

*For: Monday, **August 26, 2013**, City Council Meeting*

## **Advance Packet Information**

Dated: August 16, 2013

Included in this packet is documentation to support the following Agenda items:

### **ORDINANCES**

1. Ordinances 13-O-713 and 13-O-714, revising the Brookings Municipal Code, to clearly define the abatement process for failing and/or improperly maintained private storm drain facilities. [PWDS, pg. 2]
  - a. Draft revisions to Brookings Municipal Code (BMC) Chapters 8.10, 8.15 and 13.35. [pg. 4]
  - b. Ordinance 13-O-713, deleting BMC Chapter 8.10 in its entirety and amending Sections 8.15.010, 8.15.040 and 8.15.067 of Chapter 8.15, Nuisances, Title 8, Health and Safety. [pg. 26]
  - c. Ordinance 13-O-714, amending BMC Chapter 13.35, Storm Water, of Title 13, Public Services. [pg. 29]
2. Ordinance 13-O-715, granting Frontier Communications Northwest, Inc., a franchise for telephone service purposes within the City of Brookings. [City Manager, pg. 35]
  - a. Ordinance 13-O-715 [pg. 36]

\*Obtain Public Comment Forms and view the agenda and packet information on-line at [www.brookings.or.us](http://www.brookings.or.us), or at City Hall. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.


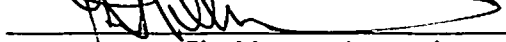
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# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: August 26, 2013

Originating Dept: PWDS, Public Works

  
\_\_\_\_\_  
Signature (submitted by)  
  
\_\_\_\_\_  
City Manager Approval

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**Subject:** Revisions to Chapter 13.35, Storm Water, Chapter 8.10, Watercourses, Drainage Channel Maintenance, Storm Drain Protection and Chapter 8.15, Nuisances to clearly define the abatement process for private storm drainage facilities that are failing or not properly maintained.

**Recommended Motion:** A motion to approve the revisions to Brookings Municipal Code (BMC) Chapter 13.35, Chapter 8.10 and Chapter 8.15 and proceed to adopting ordinances 13-O-713 and 13-O-714.

**Financial Impact:** None.

**Background/Discussion:** Public storm drains are drainage features that are located in the public street, right of way, or a recorded storm drain easement. The City maintains public storm drains. Private drainage facilities are not located in a public street, right of way, or in a storm drain easement. It is the responsibility of owners and residents to maintain the private facilities. It has been discovered that in some instances, the private drainages are being used for back yard debris dumping. This debris washes downstream and clogs other drainage structures. Additionally, recent TV inspection results show severely corroded and failing underground private storm drains. The proposed revisions clearly define the abatement process for private storm drainage facilities that are failing or not properly maintained.

The proposed revisions were discussed by City Council at the July 1, 2013 Workshop. However, after further review it was determined that several sections of Chapter 8.10 were more appropriately located in Chapter 13.35 which speaks to Storm Water. Other sections of Chapter 8.10 deals with storm drainage issues being deemed nuisances and are better located in Section 8.15.067, Surface waters and drainage. A note has been added after each section in Chapter 8.10 indicating where that section has been relocated. With these revisions, Chapter 8.10 will be effectively deleted.

The proposed revisions clearly define failing and unmaintained private storm drainages as nuisances. This will allow Staff to bring these private systems into compliance using the same abatement procedures used to resolve all other nuisances. Section 13.35.045 Duty of the public works director deals with staff process and is not appropriate to be located in the BMC. It has been deleted. Additionally, the BMC was updated to include 25-year storm event design and overland escape route requirements. The overland escape route requirement will depict the drainage pattern during a larger storm event.

The draft revisions were reviewed by the City Attorney who suggested several text changes mostly for consistency and clarity. All of these have been included in the revisions.

**Policy Considerations:** None.

**Attachment(s):**

- a. Draft revisions to Chapter 8.10, 8.15, and 13.35
- b. Ordinance 13-O-713
- c. Ordinance 13-O-714

Notes in **bold** parentheses after each section indicate where that section has been relocated.

## **Chapter 8.10 WATERCOURSES, DRAINAGE CHANNEL MAINTENANCE, STORM DRAIN PROTECTION**

Sections:

[8.10.005](#) Definitions.

[8.10.010](#) Alteration, change, restriction, blockage or contamination of watercourses, drainage channels, storm drains prohibited – Collection or concentration of surface waters prohibited.

[8.10.020](#) Permit required.

[8.10.030](#) Specification of damages.

[8.10.040](#) Indemnification of city.

[8.10.050](#) Duties of responsible party.

[8.10.060](#) General abatement procedure.

[8.10.070](#) Penalties.

[8.10.080](#) Continuing violations.

### **8.10.005 Definitions.**

For the purpose of this chapter, the following definitions apply: **(definitions were added to the chapters where the words are located)**

A. “Construction” includes, but is not limited to, constructing any of the following: a building, an addition to a building, landscaping, sidewalks, or driveways, irrespective of size.

B. “Contaminant” means any substance or material such as, but not limited to, oil, gasoline, antifreeze, animal waste, lawn and yard fertilizers, defoliants, paint, or chemicals intended for insect control, that could cause harm, or otherwise have an adverse effect on the city’s storm drain system.

C. “Debris” means any foreign material such as, but not limited to, trackout, sediment from erosion, landscaping supplies, lawn clippings, leaves, brush, tree trimmings, household trash, litter, and concrete.

D. “Landscaping” means the process of arranging soil, trees, shrubs, grass, irrigation systems, or other commonly used landscaping materials on a piece of property. For this chapter, landscaping does not include routine lawn or yard maintenance such as grass mowing.

E. “Responsible party” or “person responsible” means the owner, occupant or other person entitled to possession of the property.

F. “Storm drain system” means the system of pipes, manholes, curbs, gutters, curb inlets, catch basins, canals, ditches, detention basins, ponds and streams intended to convey stormwater runoff.

G. "Trackout" means the tracking of mud, soil, debris, or contaminant onto any street, alley, sidewalk, or public way. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2.]

