

ORDINANCE NO. 2004

AN ORDINANCE REPEALING CHAPTER 12.40 TELECOMMUNICATIONS INFRASTRUCTURE REPLACING IT WITH CHAPTER 12.40 FRANCHISES AND UTILITY LICENSE FEES

Recitals:

- A. Chapter 12.40 governs the standards for the use, construction and safety of Telecommunications Carriers in the rights-of-way; and
- B. Chapter 12.40 provides for the right of the city to collect a franchise fee for use of the rights of way by Telecommunications Carriers; and
- C. The City of Central Point desires to set forth uniform standards for the use, construction and safety in the right of way for any utility provider, cable company and/or telecommunications carrier located within the city's right-of-way; and
- D. To ensure that the city can effectively manage its rights of way and aid the enforcement of its safety and construction standards within the rights of way, the city desires to establish registration requirements for all utilities, cable companies and telecommunication carriers providing facilities or services within the City; and
- E. The City desires to establish reasonable and compensation for the use of the right of way regardless of whether such entity has entered into a franchise agreement with the City.

THE PEOPLE OF THE CITY OF CENTRAL POINT DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 12.40 Telecommunications Infrastructure of the Central Point Municipal Code is repealed in its entirety and replaced with a new section Chapter 12.40 Franchises and Utility License Fees of the Central Point Municipal Code to read as follows:

Chapter 12.40 FRANCHISES AND UTILITY LICENSE FEES

Sections:

- 12.40.010 Purpose and intent.
- 12.40.020 Definitions.
- 12.40.030 Registration.
- 12.40.040 Construction standards.
- 12.40.050 Location of Facilities.
- 12.40.060 Franchise Agreements.
- 12.40.070 General franchise terms.
- 12.40.075 Utility License Fee.
- 12.40.080 General provisions.

12.40.010 Purpose and intent.

A. Purpose. The purpose and intent of this chapter is to:

1. Secure fair and reasonable compensation to the city and its residents for permitting private use of the public right-of-way;
2. Assure that all Telecommunications Carriers, Cable Operators and Utility Providers providing facilities and/or services within the city, or passing through the city, register and comply with the ordinances, rules and regulations of the city;
3. Assure that the city's current and ongoing costs of granting and regulating private access to and the use of the public rights-of-way are fully compensated by the persons seeking such access and causing such costs;
4. Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
5. Enable the city to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.
6. Comply with the provisions of federal and state law as they apply to local governments, Telecommunications Carriers, Cable Operators and Utility Providers, and the services those carriers offer.
7. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to businesses, institutions and residents of the city;
8. Permit and manage reasonable access to the public rights-of-way of the city and conserve the limited physical capacity of those public rights-of-way held in trust by the city;

B. Jurisdiction and Management of the Public Rights-of-Way.

1. The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the city charter and state law.
2. Public rights-of-way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, city easements and all other public ways or areas, including the subsurface under and air space over these areas.
3. The city has jurisdiction and exercises regulatory management over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
4. No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises and permits and through the provisions of this ordinance.

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

6. The city retains the right and privilege to cut or move any Telecommunications, Cable or Utility facilities located within the public rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency.

C. 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 public rights-of-way provided for in this chapter, are separate from, and in addition to, any and all federal, state, local, and city charges as may be levied, imposed, or due from a Telecommunications Carrier, Cable Operator or Utility Provider, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of telecommunications services.

2. The city has determined that any fee 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 are not a tax imposed on property or property owners, and these fees are not new.

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

12.40.020 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. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

Aboveground Facilities. See “Overhead facilities.”

“Affiliated interest” shall have the same meaning as ORS [759.010](#).

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. subsection 521, et seq., as now and hereafter amended.

“Cable Operator” means any person or group of persons who provides cable service over a cable system and directly or through one or more affiliates owns a *significant interest* in such cable system, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

“Cable Service” is to be defined consistent with federal laws and means the one-way transmission to subscribers of video programming, or 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 Central Point, 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 Central Point, Oregon.

“City property” means and includes all real property owned by the city, other than public rights-of-way and utility easements as those are defined herein, and all property held in a proprietary capacity by the city, which are not subject to right-of-way franchising as provided in this chapter.

