(6) In Lieu of Fee Payment.

(a) In lieu of part or all of the annual registration and license fees, the city may accept in-kind services which the city manager determines have a value to the city equal to or greater than the registration and license fees, or the portion of those fees in lieu of which the city will accept services. If the city manager agrees to the in-kind payment, the registration or license shall reflect this agreement.

(b) Prior to the city manager agreeing to such an arrangement, the operator shall provide to city, at the operator's expense, an analysis prepared by an independent entity, which demonstrates that the value of the in-kind service is equal to or greater than the license fee (or portion of fee) to be waived. In addition, the city manager shall give at least 20 days notice to the city council of the proposed arrangement. If any two city councilors give the manager written objections to the proposed arrangement within the 20 day period, the manager shall not agree to the proposal unless the council votes to approve the proposal.

(c) If an operator fails to provide all or a portion of the in-kind service reflected in the registration or license, the operator shall be liable to the city for the full amount of the annual registration and license fees pursuant to subsections (1) and (2) of this section for the year or years in which the in-kind service or a portion thereof is not provided. In addition, the city manager may terminate the arrangement for in-kind services and amend the registration or license accordingly.

(7) Payment of Annual Registration and License Fees.

(a) Unless otherwise specified, the annual registration and license fees shall be paid to the City quarterly, and not later than forty-five (45) days after the end of each calendar quarter.

(b) Each payment shall be accompanied by a statement showing the manner in which the fee was calculated, and shall be personally delivered or mailed to the city on or before the due date. If mailed, the postmark shall be considered the date of delivery.

(c) For good cause, the city may extend for not to exceed one month, the time for making payment and filing the statement. Any person or operator to whom an extension is granted shall pay interest at the rate of 1.5% per month on the amount of fee due, without proration for a fraction of a month. If the statement is not filed and the fee and interest due is not paid by the end of the extension period, then the interest shall become part of the fee for computation of penalties prescribed in subsection (4) of this section.

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

(e) The payments hereunder are not a payment in lieu of any tax, fee or other assessment except as specifically provided in this section, or as required by applicable law.

(f) Within ninety (90) days following the end of the calendar year, each person or operator which paid a fee hereunder shall submit a statement, certified as true by an independent auditor or the chief financial officer of such person or operator, setting forth its gross revenues, by category, and describing what revenues were included and excluded in calculating the fee or fees, and any adjustments made to gross revenues.

(g) The city may, from time to time, and upon reasonable advance written notice, inspect, copy and audit any and all books and records of a registrant or licensee reasonably necessary to the determination of whether fees have been accurately computed and paid.

(h) Notwithstanding the foregoing, in the event a registrant or licensee that is obligated to pay a fee ceases to provide service for any reason (including as a result of a transfer), such registrant or licensee shall make a final payment of any amounts owed to the city within ninety (90) calendar days of the date its operations in the city cease, and shall provide a statement of gross revenues for the calendar year through the date operations ceased which statement shall contain the information and certification required by this section.

(8) Penalties and Interest.

(a) Any registrant or licensee who has not been granted an extension of time for remittance of a fee due and who fails to remit any fee imposed under subsection (2) of this section prior to delinquency shall pay a penalty of ten percent (10%) of the amount of the fee due in addition to the amount of the fee.

(b) Any registrant or licensee who has not been granted an extension of time for remittance of a fee due, and who fails to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first becomes delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the fee due plus the amount of the fee and the ten percent (10%) penalty first imposed.

(c) 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, a penalty of twenty-five percent (25%) of the amount of the fee shall be added thereto in addition to the penalties stated in subparagraphs (b) and (c) of this subsection.

(d) In addition to the penalties imposed, any registrant or licensee who fails to remit any fee imposed by this section shall pay interest at the rate of 1.5% per month or fractions thereof, without proration for portions of a month, on the amount of the fee due, exclusive of penalties, from the date on which the remittance first becomes delinquent, until paid.

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

(f) Any person required to pay a penalty under this section may appeal to the city manager as provided in section 2.021 of this code.

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3.420 Telecommunications - Inspection and Conditions Relating to Licensee's Facilities.