**8.10.010 Alteration, change, restriction, blockage or contamination of watercourses, drainage channels, storm drains prohibited – Collection or concentration of surface waters prohibited.**

A. No watercourse, drainage channel, or storm drain shall be altered, changed, restricted, contaminated or blocked in any manner, nor shall diffused surface waters be collected or concentrated in any manner until or unless a drainage plan prepared by an Oregon-registered professional engineer shall have been submitted to and approved by the city manager or his/her designee. **(added as 13.35.027(A))**

B. Drainage Channel Obstruction – Nuisance. It is a violation for any person, persons, firm or corporation, or any agent for such person, persons, firm or corporation, or any employee thereof, to cause or allow the growth of vegetation or the presence of a blockage or accumulation of debris within any natural or manmade drainage channel within the city to the point that the natural flow of water within that drainage is substantially impeded, diverted or altered from its most efficient course. Violations of this section will be abated pursuant to BMC 8.15.090 and shall be punishable as an ordinance violation pursuant to Chapter 1.05 BMC. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 1.] **(moved to 13.35.065 Violations)**

**8.10.015 Maintenance of drainage channels and underground storm drains**

**A. Surface drainage channels must be kept free of debris and maintenance activities shall comply with local, federal and state law.**

**B. Storm drain pipes must be maintained to prevent failure or obstruction. (A & B moved to 13.35.025 System maintenance under B. Private storm drainage facilities)**

**C. It is a violation and deemed a nuisance for any person, persons, firm or corporation, or any agent for such, or employee thereof to allow a storm drain conveyance located on property under their ownership to become ineffective due to a lack of maintenance of such system. Violations of this section will be abated pursuant to BMC 8.15.090 and shall be punishable as an ordinance violation pursuant to Chapter 1.05 BMC. (merged with 8.10.010(B) and moved to 13.35.065 Violations)**

**8.10.020 Permit required.**

A public works permit is required per Chapter 12.45 BMC for any and all work in a public right-of-way, waterway or drainage course and may be terminated by order of the city for failure by the property owner to properly maintain the improved waterway and drainage appurtenances in a safe and workmanlike manner. [Ord. 12-O-704 § 2; Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 2.] **(moved to 13.35.040 Procedure to secure permit)**

**8.10.030 Specification of damages.**

The property owner or any person, firm or corporation which shall have altered or changed a watercourse, allowed restriction, contamination or blockage thereof in any manner whatsoever, or increased the drainage runoff flow so as to cause flooding or damage to other properties, shall be liable in damages arising out of such alteration, change, restriction, blockage, flooding or damage for such

actions. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 3.] **(moved to 13.35.027(B) Alteration, change, restriction, contamination of watercourses....)**

#### **8.10.040 Indemnification of city.**

This chapter shall not be construed to hold the city responsible for any damage to persons or property by reason of the issuance of any permit for drainage improvements or development, the installation of any improvements, the collection or concentration of any diffused surface waters or the alteration, change, restriction, blockage, flooding or damages to watercourses or to other properties resulting therefrom, all of the aforesaid being the responsibility of the private property owners of the properties affected or involved. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 4.] **(moved to 13.35.045 Indemnification of city)**

#### **8.10.050 Duties of responsible party.**

A. No person shall, intentionally or unintentionally, allow any debris, water contaminant, or potential water contaminant to enter the city's storm drain system. **(moved to 8.15.067(D) Surface water and drainage)**

B. Any person or persons who causes or allows any type of construction to take place on his or her property shall be responsible for the prevention of any debris, contaminant or potential contaminant from entering the city's storm drain system, and shall adhere to and abide by the guidelines for erosion control and sediment prevention, as described in the City of Brookings Standard Specifications and Uniform Standard Details for Public Works. **(moved to 13.35.027(B) Alteration, change, restriction, contamination of watercourses....)**

C. No person or persons shall allow any debris, contaminant, or potential contaminant from accumulating on any city street, alley, sidewalk, or public way adjacent to his/her property to an extent that said debris, contaminant, or potential contaminant, if allowed to enter the city's storm drain system, could cause a disruption to the proper functioning of the city storm drain system, and necessitate cleaning of any portion of the city storm drain. **(moved to 8.15.067(E) Surface water and drainage)**

D. All property owners within the city of Brookings shall, within 10 days after they shall have actual notice that a watercourse, drainage channel, or storm drain, or drainage appurtenance on or adjacent to property owned by them is obstructed or constricted, remove such obstruction or constriction, and in the event such watercourse shall form the boundary between properties, it shall be the duty of each adjacent property owner to remove such obstruction or constriction. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 5.] **(moved to 13.35.025(B)(1)(c) System maintenance, private storm drainage facilities)**

#### **8.10.060 General abatement procedure.**

Nuisances contained in this chapter shall be abated pursuant to BMC 8.15.090. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 6.] **(merged and moved to 13.35.065 Violations)**

#### **8.10.070 Penalties.**

Pursuant to Chapter 1.05 BMC. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 7.] **(currently in 13.35.065 Violations)**

#### **8.10.080 Continuing violations.**

In the event of a continuing violation of this chapter, each day during which such violation exists shall be deemed a separate offense hereunder. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 8.]  
**(currently in referenced Chapter 1.05)**

Text added or relocated from Chapter 8.10 is **bold**.

Text to be deleted is ~~stricken~~.

## **Chapter 8.15 NUISANCES**

### Sections:

- [8.15.010](#) Definitions.
- [8.15.020](#) Control of domestic animals.
- [8.15.030](#) Public health.
- [8.15.040](#) Hazards.
- [8.15.050](#) Noxious vegetation.
- [8.15.060](#) Scattering rubbish.
- [8.15.065](#) Trees and fences.
- [8.15.067](#) Surface waters and drainage.
- [8.15.070](#) Earth from abutting property falling into street.
- [8.15.080](#) Noise prevention.
- [8.15.085](#) *Recodified.*
- [8.15.087](#) Temporary use of a recreational vehicle or travel trailer.
- [8.15.090](#) General abatement procedure.
- [8.15.100](#) Summary abatement.
- [8.15.110](#) Penalties.

### **8.15.010 Definitions.**

**A. “Construction” includes, but is not limited to, constructing any of the following: a building, an addition to a building, landscaping, sidewalks, or driveways, irrespective of size.**

**B. “Contaminant” means any substance or material such as, but not limited to, oil, gasoline, antifreeze, animal waste, lawn and yard fertilizers, defoliants, paint, or chemicals intended for insect control, that could cause harm, or otherwise have an adverse effect on the city’s storm drain system.**

**C. “Debris” means any foreign material such as, but not limited to, trackout, sediment from erosion, landscaping supplies, lawn clippings, leaves, brush, tree trimmings, household trash, litter, and concrete.**

**D. “Landscaping” means the process of arranging soil, trees, shrubs, grass, irrigation systems, or other commonly used landscaping materials on a piece of property. For this chapter, landscaping does not include routine lawn or yard maintenance such as grass mowing.**

**EA. “Livestock” refers to horses, mules, asses, cattle, llamas, emus, sheep, swine, goats and poultry, including turkeys, of any age or sex.**



**FB.** “Person” means a natural person, firm, partnership, association or corporation.

**GE.** “Person in charge of property” means an agent, occupant, lessee, contract purchaser, tenant or other person having possession or control of property.