“Conduit” means any structure, or portion thereof, containing one or more ducts, conduits, manholes, handholds, bolts, or other facilities used for any telegraph, telephone, cable television, electrical, or communications conductors, or cable right-of-way, owned or controlled, in whole or in part, by one or more public utilities.

“Construction” means any activity in the public rights-of-way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

“Control” or “controlling interest” means actual working control in whatever manner exercised.

“Days” means calendar days unless otherwise specified.

“Duct” means a single enclosed raceway for conductors or cable.

“Emergency” has the meaning provided for in ORS [401.025](#).

“Federal Communication Commission” or “FCC” means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

“Franchise” means an agreement between the city and a grantee which grants a privilege to use public right-of-way and utility easements within the city for a dedicated purpose and for specific compensation.

“Grantee” means the person to which a franchise is granted by the city.

“Oregon Public Utilities Commission” or “OPUC” means the statutorily created state agency in the state of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in Oregon Law, or its lawful successor.

“Overhead or aboveground facilities” means utility poles, utility facilities and telecommunication facilities above the surface of the ground, including the underground supports and foundations for such facilities.

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

“Private telecommunications network” means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. “Private telecommunications network” includes services provided by the state of Oregon pursuant to ORS [190.240](#) and [283.140](#).

“Public rights-of-way” include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the city’s right, title, interest or authority to grant a franchise to occupy and use such areas for Telecommunications, Cable and/or Utility facilities. “Public rights-of-way” shall also include utility easements as defined below.

“Reseller” means any person that provides Telecommunications Service using a Telecommunications Facility for which service a separate charge is made by such Reseller, where such Reseller does not own, control, or manage the Telecommunications Facility used to provide the service.

“State” means the state of Oregon.

“Telecommunication” means the transmission between and among points specified by the user, of information of the user’s choosing.

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

“Telecommunications Carrier” means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the city.

“Telecommunications Facilities” means the fixed, mobile, or transportable structures, property or equipment, including electrical wiring, cabling, and transmission pathways, other than customer premises equipment, used by a Telecommunications Carrier to provide Telecommunications Services.

“Telecommunications service” means transmission for rent, sale, or lease or in exchange for other value received, 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 the Telecommunications Act of 1996.

Telecommunication System. See “Telecommunications Facilities.”

“Telecommunication Utility” has the same meaning as ORS [759.005\(1\)](#).

“Underground facilities” means utility, cable and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for “overhead facilities.”

“Usable space” means all of the space on a pole, except the portion below ground level, the twenty feet of safety clearance above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

“Utility Provider” means any public, private, cooperative or special district or other entity formed for the purpose of providing electric, gas, steam heat, water, wastewater treatment and disposal service.

“Utility Easement” means any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes.

“Utility Facilities” means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the public right-of-way of the city and used or to be used for the purpose of providing utility or telecommunications services. (Ord. 1820 §1(4), 2001).

12.40.030 Registration.

A. Purpose. The purpose of registration is:

1. To assure that all Telecommunications Carriers, Cable Operators and Utility Providers who have facilities and/or provide services within the city comply with the ordinances, rules and regulations of the city;
2. To provide the city with accurate and current information concerning the Telecommunications Carriers, Cable Operators and/or Utility Providers who offer to provide services within the city, or that own or operate such facilities within the city;
3. To assist the city in the enforcement of this chapter and the collection of any city franchise fees or charges that may be due the city.

B. Registration Required. Except as provided in subsection D of this section, all Telecommunications Carriers, Cable Operators and/or Utility Providers having

Telecommunications Facilities, Cable Facilities, and/or Utility Facilities within the corporate limits of the city, and/or Resellers and other such entities that offer or provide such services to customer premises within the city, shall register. The appropriate application and license from: (a) the Oregon Public Utility Commission (PUC); or (b) the Federal Communications Commission (FCC), where applicable, qualify as necessary registration information. Applicants have the option of providing the following information:

1. The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information;
2. The name, address, and telephone number for the duly authorized officer, agent or employee to be contacted in the case of emergency;
3. A description of the registrant's existing or proposed facilities within the city, a description of the facilities that the registrant intends to construct, and a description of the service that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the city;
4. Information sufficient to determine whether the transmission, origination or receipt of the services provided, or to be provided by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided.

C. 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. Such fee is designed to defray the costs of City administration of this section.

