

ORDINANCE NO. 615

AN ORDINANCE OF THE CITY OF WILSONVILLE ADMINISTERING RIGHTS-OF-WAY AND PUBLIC EASEMENTS, AMENDING CHAPTER 3 OF THE WILSONVILLE CODE BY ADDING SECTIONS 3.300 TO 3.410 THERETO.

WHEREAS, the City of Wilsonville owns or holds in trust certain rights-of-way and easements within the City; and

WHEREAS, persons, utility companies and other entities often desire to construct or install, relocate, operate or maintain certain facilities within City rights-of-way and easements; and

WHEREAS, the City requires that to occupy or encroach on a right-of-way or easement, the person or entity receive permission from the City in the form of a franchise, license or permit; and

WHEREAS, because the form and terms of permission has varied over time, and given the differential regulatory policy reflected in the various franchises, licenses and permits, there has not been a common and consistent application of the standards for placing, relocating and maintaining facilities in the right-of way or easement; and

WHEREAS, a uniform right-of-way and public easement policy would 1) assure that all utilities operating, placing, relocating and maintaining facilities and/or services within the City comply with the ordinances, rules and regulations of the City, 2) assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens, 3) permit and manage reasonable access to the public rights-of-way and easements of the City, on a competitively neutral and non-discriminatory basis, and conserve the limited physical capacity of those public rights-of-way and easements and 4) enable the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development; and

WHEREAS, the council desires to achieve these purposes by enactment of this Ordinance;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. Chapter 3 of the Wilsonville Code is amended by adding the following sections:

Right-of-Way and Public Easement Management

3.300 Intent and Scope

- (1) Pursuant to the statutes of the State of Oregon and the powers granted in the Charter of the City, the City Council declares its intent to acquire, own, operate, maintain, and manage rights-of-way and to acquire, maintain, and manage public easements.
- (2) The purpose of this chapter is to provide for the non-discriminatory and competitively neutral management of the public rights-of-way and public easements in the interest of public safety and convenience and the protection of public infrastructure.
- (3) When any of the words or requirements under this chapter are ambiguous and subject to interpretation, they shall be interpreted and applied so as to avoid a violation of federal or state law.
- (4) If any section, sentence, clause or provision in this chapter is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state law, the remainder of this chapter shall not be affected.

3.310 Definitions.

The following definitions shall apply generally to the provisions of this chapter:

- (1) **City.** "City" means the City of Wilsonville, an Oregon municipal corporation, and all of the territory within its corporate boundaries, as may change from time to time.
- (2) **City's Authorized Representative.** "City's authorized representative" means the staff or person(s) as designated by the City Engineer to represent the City and/or oversee User's work.
- (3) **City Facilities.** "City Facilities" means City or publicly-owned structures or equipment located within the Right-of-Way or public easement used for governmental purposes.
- (4) **Equipment or Facilities.** "Equipment" or "facilities" means any tangible component, whether referred to singly or collectively, installed, maintained, or

operated by User within the right-of-way, public easement, or public utility easement. By way of example, the terms means any pole, wire, sensor, loop, light, stabilization or "guy" wire, anchor, pipe, conduit, line, main, duct, cable, wire, switch, transformer, value, antennae or other equipment, including any equipment box or vault, located wholly or in part under, on, or above the surface of the ground within any right-of-way or easement. "Facility" includes any item placed in the right of way for the purpose of providing electric power, natural gas, telephone, telecommunications, radio, cable television, internet access, sewer, water, storm sewer or other utility or similar service.

- (5) **Franchise.** "Franchise" means an agreement between the City and User which grants a privilege to use public Right-of-Way, public easement or public utility easements within the City for a dedicated purpose and for specific compensation.
- (6) **Non-City Facilities.** "Non-City Facilities" means light poles, utility poles, pipes, cable, wire, conduit, vaults, ducts, fiber or similar equipment that is not owned or operated by the City and that is lawfully placed in the Right-of-Way, public easement or public utility easement.
- (7) **Person.** "Person" means any individual, sole proprietorship, partnership, corporation, association or other organization authorized to do business in the State of Oregon, and includes any natural person.
- (8) **Right-of-Way.** "Right-of-Way" means the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow User to use. Right-of-Way shall not include the airspace above the right-of-Way used for cellular mobile radio service or broadcast television service.
- (9) **Public Easement.** "Public easement" means the space identified within the easement document this is in, upon, above, along, across, over or under the publicly owned and maintained storm, sanitary, or water facility.
- (10) **Public Utility Easement.** "Public utility easement" means the space in, upon, above, along, across, over or under the easement as identified within the easement document. By way of general description, public utility easements are typically created along the border(s) of a tax lot or frontage along public right-of-way and are intended for the use of utility companies and other authorized users to operate, place, relocate and maintain facilities in accordance with city requirements and standards.
- (11) **User.** "User" means a Person that performs Work within the Rights-of-Way, public easement or public utility easements, whether or not a permit is applied for or granted.