**HD.** “Person responsible for abatement” means the person responsible for abating a nuisance and liable for any penalties imposed hereunder and shall include, jointly and severally, the following:

1. The owner;
2. The person in charge of property;
3. The person who caused to come into or continue in existence a nuisance as defined in this chapter.

**IE.** “Public place” means a building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.

**JE.** "Public Nuisance". It is expressly found and determined by the city of Brookings that the conditions and objects specifically enumerated within this chapter do, in one or more particulars, promote blight, deterioration, unsightliness, plundering, fire hazards, **flood hazards**, hazards to the health and safety of minors, disruption of the public peace, harborage for rodents, insects and vermin, and circumstances generally injurious or detrimental to the health, safety and general welfare of the inhabitants and occupants of the city of Brookings.

**KG.** “Recreational vehicle” or “travel trailer” means a self-propelled or towable mobile unit used for temporary dwelling purposes by travelers.

**LH.** “Recreational vehicle park” means a commercially developed lot upon which two or more recreational vehicles occupied for living or sleeping purposes are located, regardless of whether a fee is paid for such service or accommodations.

**MH.** “Responsible party” or “person responsible” means an owner, occupant or other person entitled to possession. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 2; Ord. 86-O-406 § 1.]

**N.** “**Storm drainage system**” means the system of pipes, manholes, curbs, gutters, curb inlets, catch basins, canals, ditches, detention basins, ponds and streams intended to convey stormwater runoff.

**O.** “**Trackout**” means the tracking of mud, soil, debris, or contaminant onto any street, alley, sidewalk, or public way. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2.]

**8.15.020 Control of domestic animals.**

A. No person shall permit any cow, horse, goat, sheep, or other domestic animal kept in any enclosed or unenclosed lot or tract of land within the corporate limits of the city of Brookings to leave said place where said animal is so kept and wander at large within the corporate limits of the city.

B. The owner or keeper of any dog or other domestic animal shall not allow such animal to be a public nuisance. A dog, cat, or other such animal is deemed herein to be a public nuisance if it bites a person; chases persons or vehicles; damages or destroys property of persons other than the animal's owner; scatters garbage; trespasses on private property of persons other than the animal's owner; disturbs any person or neighborhood by frequent or prolonged barking, yelping, howling or any other such noise making; defecates on the property of another or of the public; or is a female in heat and running at large. Such animal shall not be considered a public nuisance if it bites a person who wrongfully is assaulting the animal or the animal's owner or if it bites a person trespassing upon premises owned or occupied by said animal's owner.

C. No person owning or harboring or having the care or custody of a vicious dog or other animal shall permit such animal to go unconfined beyond the premises of such person unless such an animal is securely leashed and muzzled or otherwise restrained. "Vicious" as herein defined means any dog or other animal or fowl with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals, any animal which attacks a human being or domestic animal without provocation, or any dog or other such animal owned or harbored primarily or in part for the purpose of dog or animal fighting.

D. No person shall own or harbor any dog for the purpose of dog fighting or train, torment, badger, bait or use any dog for the purpose of dog fighting or for the purpose of causing or encouraging said dog to unprovoked or willfully provoked attacks upon human beings or domestic animals.

E. No dog is allowed to run at large within the corporate limits of the city of Brookings. When a dog is found running at large it may be taken up and impounded by the Brookings police department or said office's designee and, if so impounded, said animal shall be held in any reasonable and adequate shelter which can be provided for such purposes. A reasonable effort shall be made to notify the dog's owner before it is removed from impoundment. If no owner appears to redeem his/her dog within five days after impoundment, the dog may be released to a responsible person upon receiving assurance from that person that he or she will properly license and care for the dog and not allow the dog to run at large or become a nuisance, and upon payment of a sum which will cover the cost of keeping the dog during the impoundment. Any owner redeeming his/her dog shall pay, in addition to any fine imposed, a reasonable charge for the expense of keeping the dog during its confinement. If no owner is found for the dog nor any responsible person found within the above-allotted time to whom the dog can be released, then the Brookings police department shall have total discretion and control of the further disposition of the animal.

F. No person shall own, harbor, take care of, or have in custody any dog without it being licensed with Curry County. Said person is responsible for payment of licensing fees, as well as securing any and all shots, vaccinations, or records which may be needed to license the animal.

G. No person shall permit the carcass of any animal owned or controlled by him to remain upon the public streets or ways to be exposed on private property for a period of time any longer than is necessary to remove the said carcass. It shall be the duty of such owner or occupant forthwith to cause such carcass to be buried or have other disposition made of the same. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 3; Ord. 86-O-406 § 2.]

#### **8.15.030 Public health.**

No owner or person in charge of property shall cause or permit to be or remain on public or private property the following objects or conditions:

A. Privies. Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the health division regulations.

B. Debris. Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health of the city.

C. Stagnant Water. An open pit, quarry, cistern, well, cesspool or other excavation in which stagnant water affords a breeding place for mosquitoes and other insect pests.

D. Water Pollution. Pollution of a body of water, well, spring, stream, drainage facilities or drainage ditch by sewage, industrial wastes, construction wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.

E. Food. Decayed or unwholesome food which is offered for human consumption, or which causes an offensive odor.

F. Odor. Premises which are in such a state or condition as to cause an offensive odor, or premises which are in an unsanitary condition.

G. Surface Drainage. Drainage of liquid wastes from private premises.

H. Cesspools. Cesspools or septic tanks which are in an unsanitary condition or which cause an offensive odor.

I. Garbage Containers. Garbage and noncombustible refuse that is not stored in flytight, watertight, and rodent-proof containers that are kept clean and in good repair.

J. Livestock and Pets. The keeping of livestock and pets or buildings for the purpose of housing such livestock or pets in such a manner as to be a breeding place or likely breeding place for rodents or pests.

K. Sanitation. A business or residence that is kept or maintained in such a condition as to permit rats, rodents, vermin, or other pests to burrow or live therein. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 4; Ord. 86-O-406 § 3.]