(1) Every licensee's communications facility shall be subject to the right of periodic inspection and testing by the city to determine compliance with the provisions of this code, a franchise or license agreement, or other applicable laws that the city has some responsibility to enforce. The city shall have the right, upon request, to be notified and be present when the licensee's communications facility is tested by the operator. Each operator must respond to requests for information regarding its existing system and plans for the system as the city may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the facility is being constructed, operated or repaired. The city engineer may require such information including GIS format or other drawings, surveys and plans as deemed necessary to determine whether the proposed work conforms to the requirements of this code.

(2) Each operator of a communications facility that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for the city at no charge.

(3) The work to be performed by an operator shall be publicized as the city may from time to time direct.

(4) Each licensee shall provide the city a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the city that will be affected.

(5) A communications facility operator shall not deny service, deny access, or otherwise discriminate against subscribers, programmers, suppliers, vendors, or residents of the city on the basis of race, color, creed, national origin, sex, age, conditions of physical handicap, religion, ethnic background, marital status, or sexual orientation.

(6) A communications facility operator shall not discriminate among persons or the city or take any retaliatory action against a person or the city because of that entity's exercise of any right it may have under federal, state, or local law, nor may the operator require a person or the city to waive such rights as a condition of taking service.

3.425 Telecommunications - Removal of Facilities; Termination of Use of Right-of- Way.

(1) Every licensee that ceases to operate a communications facility located within the city shall, upon written request of the city made within two years of the cessation of operation of such facility, promptly remove the facility, or any part thereof, and restore the property and right-of-way to the condition prior to installation. If the licensee neglects, refuses, or fails to remove the facility or part thereof, or to restore the property, the city may remove or restore it at the expense of the licensee. The obligation to remove shall survive the termination of the license. The city may require a licensee, prior to installation of a facility, to post a bond in an amount sufficient to cover the cost of removal of the facility and restoration of the property and right-of-way.

(2) If a licensee violates any provision of sections 3.400, 3.405, 3.410, 3.415, 3.420 or administrative rules adopted pursuant to section 3.430 and fails to remedy the violation within ten days of receiving notice of the violation, the city manager may terminate the licensee's use of the right-of-way.

3.430 Telecommunications - Administrative Rules. The city manager shall adopt administrative rules pursuant to section 2.019 of this code, in order to implement the provisions of sections 3.400 - 3.430. Such rules may include, but are not limited to:

(a) The information required to be provided in an application for registration and for a license, including a description of the services to be provided and the location and design of the proposed facility;

(b) Criteria for determining whether the applicant for a license is financially, technically, and legally qualified to successfully complete any proposed facility to be installed in, on, under or over the public right-of-way;

(c) Contents of a licensee's plans for construction, rebuilding, upgrade or extension of facilities, including the period of time such plans must cover;

(d) Licensee and registrant reporting requirements;

(e) Terms and renewals of registrations and licenses.

(f) Transfer of licenses.

The rules may differentiate between telecommunications facilities and telecommunications service providers, open video systems, cable television systems, and private communications facilities.

Section 3. Sections 7.290, 7.295, 7.297, 7.299, 7.300, and 7.302 of the Eugene Code, 1971, are amended to provide:

7.290 Construction and Use of Public Way - Permit Required; Standard Specifications.

(1) As used in this section, "work affecting the public way" includes, but is not limited to: installation or construction of any structure, pipe, pole, conduit, culvert, facility, including a communications facility, as defined by section 3.005 of this code, or other wire line utilities in or on a public way; construction, reconstruction, grading, oiling, repair, opening or excavation of a public way for any purpose; but does not include the construction of public improvements performed under a contract executed by the city manager or work performed by city employees under the city manager's direction.

(2) No person, municipal utility, or operator of a communications system shall do work affecting a public way without first obtaining a permit from the city engineer. A license issued pursuant to section 3.410 of this code shall not constitute authorization to perform work affecting a public way; all such work shall require a permit pursuant to this section.

(3) Work affecting a public way shall be performed in accordance with this code, the standard specifications and design standards adopted pursuant to section 7.085, administrative rules issued by the city manager pursuant to section 2.019 of this code, sound engineering and design practices and such other reasonable conditions required by the city engineer to protect the public health, safety and welfare, including proof that the contractor performing the work is licensed and bonded.