- (11) **Work.** "Work" means excavation or fill, or the construction, demolition, installation, replacement, or relocation of Equipment, within the Right-of-Way, public easement or public utility easement.

3.320 Permits.

- (1) **Permit Required.** No Person or User shall occupy or encroach on Right-of-Way, Public Easement or Public Utility Easements, nor store materials in, or perform Work, or place, relocate or maintain facilities located within Right-of-Way or easements without first obtaining a permit from the City. Application for such permit shall include at a minimum proposed construction plans and traffic control plans and shall be accompanied by an application fee. Permits are not required for routine maintenance or repair of above ground Equipment, the installation of new replacement cables or wires on existing aerial facilities, when the installation, maintenance or repair will not impact vehicular, pedestrian, or bicycle traffic by closing or blocking or partially obstructing a lane of travel and for the installation of individual customer service connections, repairs or maintenance that does not require cutting or breaking of the roadway, curb or sidewalk.

Emergency responses related to existing facilities, in order to prevent service interruptions or the imminent threat of harm to persons and property, may be undertaken without first obtaining a permit; however, the City Engineer shall be notified immediately, or as soon as reasonably possible after cessation of the emergency regarding work performed, or being performed, in the Rights-of-Way.

This permit is labeled a "Right of Way and Public Easement Use Permit." The City Engineer or City's authorized representative is authorized to establish application forms, reasonable right-of-way management procedures, terms, and conditions for such permits, approve or deny permit applications, and perform such other acts as provided by this ordinance .

(a) **Determination by City.** The City's authorized representative shall, within 30 days of receipt of a complete permit application, issue a written determination granting, granting with conditions, or denying the permit in whole or in part. If the permit is denied, the written determination shall include the reasons for denial. The permit shall be evaluated based upon the demonstrated ability of the permit applicant to meet the terms of this chapter, the continuing capacity of the public right-of way or public easement to accommodate the permit applicant's proposed facilities and the applicable federal, state and local laws, rules and polices. If denied, the applicant may appeal to the City Council.

(b) **Additional Terms and Conditions.** If the public interest warrants, The City Engineer or authorized representative and User may negotiate non-discriminatory additional terms and conditions regarding the management of the right-of-way to clarify, enhance, expand, waive or vary the provision of this chapter. The

additional terms and conditions may conflict with the terms of Section 3.300 to 3.410 with the review and approval of City Council. Such additional terms and conditions shall be in writing and signed by both the City and applicant.

- (2) **Permit Non-Exclusive.** The permit is not exclusive. The City expressly reserves the right to grant permits or rights to other Persons, as well as the City's right to use the Right-of-Way or public easement for similar or different purposes, as allowed hereunder. The permit is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Right-of-Way or public easement. Nothing in the permit shall be deemed to grant, convey, create, or vest in User a real property interest in land, including any fee, leasehold interest, or easement.
- (3) **Reservation of City Rights.** Nothing in the permit shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Right-of-Way, Public Easement or public utility easement, laying down, repairing or removing water mains or constructing or establishing any other public work, utility or improvement, including repairs, replacement or removal of City Facilities. If any of User's Equipment interferes with the construction or repair of any Right-of-Way, public easement, public work, City utility, City improvement, or City Facility, and the City and User are unable to find a reasonable alternative, User's Equipment shall be removed or relocated as provided in 3.340 below, in a manner acceptable to the City, and subject to industry standard engineering and safety codes.
- (4) **Permit Fee.** The application for a permit shall be accompanied by a permit fee which shall be set and adjusted by the City Manager in an amount designed to reasonably defray administrative expenses.