#### **8.15.040 Hazards.**

No ~~owner or person in charge of property~~ **responsible party** shall permit thereon:

A. Unguarded machinery, equipment or other devices which are attractive, dangerous and accessible to children;

B. Lumber or logs stored in a manner so as to be attractive, dangerous, and accessible to children;

C. An open pit, quarry, cistern, well, cesspool or other excavation without safeguards or barriers to prevent such places from being used by children. Any such opening or hole having a depth of four feet or more and a top width of 12 inches or more shall be covered or fenced with suitable protective construction;

D. Any junk unless such is completely enclosed within a building or kept in a duly licensed junkyard or automobile wrecking house. The term “junk” as used in this section includes all motor vehicles, machinery, or appliances, and any parts thereof or therefor; discarded or abandoned vehicles or components thereof; and old iron or other metal, glass, paper or discarded materials. “Discarded” shall mean any vehicle which does not have properly affixed thereto an unexpired license plate and is either inoperative, wrecked, dismantled (or partially so), or abandoned. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 86-O-406 § 4.]

#### **E. Failure to maintain or obstruction of private storm drainage conveyance.**

#### **8.15.050 Noxious vegetation.**

The Department of Agriculture has declared many species of vegetation to be a menace to the public welfare (ORS 570.505). A list of the vegetation covered under this declaration may be found in OAR 603-052-1200. It shall be unlawful for the owner, occupant, agent, or other person in possession of any lot, tract, or parcel of land within the corporate limits of the city of Brookings to permit the following:

A. The growth or propagation of gorse. The city may allow an abatement plan to be filed if it is determined that the gorse infestation is severe enough to merit a long-range eradication program.

B. The uncontrolled growth of nuisance vegetation. “Nuisance vegetation” is defined as vegetation that:

1. Encroaches onto the property of another; the encroachment must be by the plant itself and not by seed or underground root systems; and

2. Is listed in OAR 603-052-1200.

Exception: Vegetation growing on slopes of greater than 15 percent or adjacent to a water course or body of water that is providing erosion control. [Ord. 11-O-686 § 2; Ord. 10-O-671 § 3; Ord. 07-O-591 § 2; Ord. 93-O-406.A §§ 5, 6; Ord. 93-O-134.A § 2; Ord. 86-O-406 § 5; Ord. 59-O-134 § 8.]

#### **8.15.060 Scattering rubbish.**

No person shall deposit upon public or private property any kind of rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal or vehicle upon a public way. [Ord. 11-O-686 § 2; Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 86-O-406 § 6.]

#### **8.15.065 Trees and fences.**

No owner or person in charge of property that abuts upon a street or public sidewalk shall:

A. Permit trees or bushes on his property to interfere with street or sidewalk traffic. It shall be the duty of an owner or person in charge of property that abuts upon a street or public sidewalk to keep all trees and bushes on his premises, including the adjoining parking strip, trimmed to a height of not less than eight feet above the sidewalk and not less than 13.5 feet above the roadway;

B. Allow to stand a dead or decaying tree that is a hazard to the public or to persons or property on or near the property;

C. Allow to stand a tree that has been identified as a high potential blowdown hazard by a professional engineer or forester, as designated by the city;

D. Construct or maintain a barbed-wire fence thereon, or permit barbed-wire to remain as part of a fence along a sidewalk or public way; except such wire may be placed above the top of other fencing not less than six feet, six inches high;

E. Construct, maintain or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person. [Ord. 11-O-686 § 2; Ord. 07-O-589 § 2; Ord. 06-O-572 § 1; Ord. 94-O-406.B § 2; Ord. 86-O-406 § 7.]

#### **8.15.067 Surface waters and drainage.**

~~No owner or person in charge of property~~ responsible party shall:

**A. Suffer or permit rainwater, ice or snow to fall from any building or structure onto a street or public sidewalk or to flow across the sidewalk;**

**B. Fail to install and maintain in a proper state of repair adequate drainpipes or a drainage system, so that any overflow water accumulating on the roof or about the building is not carried across or upon the sidewalk; [Ord. 11-O-686 § 2; Ord. 86-O-406 § 8.]**

**C. Fail to maintain or cause the obstruction of a private storm drainage conveyance;**

**D. No person shall, intentionally or unintentionally, allow any debris, water contaminant, or potential water contaminant to enter the city's storm drainage system;**

**E. No person or persons shall allow any debris, contaminant, or potential contaminant from accumulating on any city street, alley, sidewalk, or public way adjacent to his/her property to an extent that said debris, contaminant, or potential contaminant, if allowed to enter the city's storm drainage system, could cause a disruption to the proper functioning of the system and necessitate cleaning of any portion of the city storm drainage system.**

**8.15.070 Earth from abutting property falling into street.**

Any earth, debris, or other material which caves or falls into or upon any street or sidewalk from any adjacent or abutting real property is a nuisance, and the owner or occupant of such real property shall remove forthwith said earth, debris, or material. It shall be unlawful for any owner or occupant of any real property to permit such earth, debris, or other material to remain upon any street or sidewalk. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 51-O-013 § 99.]

**8.15.080 Noise prevention.**

A. It shall be unlawful for any person to create, assist in creating, permit, continue, or permit the continuation of any unreasonably loud, disturbing, or unnecessary noise; and further, no person shall conduct or maintain any condition, activity, operation, vocation or avocation which causes unreasonably offensive noise to either the neighborhood or the public at large. In the case of noise that is generated due to an activity that is permitted within the zone, specifically in the case of industrial or manufacturing zones, such noise shall not be deemed unreasonably offensive.

B. The following acts are declared to be violations of this chapter, but said enumeration shall not be deemed to be exclusive:

1. The use of any automobile or other vehicle, engine, stationary or moving instrument, device or thing so out of repair or used in such manner as to create a loud or unnecessary grating, grinding, rattling or other such noise;
2. The sounding of any horn or signaling device on any automobile or other vehicle on any street or public place, except as a necessary warning of danger to property or persons or as so used on emergency equipment;
3. Entertainment devices used in an abusive manner for the creation of prolonged and excessively loud noise;

4. The use of an electrical, mechanical or other device, apparatus, instrument or machine that causes interference with radio or television reception by radio or television receiver of good engineering design unless said device or apparatus is duly licensed, approved and operated under the rules and regulations of the Federal Communications Commission;

5. Any person who operates powered construction equipment; erects, constructs, demolishes, excavates for; alters or repairs any building, structure, roadway or utility within the city in such a manner as to cause noise to be received beyond the boundaries of the property on which the construction work is occurring shall comply with the following:

- a. Except for the pouring of concrete and roofing, no construction work shall be performed before 7:00 a.m. or after 7:00 p.m. on weekdays.
- b. Except for the pouring of concrete and roofing, no construction work shall be performed before 8:00 a.m. or after 7:00 p.m. on weekends or holidays.
- c. Provided, however, that in case of urgent necessity, permission may be granted by the city manager for construction activities to occur during otherwise proscribed hours. [Ord. 11-O-686 § 2; Ord. 10-O-674 § 2; Ord. 07-O-591 § 2; Ord. 86-O-406 § 9.]