D. Exceptions to Registration. The following Telecommunications Carriers, Cable Operators and/or Utility Providers are exempted from registration:

1. Telecommunication Carriers, including internet service providers, Cable Operators and/or Utility Providers that are owned and operated exclusively for its own use by the state or a political subdivision of this state;
2. A private telecommunications network. Provided that such network does not occupy any public rights-of-way of the city. (Ord. 1820 §1(5)--(8), 2001).

12.40.040 Construction standards.

A. General. No person shall commence or continue with the construction, installation or operation of Telecommunication Facilities, Cable Facilities and/or Utility Facilities within a public right-of-way except as provided in subsections D through O of this section and Section [12.40.050](#), and with all applicable codes, rules, and regulations.

B. Construction Codes. Telecommunication Facilities, Cable Facilities and/or Utility Facilities shall be constructed, installed, operated and maintained in accordance with all

applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

C. Construction Permits. No person shall construct or install any Telecommunication Facilities, Cable Facilities and/or Utility Facilities within the city without first obtaining a construction permit, and paying the construction permit fee established in subsection G of this section. No permit shall be issued for the construction or installation of Telecommunication Facilities, Cable Facilities and/or Utility Facilities:

1. Unless the Telecommunications Carrier, Cable Operator or Utility Provider has first filed a registration statement with the city pursuant to Section [12.40.030](#); and if applicable;
2. Unless the Telecommunications Carrier, Cable Operator or Utility Provider has satisfied the requirements of the Central Point Municipal Code.

D. Permit Applications. Applications for permits to construct Telecommunication Facilities, Cable Facilities and/or Utility Facilities shall be submitted upon forms to be provided by the city and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

1. That the facilities will be constructed in accordance with all applicable codes, rules and regulations;
2. That the facilities will be constructed in accordance with the franchise agreement, if any;
3. The location and route of all facilities to be installed aboveground or on existing utility poles;
4. The location and route of all new facilities on or in the public rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights-of-way. Existing facilities shall be differentiated on the plans from new construction;
5. The location of all of applicant's existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights-of-way along the underground route proposed by the applicant. A cross-section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right-of-way;
6. The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public rights-of-way, and description of any proposal to temporarily or permanently remove or relocate.

E. Applicant's Verification. All permit applications shall be accompanied by the verification of a registered professional engineer, or other 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.

F. Construction Schedule. All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the planning, building and public works departments.

G. Construction Permit Fee. Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the city council. Such fees shall be designed to defray the costs of city administration of the requirements of this chapter.

H. Issuance of Permit. If satisfied that the applications, plans and documents submitted comply with all requirements of this chapter and the franchise agreement, the planning, building and public works departments shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they deem necessary or appropriate.

I. Notice of Construction. Except in the case of an emergency, the permittee shall notify the public works department not less than two working days in advance of any excavation or construction in the public rights-of-way. Utility locates by the Oregon Utility Notification Center shall be completed prior to notification of the public works department.

J. Compliance with Permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The planning, building and public works departments and their representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

K. Noncomplying Work. Subject to the notice requirements in subsection D of Section [12.40.050](#), 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 at the sole expense of the permittee. The city is authorized to stop work in order to assure compliance with the provisions of this chapter.

L. Completion of Construction. The permittee shall promptly complete all construction activities so as to minimize disruption of the city's rights-of-way and other public and private property. All construction work within city rights-of-way, including restoration, must be completed within one hundred twenty (120) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the appropriate city official as contemplated by subsection F of this section.

M. As-Built Drawings. If requested by the city, the permittee shall furnish the city with two complete sets of plans drawn to scale and certified to the city as accurately depicting the location of all Telecommunication Facilities, Cable Facilities and/or Utility Facilities pursuant to the permit. These plans shall be submitted to the public works director or designee within sixty days after completion of construction, in a format mutually acceptable to the permittee and the city.

N. Restoration of Public Rights-of-Way and City Property.

1. When a permittee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or city property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to good order and condition unless otherwise directed by the city and as determined by the public works director.

2. If weather or other conditions do not permit the complete restoration required by this subsection N, the permittee shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the city.