(4) If an applicant for a permit or the contractor performing the work for the applicant:

(a) Is delinquent in performing the obligations required by sections 7.290 to 7.308 on permits previously issued, the city engineer may refuse to issue a new permit for other work affecting a public way until the delinquency is corrected; and

(b) Has been delinquent in performing the obligations required by sections 7.290 to 7.308 more than two times in the previous 24 months, the city engineer may require a bond or other reasonable security, which may be a cash deposit, be posted with the city against which the city may collect its cost of enforcing this code and the conditions of any permit issued thereunder against the permittee.

7.295 Public Way Construction and Use - Permit Application.

(1) Unless otherwise permitted in section 7.305, application for a permit to perform work affecting a public way shall be made to the city engineer on forms provided by him/her.

The city engineer may waive the requirement to complete the application form and pay the permit fees and restoration deposit when the amount of work to be done in the public way does not warrant the cost of processing the application.

(2) No permit which authorizes the cutting of street surfaces shall be issued for installation of any utility or facility for a period of five years from the time the street is constructed or resurfaced, unless otherwise approved by the city engineer pursuant to rules adopted and section 7.302(5) of this code.

(3) If the city engineer determines that it is proper that the proposed work be done, the application shall be approved. After approval, and upon receipt of the required fee, deposit, and proof of license and bond required by section 7.290(3), the city engineer shall issue a revocable permit.

(4) If the city engineer denies a permit, or revokes a permit because of a failure to comply with the provisions of this chapter or because another public purpose is to be accomplished which is inconsistent with the permittee's use of the public way, the applicant or permittee shall have the right of appeal to the city manager as provided in section 2.021 of this code.

(5) Permits issued pursuant to this section do not authorize vehicle parking in the public way. If the proposed construction necessitates parking vehicles in the public way, the applicant must make an application for a parking space rental permit in accordance with and subject to section 5.350.

7.297 Permit - Insurance Requirement; Safety.

(1) No permit shall be issued under section 7.295 unless an applicant agrees to save the city, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under said permit and provides proof of the license and bond required under section 7.290. The acceptance of a permit under 7.290 shall constitute such an agreement by the applicant whether the same is expressed or not.

(2) A permittee shall preserve and protect from injury other permittees' facilities in the public way, the public using the public 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 utilities that may be subject to damage from the permitted excavation. A permittee shall be responsible for all damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.

7.299 Public Way Construction and Use - Permit Revocation. Failure to comply with any condition of the permit issued under section 7.295 and related code or administrative rule requirements, or failure to make a safe and timely restoration of the public way shall be cause for revocation of the permit.

7.300 Public Way Construction and Use - Permit Fees.

(1) The fee for a permit required by section 7.290 shall be set by the city manager pursuant to section 2.020 of this code in an amount sufficient to fully recover all of the City's costs related to processing the application for the permit and inspecting the work during and after completion of the work.

(2) Except when the permittee is a municipal utility, a franchisee, or a licensee otherwise obligated to compensate the city for on-going use of the public way, in addition to the fee required in subsection 7.300(1), a fee for leaving any structure, pipe, conduit, culvert or facility in the public way may be set by the city manager pursuant to section 2.020 of this code to provide a reasonable return to the public for the permitted on-going use of the public way.

7.302 Public Way Construction and Use - Location of Facilities.

(1) All underground pipes and conduits in the public way shall be laid a minimum depth of 30 inches below the city-established street grade or alley grade and 30 inches below ground level in utility easements, unless otherwise approved by the city manager or designee. If it becomes necessary for the proper or necessary public use of any public way that any structure, pipe, conduit, culvert or facility heretofore installed or constructed be removed or relocated or that any use made thereof by a municipal utility, franchisee, licensee, or permittee be discontinued, the city engineer shall give written notice to the owner of the street tree, pipe, conduit, culvert or other facility to remove the same within a reasonable time. If the owner fails to comply with such notice, the city may remove or relocate the same and charge the costs of removal or relocation to the owner.