3.340 Construction, Installation and Relocation

- (1) **Construction and Installation.** Subject to the terms of the permit, User may enter upon the Right-of-Way, Public Easement or public utility easement to perform all Work that is necessary to install, operate, maintain, remove, reinstall, relocate, and replace Equipment in or on User's Facilities or in or on City Facilities. All work shall be in conformance with the Public Works Standards and other federal, state, or local laws and ordinances. The City may determine the methods used to place Equipment to the extent such methods are reasonable and feasible. Any disturbance to existing City of private facilities shall be immediately repaired and brought to equal or better condition.
- (2) **No Interference.** User, in the performance and exercise of its rights and obligations under the permit, shall not interfere in any manner with the existence and operation of any Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, traffic control signals, light poles, utility poles, pipes, cable, wire,

sensor, loop, light, stabilization or "guy" wire, anchor, conduit, line, main, switch, transformer, antennae, vaults, ducts, fiber, cable television, and other telecommunications, utility, communication system or municipal property, without the express written approval of the owner or owners of the affected personal property or properties. Upon notification by the City, User may be required to review plans of others to determine if interference may occur.

- (3) **Under Grounding Required.** All new equipment or facilities shall be constructed pursuant to W. C. 4.300 – 4. 320. User is prohibited from installing any new aerial cables, wire, or conduit except in locations where existing aerial cables, wire, or conduit have not yet been brought underground, permission for attachment or over-wrapping is obtained, and the City has no planned and funded construction project to bring aerial utilities underground.

When new construction occurs, existing overhead equipment or facilities on the project site or immediately adjacent to the project site, shall be brought under ground, wherever reasonably possible, in a location acceptable to the City. The cost of bringing such equipment or facilities underground (but not the cost of any upgraded equipment or facility) shall be the responsibility of the developer responsible for the project site.

- (4) **Hours of Work.** Except for emergencies, hours of work are as follows:

Monday through Friday:	7:00 a.m. to 8:00 p.m. Pacific Standard Time
Monday through Friday:	7:00 a.m. to 9:00 p.m. Pacific Daylight Time
Saturday:	9:00 a.m. to 6:00 p.m. Pacific Standard Time
Saturday:	9:00 a.m. to 7:00 p.m. Pacific Daylight Time
Sunday:	No work Allowed unless authorized by the City Engineer

- (5) **Obtaining Required Permits.** If the excavation, installation, operation, maintenance, removal, reinstallation, relocation or replacement of the Equipment in the Right-of-Way or easement requires any additional permits, User shall obtain the permits and pay any standard and customary permit fees as provided by law.
- (6) **Plans.** Upon request, and in a generally recognized format acceptable to the City, each User shall provide the City with an accurate map(s) certifying the approximate horizontal and vertical location, size and type of material of all of User's under ground facilities within the public Rights-Of-Way, Public Easement or Public Utility Easement or easements or a portion thereof. A User shall not be required to "pothole" or conduct "vertical locates" to satisfy a mapping request unless reasonably required for the design of a City public improvement project. For 100% City-financed projects, City shall be responsible for any elevation surveys and contacting Digsafelyoregon.com (one call) for any pre-engineering locates.

- (7) **Duty to provide information.** Within sixty (60) business days of a written request from the City, each User shall:
- (a) Furnish the City with information sufficient to demonstrate that User has complied with all requirements of this ordinance provided that the city outline the specific area(s) and matter for which City is reviewing the Users compliance .
 - (b) Make available for inspection by the City at reasonable time and intervals all maps, diagrams, plans and other documents, maintained by the User that describe or locate facilities within the public Right-of-Way or easement.
- (8) **Relocation.** City shall have the right to require User to change the location of its Equipment or to remove its Equipment from the Right-of-Way and Public Easement, and to relocate its equipment within a Public Utility Easement. Costs for relocation or removal necessitated for anything other than publicly--funded projects shall be borne by the Person requesting/ necessitating relocation or removal. User shall pay the cost for relocation of User's Equipment for publicly-funded projects to the extent the City is not reimbursed . When a project is funded with both private and public funds, User shall pay the percentage of the costs that is equal to the percentage of City funds that were spent on the relocation. Prior to relocation, the City shall make a reasonable effort to find an alternative location within a public Right-of-Way for relocated facilities. If User shall fail to relocate or remove any Equipment as requested by the City by the date established by the City, the City may cause the Equipment to be removed at User's sole expense. Upon receipt of a detailed invoice for payment from the City, User shall reimburse the City for the costs the City incurred within sixty (60) days. This subsection operates concurrently with Oregon Administrative Rules.
- (9) **Repairs and Restoration.** Repairs to existing City Facilities that have been damaged during User's installation, operation, maintenance, removal, reinstallation, replacement or relocation of Equipment in the Right-of-Way or easement and/or restoration of landscaping shall be in conformance with the Public Works Standards. If User does not repair the Right-of-Way or easement to at least the condition that existed prior to construction within the time frame given in the permit or as otherwise agreed to by the City, then the City may, upon fifteen (15) days (or less if public safety requires) prior written notice to User, repair the Right-of-Way or easement at User's sole expense. Upon the receipt of a detailed invoice from the City, User shall reimburse the City for the costs the City incurred within sixty (60) days.
- (10) **Use by City.** The City, at its cost, may install pipes or conduit in any trench or excavation created by User, to the extent that such space therein or thereon is reasonably available. The City may also require User to excavate trenches larger than needed by User, with the excess capacity to be utilized by the City and with