3. If the permittee fails to restore rights-of-way or property in good condition, the city shall give the permittee written notice and provide permittee a reasonable period of time not exceeding thirty (30) days to restore the rights-of-way or property. If, after said notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the city shall cause such restoration to be made at the expense of the permittee.

4. A permittee or other acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way or property.

O. Performance and Completion Bond. Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the city equal to at least one hundred (100%) percent of the estimated cost of constructing permittee's Telecommunication Facilities, Cable Facilities and/or Utility Facilities within the public rights-of-way of the city shall be provided before construction is commenced.

1. The surety shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the city, including restoration of public rights-of-way and other property affected by the construction.

2. The surety shall guarantee, to the satisfaction of the city:

a. Timely completion of construction;

b. Construction is in compliance with applicable plans, permits, technical codes and standards;

c. Proper location of the facilities as specified by the city;

d. Restoration of the public rights-of-way and other property affected by the construction; and

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

12.40.050 Location of Facilities.

A. Location of Facilities. Placement of Telecommunication Facilities, Cable and Utility Facilities within the city shall be subject to zoning code, Title 17. All facilities located within the public right-of-way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

1. Whenever all new or existing Telecommunication Facilities, Cable Facilities and/or Utility Facilities are located or relocated underground within a public right-of-way of the city, a grantee with permission to occupy the same public right-of-way must also locate its facilities underground.
2. Whenever all new or existing Telecommunication Facilities, Cable Facilities and/or Utility Facilities are located or relocated underground within a public right-of-way of the city, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent extraordinary circumstances or undue hardship as determined by the city and consistent with applicable state and federal law.

B. Interference with the Public Rights-of-Way. No grantee may locate or maintain its Telecommunication Facilities, Cable Facilities and/or Utility Facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with city codes, ordinances and regulations.

C. Relocation or Removal of Facilities. Except in the case of an emergency, within ninety (90) days following the written notice by the city, a grantee shall, at no expense to city, temporarily or permanently remove, relocate, change or alter the position of any Telecommunication Facilities, Cable Facilities and/or Utility Facilities within the public rights-of-way whenever the city shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

1. The construction, repair, maintenance or installation of any city or other public improvement in or upon the public rights-of-way;
2. The operations of the city or other governmental entity in or upon the public rights-of-way;
3. The public interest.

D. Removal of Unauthorized Facilities. Within thirty (30) days following written notice from the city, any Telecommunications Carrier, Cable Operator, Utility Provider or other person that owns, controls or maintains any unauthorized Telecommunications, Cable or Utility system, facility or related appurtenances within the public rights-of-way of the city shall, at its own expense, remove such facilities and/or appurtenances from the public rights-of-way

of the city. A Telecommunications, Cable or Utility system or facility is unauthorized and subject to removal in the following circumstances:

1. One year after the expiration or termination of the grantee's franchise;
2. Upon abandonment of a facility within the public rights-of-way of the city. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced;
3. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation;
4. If the system or facility was constructed or installed at a location not permitted by the grantee's franchise or other legally sufficient permit.

E. Coordination of Construction Activities. All grantees are required to make a good faith effort to cooperate with the city.

1. By January 1st of each year, grantees shall provide the city with a schedule of their proposed construction activities in, around or that may affect the public rights-of-way.
2. If requested by the city, each grantee shall meet with the city annually or as determined by the city, to schedule and coordinate construction in the public rights-of-way. At that time, the city will provide available information on plans for local, state, and/or federal construction projects.
3. All construction locations, activities and schedules shall be coordinated, as ordered by the public works director or designee, to minimize public inconvenience, disruption or damages. (Ord. 1823 §1, 2001; Ord. 1820 §1(24)--(28), 2001).

12.40.060 Franchise Agreements.

A. Franchise. As of the effective date of this ordinance, in lieu of payment of the Utility License Fee, a Telecommunications Carrier, Cable Operator or Utility Provider who desires to occupy public rights-of-way of the city may negotiate to enter into a franchise agreement with the city, subject to the provisions herein.