#### **8.15.085 Motor vehicles.\***

*Recodified at BMC 10.30.005.* [Ord. 07-O-591 § 2; Ord. 06-O-571 §§ 1 – 5.]

\* Code reviser's note: Ords. 06-O-571 §§ 1 – 5 and 07-O-591 § 2 were recodified at the request of the city.

#### **8.15.087 Temporary use of a recreational vehicle or travel trailer.**

A. All recreational vehicle parks within the city of Brookings shall conform to the electrical, fire, health, building, and plumbing ordinances of the city of Brookings, as amended, except as hereinafter specified.

B. It is a violation to use a recreational vehicle or travel trailer for living purposes within the city of Brookings except when parked within a licensed recreational vehicle park. A recreational vehicle or travel trailer may be used for temporary sleeping purposes within the city of Brookings provided as follows:

1. That the recreational vehicle or travel trailer is located entirely on private property that is residentially zoned and developed with a dwelling unit or there is an active building permit for a dwelling unit;
2. That no connection of any kind may be made to the city's water or sewer system; and

3. That the period of use for the property shall not exceed 14 days out of any calendar year.

C. It shall be a violation for any person, firm, or corporation owning or operating a recreational vehicle park in the city of Brookings to violate any of the provisions of this chapter. It shall be a violation for any person, firm, or corporation owning, maintaining, or in control of any recreational vehicle or travel trailer, or the occupant or tenant of any recreational vehicle or travel trailer in whatever capacity, to violate any provisions of this chapter. [Ord. 11-O-686 § 2; Ord. 09-O-642 § 2; Ord. 07-O-591 § 2.]

#### **8.15.090 General abatement procedure.**

A. Upon determination by the city manager or his designee that a nuisance/violation exists, the city shall cause a notice to be posted at the site of the nuisance/violation or mail the notice by certified mail or personally deliver the notice to the responsible party, directing the person responsible to abate the nuisance/violation. The city may record the notice of nuisance in the county recorder's office.

B. The notice to abate shall contain:

1. A general description, location or address of the real property on which the nuisance/violation exists;
2. A direction to abate the nuisance/violation within 10 days from the date of the notice;
3. A description of the nuisance/violation;
4. A statement that, unless the nuisance/violation is removed, the city may abate the nuisance/violation and charge the person responsible for abatement and administrative costs;
5. A statement that failure to abate a nuisance/violation may warrant imposition of a penalty;
6. A statement that the person responsible may dispute the existence of a nuisance/violation by giving a written statement to the city manager or his designee within 10 days from the date of the notice to abate;
7. An error in the name or address of the person responsible shall not make the notice void.

C. Within the 10-day period after the posting or mailing of such notice, the person responsible shall either remove and abate the nuisance/violation, or develop a plan acceptable to the city manager or his designee to remove or abate the nuisance/violation, or file his written statement setting forth his grounds that no nuisance/violation exists and request an administrative hearing.



D. If a written statement of dispute is filed within the period of time, there shall be a hearing scheduled within 15 days before the city manager. After hearing all relevant evidence and argument, the city manager shall determine whether or not a nuisance/violation in fact exists and provide a written statement of the decision. In BMC Title 17 cases, where the potential violation is a matter of ambiguity, the city manager's decision may be appealed to the planning commission pursuant to Chapter 17.156 BMC.

E. If the city manager determines that a nuisance/violation does in fact exist, the person responsible shall remove or abate the nuisance/violation within 10 days after determination is mailed. If, within such time, no appeal has been filed and the nuisance/violation has not been abated or removed by the person responsible, the city may cite the responsible person into municipal court for a violation of this chapter pursuant to BMC 8.15.110. In addition to the levying of a fine, if the city so requests, the municipal judge may order the nuisance abated by the city, the cost of such abatement to be recovered through a lien against the property.

F. If the city abates the nuisance/violation, the following shall apply:

1. The city, its officers and employees so charged with abatement of the nuisance/violation shall have the right at all reasonable times to enter into or upon the property to investigate and cause the removal of the nuisance/violation.
2. The city shall keep an accurate record of the expense incurred in abating the nuisance/violation, and shall additionally include a charge of \$150.00 or 15 percent of the abatement expenses, whichever is greater, for administrative overhead. Any bill unpaid from 30 days of mailing shall carry interest at the statutory rate per annum. The administrative services director, by registered or certified mail, shall forward to the person responsible a notice stating:
  - a. The total cost of abatement, including the administrative overhead;
  - b. That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice;
  - c. That the administrative services director will temporarily enter the cost of abatement in the city's lien docket;
  - d. That if the person responsible objects to the cost of the abatement as indicated, he/she may file a notice of objection with the administrative services director not more than 10 days from the date of the notice.
3. If an objection is received on or before the expiration of 10 days after the notice was served, the city manager shall consider the objection and make a final determination regarding the cost to be assessed.

4. The lien shall thereupon be entered in the docket of the city liens; and, upon such entry being made, shall constitute a lien upon the property from which the nuisance/violation was removed or abated. The lien shall be enforced and shall bear interest at the statutory rate. The interest shall commence to run from the date of the entry of the lien in the lien docket. An error in the name of the person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A §§ 7, 8; Ord. 86-O-406 § 10.]

#### **8.15.100 Summary abatement.**

The procedure provided by this chapter is not exclusive, but is in addition to procedures provided by other chapters and the general police powers of the city; and the city manager, the chief of the fire department, the chief of the police department and the building/fire safety officer may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 86-O-406 § 11.]

#### **8.15.110 Penalties.**

Pursuant to Chapter 1.05 BMC. [Ord. 11-O-686 § 2; Ord. 10-O-671 § 3; Ord. 07-O-591 § 2; Ord. 86-O-406 § 12.]

Text added or relocated from Chapter 13.35 is **bold**.