the City responsible for the incremental cost provided that such requirement does not impose unreasonable delay on the User's construction activities.

- (11) **Safety.** User shall perform all Work in a manner that ensures safety of workers and the public. Safety requirements and traffic maintenance shall be in conformance with the Public Works Standards.
- (12) **Moving of Structures and Equipment.** Whenever it becomes necessary to allow for the passage of buildings, machinery or other objects, User shall temporarily rearrange, remove, lower or raise its wires, cables or other Facilities as necessary, at no cost to the City. However, any person or persons, other than the City, desiring to move any such buildings, machinery or other objects, shall pay the entire actual cost incurred by User for changing, altering, moving, removing or replacing its wires, cables, or other Facilities so as to permit such passage, and shall deposit in advance with User a sum equal to such cost as estimated by User. The person or persons that requested the move shall pay all direct damages caused directly by the changing, altering, moving, removing or replacing of such wires, cables or other Facilities, except for damages and claims that are the direct result of User's negligent acts. Except in an emergency, User shall be given not less than thirty (30) days written notice by the party desiring to move such building or other objects. Such notice shall detail the route of movement of such buildings or other objects over and along the streets, alleys, avenues, thoroughfares and public highways of the City. Upon receiving required notice, User shall complete such moves as soon as practicable, and without undue delay. Furthermore, the passage of buildings, machinery or other objects shall be with as much haste as possible and shall not be necessarily delayed or cause User unnecessary expense or waste of time.

3.350 Maintenance. User shall install and maintain all Equipment in a manner that prevents injury to the Right-of-Way, Public Easement or Public Utility Easement, the City's property or the property belonging to another person. User shall, at its own expense, repair, and maintain Equipment from time to time as may be necessary to accomplish this purpose.

3.360 Vacation. If the City vacates any Right-of-Way, or portion thereof, that User uses, User shall remove its Equipment from the Right-of-Way at its own expense unless the City reserves a public utility easement, which the City shall make a reasonable effort to do. User shall be notified of proposed vacation at least 90 days before User shall be required to relocate or remove its Equipment. If User fails to remove its Equipment within thirty (30) days, or as otherwise necessary to complete removal, after a Right-of-Way is vacated, the City may remove the Equipment at User's sole expense. Upon receipt of a detailed invoice from the City, User shall reimburse the City for the costs the City incurred within sixty (60) days.

3.370 Financial, Liability and Insurance Provisions.

(1) Insurance.

(a) When the City, at its sole discretion, determines that the User's Work or manner of performance warrants, User shall maintain public liability and property damage insurance that protects User and the City, as well as the City's officers, agents, and employees, from the claims referred to in Paragraph C of this Section. The insurance shall provide coverage at all times of not less than \$500,000 for bodily injury including death and personal injury for one claimant, \$1,000,000 for bodily injury including death and personal injury for each occurrence, and \$1,000,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence, plus costs of defense. Motor vehicle liability insurance in the amount of \$1,000,000 for each occurrence shall be maintained. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The Certificate of Insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City. If the insurance is canceled or materially altered, User shall provide a replacement policy with the terms as outlined in this Section. User shall maintain continuous uninterrupted coverage, in the terms and amounts required. User may self insure any or all of the above coverage.

(b) User shall maintain on file with the City a Certificate of Insurance or self-insurance certifying the coverage required above.