(2) A permit issued under sections 7.290 and 7.295 shall require that all utilities and communications facilities be located underground in the manner provided in subsection (1) of this section if the permit is associated with new residential or new commercial development.

(3) A permit issued under section 7.295 may require the permittee to locate the facility or utility jointly with other providers and to reserve public space in privately opened trenches to ensure adequate conduit capacity for city operational and infrastructure needs.

(4) A permit issued under section 7.295 may require the permittee to install capacity in excess of the permittee's or other providers' needs, as determined by the city. The permittee may negotiate with other licensed providers, which are co-locating with the permittee, for sharing the use and costs associated with the joint use in open trenches.

(5) A licensee or owner of above-ground wires, cables or lines located in a right-of-way that is subject to a capacity-enhancing improvement project shall install conduit crossings at the time of the improvement project.

(6) The administrative rules issued by the city manager hereunder shall include, but not be limited to:

(a) Requirements for prior notice to other licensed providers before performing work, and establishment of criteria to address the frequency that street openings will be permitted;

(b) Location criteria and regulations for installation of above-ground facilities, such as junction boxes, controllers, distribution centers, etc. within the general right of way, including the ability to require under-grounding.

(c) Standards for when and under what conditions existing above-ground utilities and telecommunications facilities shall be placed underground;

(d) Standards for conduit size, location and capacity to be installed by providers, which may be different for different areas of the city, class of street, location, and other factors;

(e) Standards that ensure initial providers in an area provide extra capacity for later providers and a procedure that enables the initial provider to recover a portion of its costs incurred, is not discriminatory, does not prevent competition in service delivery, or become a barrier to other providers;

(f) Criteria for providing exceptions to the requirement that later providers utilize the extra capacity of initial providers;

(g) The format for the manner in which data on the construction and location of services is provided to the city;

(h) Procedures that ensure providers belong to the local utility notification service and can document their ability to provide locating service for their facilities;

(i) Requirements for public notice;

(j) Traffic control plans; and

(k) Requirements for indemnity, performance bonds and project completion bonds.

Section 4. Notwithstanding the effective date of this Ordinance, or any provisions adopted herein requiring the imposition of annual license and/or registration fees, the City Manager may provide in the administrative order establishing the fees an effective date of July 1, 1997 for imposition of the fees.

Section 5. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Section 6. The findings attached as Exhibit 1 hereto are hereby adopted in support of this Ordinance.

Section 7. That the matters contained herein concern the public health, welfare and safety and therefore, an emergency is hereby declared to exist, and this Ordinance shall become effective immediately upon its passage by the City Council and approval by the Mayor, retention by the Mayor for more than ten days, or readoption over a mayoral veto by two-thirds of all members of the City Council.

Passed by the City Council this _____ day of April, 1997
Approved by the Mayor this _____ day of April, 1997

28th of April, 1997 _____ day of April, 1997

City Recorder Mayor

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City of Eugene Telecommunications Vision and Policies

Vision

The City of Eugene's telecommunications vision is completion and operation of a coordinated regional information infrastructure that provides accessible and affordable high-speed connectivity for citizens, public institutions, and businesses and is constructed in a manner that best serves the public interest.

Policies

1. All City residents, businesses and public institutions shall have access to the full range of telecommunications services at reasonable, affordable rates.

2. The City shall receive fair compensation, including but not limited to full recovery of all its costs for the use of public rights of way and other City property by telecommunications providers.
3. The public must be protected from adverse safety consequences stemming from the installation, maintenance and operation of telecommunications facilities in the City.
4. Telecommunications facilities must be located, installed and maintained in a manner that minimizes visual impact, preserves views, and is consistent with City of Eugene adopted land use plans and policies.
5. Public inconvenience and disruption stemming from the installation, maintenance, and operation of telecommunications facilities shall be minimized and fully compensated.
6. The City shall ensure that telecommunications providers make use of the rights of way in as efficient a manner as possible.
7. The City shall have access to reliable, flexible telecommunications services.
8. Similarly situated telecommunications providers shall be treated in a similar manner.
9. The City shall use telecommunications along with other media, including an emphasis on the Internet, to communicate with and provide information and services to citizens, public institutions, and businesses.

(Rev. 4/97)

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