Text to be deleted is ~~stricken~~

## **Chapter 13.35 STORM WATER**

### Sections:

[13.35.010](#) Establishment of storm water system.

[13.35.015](#) Definitions.

[13.35.020](#) System improvements.

[13.35.025](#) System maintenance.

[13.35.027](#) **Alteration, change, restriction, blockage or contamination of watercourses, drainage channels, storm drains prohibited – Collection or concentration of surface waters prohibited.**

[13.35.030](#) Prohibition of nonconforming storm drainage system.

[13.35.035](#) Prohibition for constructing storm drainage systems without permit.

[13.35.040](#) Procedure to secure permit.

[13.35.045](#) ~~Duty of public works director.~~ **Indemnification of city.**

[13.35.050](#) Procedure to require conformance of nonconforming storm drains.

[13.35.055](#) Material specifications.

[13.35.060](#) Reservation of the city's right to change specifications.

[13.35.065](#) Violations.

### **13.35.010 Establishment of storm water system.**

A. The city of Brookings, for the protection of the public welfare, for the safety of the public, and for the best interest of the city, hereby declares that the city of Brookings, Oregon, possesses, claims, maintains, exerts, and reserves unto the city complete and full jurisdiction over and unto all conforming storm drainage systems now, or hereafter, constructed within the corporate limits of the city of Brookings.

B. This chapter provides for the establishment, operation, and maintenance of a storm water system within the city of Brookings including maintenance and extension of the present storm water system. [Ord. 08-O-610 § 2.]

### **13.35.015 Definitions.**

A. **“Contaminant” means any substance or material such as, but not limited to, oil, gasoline, antifreeze, animal waste, lawn and yard fertilizers, defoliants, paint, or chemicals intended for insect control, that could cause harm, or otherwise have an adverse effect on the city’s storm drainage system.**

B. † “Culvert” is **means** a transverse pipe made of concrete, steel, HDPE, PVC, terra cotta tile, or wood used for the transport of storm water/drainage.

C. **“Debris” means any foreign material such as, but not limited to, trackout, sediment from erosion, landscaping supplies, lawn clippings, leaves, brush, tree trimmings, household trash, litter, and concrete.**

D. “Development” ~~shall~~ **means** any manmade change to improved or unimproved real property including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

E. B **“Impervious surfaces” are these means** surface areas which either prevent or retard saturation of water into the land surface and/or cause water to run off the land surface in greater quantities or at an increased rate of flow from that present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways, patio areas, driveways, parking lots or storage areas and graveled, oiled, macadam or other surfaces which similarly impact the natural saturation or runoff patterns which existed prior to development.

F. C **“Improved premises” means** an area which has been altered such that the runoff from the site is greater than that which could historically have been expected.

G. **“Landscaping” means the process of arranging soil, trees, shrubs, grass, irrigation systems, or other commonly used landscaping materials on a piece of property. For this chapter, landscaping does not include routine lawn or yard maintenance such as grass mowing.**

H. **“Nonconforming storm drainage system component” shall means:**

1. Any culvert or ditch that is constructed upon any property or public right-of-way within the corporate limits of the city of Brookings that has been constructed without a written permit issued by the public works department.
2. Any storm drainage component which is not constructed to standards approved by the city, or maintained in such shape or condition or repair as to render the storm drainage component dangerous or unsafe.
3. **Any storm drain component that has not been maintained and is in a condition that could fail or obstruct a drainage path.**

I. A **“Open drainage way” means** a natural or manmade path, ditch or channel which has the specific function of transmitting natural stream water or storm runoff water from a point of higher elevation to a point of lower elevation.

J. **“Person” means a natural person, firm, partnership, association or corporation.**

**K. “Responsible party” or “person responsible” means the owner, occupant or other person entitled to possession of the property.**

**L. E** “Runoff control” is any means approved by the city engineer by which the peak rate of storm runoff from development land surfaces is reduced.

**M. F** “Runoff control measures” can be but are not limited to bioswales, storm water recharge systems, pervious surfaces and detention systems.

**N. Q** “Storm drainage system” shall mean a natural drainage course or manmade culverting system or ditch that conveys storm water.

**O. “Trackout” means the tracking of mud, soil, debris, or contaminant onto any street, alley, sidewalk, or public way.**

#### **13.35.020 System improvements.**

A. The improvement of both public and private storm **drainage** facilities through or adjacent to a new development shall be the responsibility of the developer. The improvement shall comply with all applicable city ordinances, policies and standards.

B. It is the policy of the city of Brookings to participate in the improvements to ~~the storm water~~ **drainage** facilities when authorized by the city council. To be considered for approval by the council, a facility must:

1. Be a public facility.
2. Be a ~~major~~ **substantial** benefit to the community.
3. ~~Conveyance shall n~~**Not detrimentally impact downstream facilities or increase runoff to deficient downstream drainage conveyance.**
4. **Be designed to convey a minimum of a 25-year storm event and overland escape route as approved by the city’s engineer.**
5. ~~4~~ Be a replacement or rehabilitation of an existing public facility. [Ord. 08-O-610 § 4.]

#### **13.35.025 System maintenance.**

##### **A. Public storm drainage facilities.**

1. The city shall maintain all public storm drainage facilities located within city-owned land, city rights-of-way and city easements.
2. ~~A.~~ Public facilities include, but are not limited to:

- a. ~~1.~~ Pipe drainage systems and their related appurtenances which have been designed and constructed expressly for use by the general public and accepted by the city.
- b. ~~2.~~ Roadside drainage ditches along city streets.
- c. ~~3.~~ Flood control facilities that have been designed and constructed expressly for use by the general public and accepted by the city.