(2) **Financial Assurance.** When the City, at its sole discretion, determines that User's Work or manner of performance warrants, the City may request and the User shall provide a financial security. The form of the financial security (bond, cashiers check, letter of credit, etc.) shall be reasonably determined by the City Engineer or authorized representative. The value of the financial security shall be in an amount determined by the City Engineer or designee but shall not exceed 150% of the engineer's estimated value of the Work the User is obligated to perform. The estimated value of the Work shall be verified by the City's authorized representative. The financial assurance instrument shall be reasonably reviewed and approved as to form by the City Attorney.

(3) Indemnification

(a) User shall indemnify, defend, and hold the City, its officers, agents, and employees harmless from any claims for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising

from any casualty or accident to person or property by reason of any act done under the permit, by or for User, its agents or employees, or by reason of any neglect or omission of User to keep its Equipment in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide User with prompt notice of any such claim, which User shall defend. No settlement or compromise of any such claim will be done by the City or the User without the prior written approval of the other party. User and its agents, contractors and others shall consult and cooperate with the City while conducting its defense.

(b) User shall also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from User's failure to remove or relocate any of its Equipment in the Rights-of-Way or easements in a timely manner, unless User's failure arises directly from the City's negligence or willful misconduct or that of another User.

3.380 Vegetation. User shall prune or cause to be pruned any vegetation to the extent allowed by law, including but not limited to tree limbs and roots that protrude into the Right-of-Way or easement and inhibit the operation of the User's Equipment. Except for an emergency, before pruning any vegetation, User shall obtain any required permits from the City. The City shall provide notification to users of any pruning or permitting requirements. All pruning shall be done using proper arboricultural practices. User shall be responsible for the costs of pruning and of replacing or treating any vegetation that is not pruned in accordance with proper arboricultural practices and that is damaged or dies as a result. If User fails to replace or treat damaged or dead vegetation within thirty (30) days after receiving written notice from the City, the City may replace or treat the vegetation at User's sole expense. Upon receipt of a detailed invoice from the City, User shall pay the City for the costs the City incurred within sixty (60) days.

3.390 Discontinued Use. Whenever User discontinues use of any Equipment and does not intend to use the Equipment within six (6) consecutive months, User shall remove the Equipment from the Right-of-Way or easement unless the City agrees, in writing, that the Equipment may remain in the Right-of-Way or easement and the User conveys title or ownership of the Equipment to the City. The City shall not unreasonably withhold such agreement. If User fails to remove Equipment that is no longer going to be used, and the City has not agreed to allow User to abandon such Equipment in place, the City may remove the Equipment at User's sole expense. Upon receipt of a demand for payment from the City, User shall pay the City for the estimated costs or a detailed invoice of the costs the City incurred within sixty (60) days.

3.400 Assignment. Except as provided below, the permit shall not be assigned or transferred without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. User may assign a franchise or permit to a parent, subsidiary, affiliate, or to any entity that acquires all or substantially all the

equity or assets of User by sale, merger or otherwise without the consent of the City, but upon written notice to the City.

3.410 Franchise Required. Unless exempted by state or federal law, User shall enter into a non-exclusive Franchise agreement with the City for cable services and other services as specifically set forth in city code. To the extent allowed by law, the requirements of this chapter may be varied or waived by the provisions of a franchise agreement, provided that no such franchise or similar lawful authorization shall contain material terms or conditions which are substantially more favorable or less burdensome than the material terms and conditions in other Users' existing franchises.

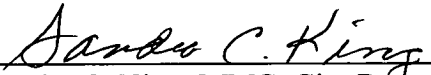
Section 2. To the extent that this ordinance is not in conflict with, and can be implemented with, User's existing Franchise agreements, this ordinance shall apply to all such Franchise agreements for use of the public Rights-of-Way or public easements.

Section 3. Severability. In the event any provisions of this Ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

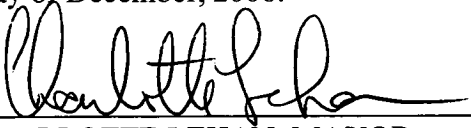
SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 4th day of December 2006, at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 SW Wilsonville Road, Wilsonville, Oregon, and scheduled for second reading on the 18th day of December 2006, commencing at the hour of 7:00 p.m. at the Wilsonville City Hall.


Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the 18th day of December 2006, by the following votes: YEAS: -4- NAYS: -0-


Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this 20th day of December, 2006.


CHARLOTTE LEHAN, MAYOR

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Holt	Excused
Councilor Knapp	Yes
Councilor Ripple	Yes