B. Application. Any person that desires a franchise must register as a Telecommunications Carrier, Cable Operator or Utility Provider as provided in 12.40.030 herein, and shall file an application with the Central Point planning department which includes the following information:

1. The identity of the applicant;
2. A description of the services that are to be offered or provided by the applicant over its facilities;

3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights-of-way in the city, including the location and route requested for applicant's proposed Telecommunication Facilities, Cable Facilities and/or Utility Facilities;

4. The area or areas of the city the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchised area;

5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the services proposed;

6. An accurate map showing the location of any existing Telecommunication Facilities, Cable Facilities and/or Utility Facilities in the city that applicant intends to use or lease.

C. Application and Review Fee.

1. Subject to applicable state law, applicant shall reimburse the city for such reasonable costs as the city incurs in entering into the franchise agreement.

2. An application and review fee of one thousand dollars shall be deposited with the city as part of the application filed pursuant to subsection B of this section. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise. Additional building, public works and planning department fees may be required by the Central Point Municipal Code.

D. Determination by the City. The city shall issue a written determination granting or denying the application in whole or part. If the application is denied, the written determination shall include the reasons for denial.

E. Rights Granted. No franchise granted pursuant to this chapter shall convey any right, title or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the public rights-of-way for the limited purposes and term, and upon the conditions stated in the franchise agreement.

F. Term of Grant. Unless otherwise specified in a franchise agreement, a franchise granted hereunder shall be in effect for a term of five years.

G. Franchise Territory. Unless otherwise specified in a franchise agreement, a franchise granted hereunder shall be limited to a specific geographic area of the city to be served by the franchise grantee, and the public rights-of-way necessary to serve such areas, and may include the entire city.

H. Franchise Fee. Each franchise granted by the city is subject to the city's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this chapter shall prohibit the city and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment

terms and conditions contained in the franchise agreement and applicable state and federal laws.

I. Amendment of Grant. Conditions for amending a franchise:

1. A new application and grant shall be required of any Telecommunications Carrier, Cable Operator or Utility Provider that desires to extend or locate its Telecommunication Facilities, Cable Facilities and/or Utility Facilities in public rights-of-way of the city which are not included in a franchise previously granted under this chapter, or to provide a service not previously included in a franchise previously granted under this chapter.
2. If ordered by the city to locate or relocate its Telecommunication Facilities, Cable Facilities and/or Utility Facilities in public rights-of-way not included in a previously granted franchise, the city shall grant an amendment without further application.
3. A new application and grant shall be required of any Telecommunications Carrier, Cable Operator or Utility Provider that desires to provide a service which was not included in a franchise previously granted under this chapter.

J. Renewal Applications. A grantee that desires to renew its franchise under this chapter shall, not less than one hundred eighty (180) days before expiration of the current agreement, file an application with the city for renewal of its franchise which shall include the following information:

1. The information required pursuant to subsection B of this section;
2. Any information required pursuant to the franchise agreement between the city and the grantee.

K. Renewal Determinations. Within ninety (90) days after receiving a complete application under subsection J of this section, the city shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

1. The financial and technical ability of the applicant;
2. The legal ability of the applicant;
3. The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities;
4. The applicant's compliance with the requirements of this chapter and the franchise agreement;
5. Applicable federal, state and local laws, rules and policies;

6. Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest;

L. Obligation to Cure as a Condition of Renewal. No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the city.

M. Assignments or Transfers of System or Franchise. Ownership or control of a majority interest in a Telecommunication Carrier, Cable Operator or Utility Provider subject to a franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the proper consent of the city, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

1. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.

2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the Telecommunications System, Cable System or Utility System pursuant to this chapter.

3. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the city for all direct and indirect fees, costs and expenses reasonably incurred by the city in considering a request to transfer or assign a franchise.

4. Any transfer or assignment of a Telecommunications, Cable or Utility franchise, system or integral part of a system without prior approval of the city under this section or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

N. Revocation or Termination of Franchise. A franchise to use or occupy public rights-of-way of the city may be revoked for the following reasons:

1. Construction or operation in the city or in the public rights-of-way of the city without a construction permit;

2. Construction or operation at an unauthorized location;

3. Failure to comply with subsection M of this section with respect to sale, transfer or assignment of a system or franchise;

4. Misrepresentation by or on behalf of a grantee in any application to the city;

5. Abandonment of Telecommunication Facilities, Cable Facilities and/or Utility Facilities in the public rights-of-way;

6. Failure to relocate or remove facilities as required in this chapter;

7. Failure to pay taxes, compensation, fees or costs when and as due the city under this chapter;
8. Insolvency or bankruptcy of the grantee;
9. Violation of material provisions of this chapter;
10. Violation of the material terms of a franchise agreement.