**B. Private storm drainage facilities.**

**1. Private storm drainage facilities must shall be maintained and repaired by the responsible party.**

- a. **Surface drainage channels must be kept free of debris and maintenance activities must comply with local, federal and state law.**
- b. **Storm drain pipes must be maintained to prevent failure or obstruction.**
- c. ~~All property owners within the city of Brookings~~ **A responsible party shall, within 10 days after they shall have of receiving actual notice that a watercourse, drainage channel, storm drain, or drainage appurtenance on or adjacent to property owned by them the responsible party is obstructed or constricted, remove such the obstruction or constriction, and in the event the watercourse forms the boundary between properties, it shall be the duty of each adjacent property owner to remove the obstruction or constriction. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 5.]**

**2. Private storm drainage facilities include, but are not limited to:**

~~B. Facilities which do not qualify as public facilities under this section include, but are not limited to:~~

- a1. ~~Facilities not located on city-owned~~ **private property and not within a city rights-of-way, or within a city easements.**
- b2. **Private parking lot storm drains.**
- c3. **Roofs, footings and area drains.**
- d4. **Drains not designed and constructed for use by the general public.**
- e5. ~~Access drive culverts not within the city right-of-way. within~~ **whether or not within the City right-of-way. [Ord. 08-O-610 § 5.]**

**13.35.027 Alteration, change, restriction, blockage or contamination of watercourses, drainage channels, storm drains prohibited – Collection or concentration of surface waters prohibited.**

**A. No watercourse, drainage channel, or storm drain shall be altered, changed, restricted, contaminated or blocked in any manner, nor shall diffused surface waters be collected or concentrated in any manner until or unless a drainage plan prepared by an Oregon-registered professional engineer ~~shall have~~ has been submitted to and approved by the city manager or his/her designee.**

**B. ~~Any person or persons~~ property owner who causes or allows any type of construction to take place on his or her property ~~shall will~~ be responsible for the prevention of any debris, contaminant or potential contaminant from entering the city's storm drainage system, and ~~shall must~~ adhere to and abide by the guidelines for erosion control and sediment prevention, as described in the City of Brookings Engineering Requirements and Standard Specifications for Public Works Infrastructure ~~Standard Specifications and Uniform Standard Details for Public Works.~~**

**C. The property owner ~~or~~ and any other person ~~firm or corporation which shall~~ that hasve altered or changed a watercourse, or has caused or allowed the restriction, contamination or blockage thereof in any manner whatsoever, or increased the drainage runoff flow so as to cause flooding or damage to other properties, ~~shall will~~ be liable in for damages arising therefrom. ~~out of such alteration, change, restriction, blockage, flooding or damage for such actions.~~ [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 3.]**

**13.35.030 Prohibition of nonconforming storm drainage system.**

From and after the date of passage and the effectiveness of the ordinance codified in this chapter, no person shall construct a nonconforming storm drainage system upon any property, public easement or right-of-way within the corporate limits of the city of Brookings. [Ord. 08-O-610 § 6.]

**13.35.035 Prohibition for constructing storm drainage systems without permit.**

No owner of property located within the corporate limits of the city of Brookings, or **any other** person ~~firm or corporation~~ shall construct a storm drainage system, or excavate any ground for the purpose of construction of a storm drainage component thereon, without first having applied for and received from the city a development permit for such construction and excavation. A development permit from the city will not be granted without submittal of plans and a copy of permits or letter of non-interest from Department of State Lands and Army Corps of Engineers, if required by law. Exception: gutters, downspouts and internal systems that do not discharge water off of subject property, or internal systems that discharge water to a pre-designed and/or pre-approved drainage system. [Ord. 08-O-610 § 7.]

**13.35.040 Procedure to secure permit.**

Any owner of property located within the corporate limits of the city of Brookings, or any **other** person ~~firm or corporation~~ desiring to construct or excavate for a storm drainage component within the corporate limits, ~~shall~~ **must** comply with the following procedure. An application in writing shall first be made to the public works department setting forth the description of the land upon which a storm drainage component

is to be constructed and upon which the excavation, if any, is to be made. This application shall also set forth the material to be used in the construction together with a statement as to how the storm drainage component is to be established. This application may require plans drawn by an Oregon licensed civil engineer and **will must** include a minimum easement width of 15 feet. The city ~~shall~~ **will** consider the application, and if the provisions of this chapter have been met, a permit ~~shall~~ **will** be issued to the applicant to construct and excavate to the extent that such excavation is necessary to accomplish the purpose applied for. [Ord. 08-O-610 § 8.]

**A public works permit is required per Chapter 12.45 BMC for any and all work in a public right-of-way, waterway or drainage course and may be terminated by order of the city for failure by the property owner to properly maintain the improved waterway and drainage appurtenances in a safe and workmanlike manner.**

~~13.35.045 Duty of public works director.~~

~~It shall be the duty of the public works director or his designee to periodically inspect the condition of all storm drainage systems in the city. He shall periodically make a report of such inspection to the city manager. He shall set forth and describe all nonconforming storm drainage components that he has discovered, prior to the date of his report, and submit the same to the city manager. [Ord. 08-O-610 § 9.]~~

#### **13.35.045 Indemnification of city.**

**This chapter shall not be construed to hold the city responsible for any damage to persons or property by reason of the issuance of any permit for drainage improvements or development, the installation of any improvements, the collection or concentration of any diffused surface waters or the alteration, change, restriction, blockage, flooding or damages to watercourses or to other properties resulting therefrom, all of the aforesaid being the responsibility of the private property owners of the properties affected or involved.**

#### **13.35.050 Procedure to require conformance of nonconforming storm drains.**

If the city manager finds that a nonconforming storm drainage component exists he may order the storm drainage component to be repaired per the "General Engineering Requirements and Standard Specifications" of the city of Brookings. The procedure as stated in BMC 8.15.090, General abatement procedure, will be followed. [Ord. 08-O-610 § 10.]

#### **13.35.055 Material specifications.**

All material used in the construction of any storm drainage system or component must be in compliance with the city of Brookings "General Engineering Requirements and Standard Specifications" document. [Ord. 08-O-610 § 11.]

#### **13.35.060 Reservation of the city's right to change specifications.**

The city reserves the right to revise, change, or require additions or alterations to any stated specifications, when in their judgment the health, safety, and welfare of the community warrant such actions. [Ord. 08-O-610 § 12.]



**13.35.065 Violations.**

**A. ~~Drainage Channel Obstruction~~ — Nuisance.** It is a violation for any property owner or other responsible party ~~person, persons, firm or corporation, or any agent for such person, person, firm or corporation, or any employee thereof,~~ to cause or allow the growth of vegetation or the presence of a blockage or accumulation of debris within any natural or manmade drainage channel within the city to the point that the natural flow of water within that drainage is substantially impeded, diverted or altered from its most efficient course. Violations of this section chapter are deemed a nuisance and will be abated pursuant to BMC 8.15.090, and shall be ~~punishable as an ordinance violation pursuant to Chapter 1.05~~ BMC.

**B.** The violation of any section of this chapter shall be punishable pursuant to ~~as stated~~ in BMC 1.05.010. [Ord. 08-O-610 § 13.]