O. Notice and Duty to Cure. In the event that the city believes that grounds exist for revocation of a franchise, the city shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding thirty (30) days, to furnish evidence that:

1. Corrective action has been taken, or good faith and active efforts to expeditiously remedy the violation or noncompliance are taking place; and/or
2. Requesting a hearing before the city council to rebut the alleged violation or noncompliance; and/or present evidence that it would be in the public interest to impose some penalty or sanction less than revocation.

P. Public Hearing. Upon receipt of the franchisee's response, or in the event no response is received within thirty (30) days of the date of receipt of the notice, the city manager shall refer the apparent violation or noncompliance to the city council. In the event a request for hearing is made by the franchisee, the city manager shall fix a time and place for hearing the matter, and shall give the appellant fifteen days written notice of the time and place of the hearing before the city council.

1. The parties shall be entitled to appear personally and by counsel and to present such facts, evidence and arguments as may tend to support the respective positions on appeal.
2. The city council shall afford the parties an opportunity to be heard at an appeal hearing after reasonable notice. The city council shall take such action upon the appeal it sees fit. The city council shall at a minimum:
 - a. At the commencement of the hearing, explain the relevant issues involved in the hearing, applicable procedures and the burden of proof.
 - b. At the commencement of the hearing place on the record the substance of any written or oral ex parte communications concerning any relevant and material fact in issue at the hearing which was made outside the official proceedings during the pendency of the proceeding. The parties shall be notified of the substance of the communication and the right to rebut the communication. Notwithstanding the above, the parties are prohibited from engaging in ex parte communications with the members of the city council.

- c. Testimony shall be taken upon oath or affirmation of the witnesses.
- d. The city council shall ensure that the record developed at the hearing shows a full and fair inquiry into the relevant and material facts for consideration for the issues properly before the hearings officer.
- e. Written testimony may be submitted under penalty of false swearing for entry into the record. All written evidence shall be filed with the City recorder no less than (5) five working days before the date of the hearing.
- f. The city council shall hear and consider any records and evidence presented bearing upon the alleged violation or nonconformance.

3. Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.

Q. Standards for Revocation or Lesser Sanctions. If persuaded that the grantee has violated or failed to comply with the material provisions of this chapter, or of a franchise agreement, the city council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:

- 1. The misconduct was egregious;
- 2. Substantial harm resulted;
- 3. The violation was intentional;
- 4. There is a history of prior violations of the same or other requirements;
- 5. There is a history of overall compliance;
- 6. The violation was voluntarily disclosed, admitted or cured.
- 7. The findings of the city council shall be final and conclusive, and shall be served upon the grantee in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

R. Other City Costs. All grantees shall, within thirty (30) days after written demand therefor, reimburse the city for all reasonable direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws. (Ord. 1969 §1(part), 2013; Ord. 1820 §1(29)--(46), 2001).

12.40.070 General franchise terms.

A. Facilities. Upon request, each grantee shall provide the city with an accurate map or maps certifying the location of all facilities within the public rights-of-way. Each grantee will provide updated maps annually.

B. Damage to Grantee's Facilities. Unless directly and proximately caused by willful, intentional or malicious acts by the city, the city shall not be liable for any damage to or loss of any Telecommunications, Cable or Utility facility within the public rights-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the public rights-of-way by or on behalf of the city, or for any consequential losses resulting directly or indirectly therefrom.

C. Duty to Provide Information. Within ten (10) business days of a written request from the city, each grantee shall furnish the city with the following:

1. Information sufficient to demonstrate that grantee has complied with all requirements of this chapter;
2. All books, records, maps, and other documents, maintained by the grantee with respect to its facilities within the public rights-of-way shall be made available for inspection by the city at reasonable times and intervals.

D. Service to the City. If the city contracts for the use of Telecommunication, Cable or Utility facilities, services, installation, or maintenance from the grantee, the grantee shall charge the city the grantee's most favorable rate offered at the time of the request charged to similar users within Oregon for similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the city's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of such services may be specified in a separate agreement between the city and grantee.

E. Compensation for City Property. If any right is granted, by lease, franchise, or other manner, to use and occupy city property for the installation of Telecommunication Facilities, Cable Facilities and/or Utility Facilities, the compensation to be paid for such right and use shall be fixed by the city.

F. Multiple Facility Franchises. A facility used for multiple purposes requires separate franchises. By way of illustration and not limitation, a Cable Operator of a Cable System to provide Cable Services must obtain a separate franchise to provide Telecommunication Services over the same facilities.

G. Resellers. Resellers must register with the city pursuant to section 12.40.030 herein. So long as Resellers register pursuant to section 12.40.030 herein and pay the Utility License Fee provided in section 12.40.075 below, a Reseller may use another entity's facilities to engage in telecommunications activities in the right-of-way without obtaining a franchise, providing the Reseller does not, either itself or through an affiliate, own or lease, control or manage the facilities in the right-of-way and is not involved in the construction or repair of facilities in the right-of-way. For purposes of calculating the registration and privilege tax to be paid by the Reseller, the amount of compensation paid by the Reseller to the owner of manager of the 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 sections 12.40.075.

H. Leased Capacity. A grantee shall have the right, without prior city approval, to offer or provide capacity or bandwidth to its customer; provided that the grantee shall notify the city that such lease or agreement has been granted to a customer of lessee.

I. Grantee Insurance. Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring the grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:

1. Comprehensive general liability insurance with limits not less than:
 - a. Three million dollars for bodily injury to death to each person,
 - b. Three million dollars for property damage resulting from any one accident, and
 - c. Three million dollars for all other types of liability;
2. Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars for each person and three million dollars for each accident;
3. Worker's compensation within statutory limits and employer's liability insurance with limits not less than one million dollars;
4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits not less than three million dollars;
5. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of Telecommunication Facilities, Cable Facilities and/or Utility Facilities. Each such insurance policy shall contain the following endorsement:

“It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Manager of such intent to cancel or not to renew.”
6. Within sixty (60) days after receipt by the city of such notice and in no event later than thirty (30) days prior to such cancellation, the grantee shall obtain and furnish to the city evidence that the grantee meets the requirements of this section.
7. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the city.

J. General Indemnification. Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its Telecommunication Facilities, Cable Facilities and/or Utility Facilities, and in providing or offering Telecommunications, Cable or Utility Services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this chapter, or by a franchise agreement made or entered pursuant to this chapter.

K. Performance Surety. Before a franchise granted pursuant to this chapter is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the city, as security for the full and complete performance of a franchise granted under this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required by subsection O of Section [12.40.040](#) for construction of facilities. (Ord. 1820 §1(47)--(56), 2001).

12.40.075 Utility License Fee Required.

A. The terms of the Utility License Fee shall not apply to any holder of a current, valid, franchise granted or issued by the city council.

B. Any Telecommunications Carrier, Cable Operator or Utility Provider using or occupying public rights-of-way within the city without a franchise for a period of thirty (30) days or longer shall pay for the use and occupancy of such public rights of way. The fee imposed under this subsection shall be in the amount of seven and one-half percent (7.0%) of the Telecommunications Carrier, Cable Operator or Utility Provider's Gross Revenues as defined herein, for each consecutive three (3) month period. The Utility License Fee shall be computed as of 30-days after the commencement of business or 30-days after the expiration of any franchise or other authority under which the Telecommunications Carrier, Utility Provider or Cable Operator operated. The license fee shall be due and payable so long as the Telecommunications Carrier, Cable Operator or Utility Provider operates within the city limits and uses or occupies the public rights-of-way.

C. In the event a franchise is granted to any Telecommunications Carrier, Cable Operator or Utility Provider subject to the Utility License Fee under this chapter, and the franchise becomes effective, then the fee shall cease to apply from the effective date of the franchise. The franchise holder shall pay the proportionate earned amount of the Utility License Fee for the current quarterly period. The license fee shall in such cases become immediately due and payable, and if not paid, collectible as provided in subsection G herein.

D. Each Telecommunications Carrier, Cable Operator or Utility Provider subject to the Utility License Fee as provided in this section shall file with the Director of the Finance Department a report of the revenues earned within the corporate limits of the city for each consecutive 3-month period in the form and manner specified by the Finance Department (“Quarterly Report”).

1. The first quarterly report shall be filed on or before the first payment date of the license fee. Subsequent reports shall be filed on or before February 15, May 15, August 15 and November 15 of each year.

2. If a franchise is granted to an entity otherwise subject to the license fee, the Telecommunications Carrier, Cable Operator or Utility Provider shall file a report with the Director within 10-days after the franchise becomes effective showing the Gross Revenues earned for the proportionate period of the quarter prior to the franchise being granted.

E. Telecommunication Carriers, Cable Operators and Utility Providers shall submit quarterly payments of Utility License Fee under this subsection on or before February 15, May 15, August 15 and November 15 of each year which shall be accompanied by the Quarterly Report for that payment period as provided in subsection E above.

F. If the Telecommunication Carrier, Cable Operator or Utility Provider fails to pay the Utility License Fee under this section, the City Attorney may institute an action in the Circuit Court of the State of Oregon for Jackson County to recover the amount of the utility license fee due the city, together with applicable penalties and accrued interest.

1. Interest will be assessed on any unpaid utility license fee at the rate of 0.833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the original due date of the fee to the 15th day of the month following the date of payment.

2. For the purpose of calculating interest under this subsection G, the amount of the utility license fee due shall be reduced the amount of any Utility License Fee payments received by the Director on or before the due dates established herein.

3. Interest amounts properly assessed in accordance with this section may not be waived or reduced by the Director.

G. Any person subject to this Chapter or any officer or agent of any association or corporation subject to the provisions of this Chapter who, for a period of 30-days after the statement is required to be filed with the Director, fails, neglects, or refuses to file with the Director the Quarterly Report of such person, association or corporation shall be subject to the penalties, including any criminal penalties, provided for in Section

H. Any person subject to the provisions of this 12.40.75 shall provide the city evidence of the insurance on the amounts specified in 12.40.070 and is subject to the indemnification requirements of 12.40.070 herein.

12.40.080 General provisions.

A. Governing Law. Any franchise granted under this chapter is subject to the provisions of the Constitution and laws of the United States, and the state of Oregon and the ordinances and charter of the city.

B. Written Agreement. No franchise shall be granted hereunder unless the agreement is in writing.

C. Nonexclusive Grant. No franchise granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights-of-way of the city for delivery of telecommunications services or any other purpose.

D. Severability and Preemption. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this chapter is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulation or decision, the remainder of the chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this chapter shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this chapter, then the provision shall be read to be preempted only to the extent required by the law. In the event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall be thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the city.

E. Penalties. Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any provisions of this chapter shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs.

F. Other Remedies. Nothing in this chapter shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this chapter.

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

H. Compliance with Laws. Any grantee under this chapter shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term of any franchise granted under this chapter, which are relevant and relate to the construction, maintenance and operation of a telecommunication system.

I. Consent. Whenever the consent of either the city or of the grantee is specifically required by this chapter or in a franchise granted, such consent will not be unreasonably withheld.

J. Application to Existing Ordinance and Agreements. To the extent that this chapter is not in conflict with and can be implemented with existing ordinance and franchise agreements, this chapter shall apply to all existing ordinance and franchise agreements for use of the public right-of-way for telecommunications.

K. Confidentiality. The city agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law. (Ord. 1820 §1(57)--(67), 2001).

SECTION 3. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word Ordinance may be changed to “code”, “article”, “section”, “chapter”, or other word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions need not be codified and the City Recorder is authorized to correct any cross references and any typographical errors.

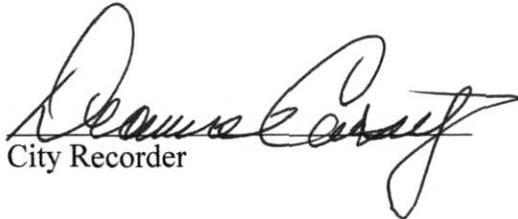
SECTION 4. Effective Date. The Central Point City Charter states that an ordinance enacted by the council shall take effect on the thirtieth day after its enactment. The effective date of this ordinance will be the thirtieth day after the second reading.

Passed by the Council and signed by me in authentication of its passage this 18th day of March 2015.



Mayor Hank Williams

ATTEST:



City Recorder

Ordinance No. 2064 (031215)