**IN AND FOR THE CITY OF BROOKINGS**  
**STATE OF OREGON**  
**ORDINANCE 13-O-713**

**IN THE MATTER OF ORDINANCE 13-O-713, AN ORDINANCE DELETING CHAPTER 8.10 WATERCOURSES, DRAINAGE CHANNEL MAINTENANCE, STORM DRAIN PROTECTION, IN ITS ENTIRETY, AND AMENDING SECTIONS 8.15.010, 8.15.040 AND 8.15.067, OF CHAPTER 8, NUISANCES, TITLE 8, HEALTH AND SAFETY, OF THE BROOKINGS MUNICIPAL CODE.**

Sections:

- Section 1. Ordinance Identified.
- Section 2. Deletes Chapter 8.10, in its entirety.
- Section 3. Amends Sections 8.15.010, 8.15.040 and 8.15.067

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance deletes Chapter 8.10, Watercourses, Drainage Channel Maintenance, Storm Drain Protection, in its entirety, and amends Sections 8.15.010, 8.15.040 and 8.15.067 of Chapter 8, Nuisances, Title 8, Health and Safety, of the Brookings Municipal Code.

Section 2. Deletes Chapter 8.10 in its entirety. Chapter 8.10, Watercourses, Drainage Channel Maintenance, Storm Drain Protection, is deleted in its entirety.

Section 3. Amends Sections 8.15.010, 8.15.040 and 8.15.067. Sections 8.15.010, 8.15.040 and 8.15.067 of Chapter 8.15, Nuisances, are amended to read as follows:

**8.15.010 Definitions.**

- A. “Construction” includes, but is not limited to, constructing any of the following: a building, an addition to a building, landscaping, sidewalks, or driveways, irrespective of size.
- B. “Contaminant” means any substance or material such as, but not limited to, oil, gasoline, antifreeze, animal waste, lawn and yard fertilizers, defoliants, paint, or chemicals intended for insect control, that could cause harm, or otherwise have an adverse effect on the city’s storm drain system.
- C. “Debris” means any foreign material such as, but not limited to, trackout, sediment from erosion, landscaping supplies, lawn clippings, leaves, brush, tree trimmings, household trash, litter, and concrete.
- D. “Landscaping” means the process of arranging soil, trees, shrubs, grass, irrigation systems, or other commonly used landscaping materials on a piece of property. For this chapter, landscaping does not include routine lawn or yard maintenance such as grass mowing.
- E. “Livestock” refers to horses, mules, asses, cattle, llamas, emus, sheep, swine, goats and poultry, including turkeys, of any age or sex.
- F. “Person” means a natural person, firm, partnership, association or corporation.
- G. “Person in charge of property” means an agent, occupant, lessee, contract purchaser, tenant or other person having possession or control of property.

H. "Person responsible for abatement" means the person responsible for abating a nuisance and liable for any penalties imposed hereunder and shall include, jointly and severally, the following:

1. The owner;
2. The person in charge of property;
3. The person who caused to come into or continue in existence a nuisance as defined in this chapter.

I. "Public place" means a building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.

J. "Public Nuisance". It is expressly found and determined by the city of Brookings that the conditions and objects specifically enumerated within this chapter do, in one or more particulars, promote blight, deterioration, unsightliness, plundering, fire hazards, flood hazards, hazards to the health and safety of minors, disruption of the public peace, harborage for rodents, insects and vermin, and circumstances generally injurious or detrimental to the health, safety and general welfare of the inhabitants and occupants of the city of Brookings.

K. "Recreational vehicle" or "travel trailer" means a self-propelled or towable mobile unit used for temporary dwelling purposes by travelers.

L. "Recreational vehicle park" means a commercially developed lot upon which two or more recreational vehicles occupied for living or sleeping purposes are located, regardless of whether a fee is paid for such service or accommodations.

M. "Responsible party" or "person responsible" means an owner, occupant or other person entitled to possession. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 2; Ord. 86-O-406 § 1.]

N. "Storm drainage system" means the system of pipes, manholes, curbs, gutters, curb inlets, catch basins, canals, ditches, detention basins, ponds and streams intended to convey stormwater runoff.

O. "Trackout" means the tracking of mud, soil, debris, or contaminant onto any street, alley, sidewalk, or public way. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2.]

#### **8.15.040 Hazards.**

No responsible party shall permit thereon:

- A. Unguarded machinery, equipment or other devices which are attractive, dangerous and accessible to children;
- B. Lumber or logs stored in a manner so as to be attractive, dangerous, and accessible to children;
- C. An open pit, quarry, cistern, well, cesspool or other excavation without safeguards or barriers to prevent such places from being used by children. Any such opening or hole having a depth of four feet

or more and a top width of 12 inches or more shall be covered or fenced with suitable protective construction;

D. Any junk unless such is completely enclosed within a building or kept in a duly licensed junkyard or automobile wrecking house. The term “junk” as used in this section includes all motor vehicles, machinery, or appliances, and any parts thereof or therefor; discarded or abandoned vehicles or components thereof; and old iron or other metal, glass, paper or discarded materials. “Discarded” shall mean any vehicle which does not have properly affixed thereto an unexpired license plate and is either inoperative, wrecked, dismantled (or partially so), or abandoned. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 86-O-406 § 4.]

E. Failure to maintain or obstruction of private storm drainage conveyance.

#### **8.15.067 Surface waters and drainage.**

No responsible party shall:

A. Suffer or permit rainwater, ice or snow to fall from any building or structure onto a street or public sidewalk or to flow across the sidewalk;

B. Fail to install and maintain in a proper state of repair adequate drainpipes or a drainage system, so that any overflow water accumulating on the roof or about the building is not carried across or upon the sidewalk;[Ord. 11-O-686 § 2; Ord. 86-O-406 § 8.]

C. Fail to maintain or cause the obstruction of a private storm drainage conveyance;

D. No person shall, intentionally or unintentionally, allow any debris, water contaminant, or potential water contaminant to enter the city’s storm drainage system;

E. No person or persons shall allow any debris, contaminant, or potential contaminant from accumulating on any city street, alley, sidewalk, or public way adjacent to his/her property to an extent that said debris, contaminant, or potential contaminant, if allowed to enter the city’s storm drainage system, could cause a disruption to the proper functioning of the system and necessitate cleaning of any portion of the city storm drainage system.

First Reading:	_____	Passage:	_____
Second Reading:	_____	Effective Date:	_____

Signed by me in authentication of its passage this \_\_\_\_\_, day of \_\_\_\_\_, 2013

ATTEST:

\_\_\_\_\_  
Mayor Ron Hedenskog

\_\_\_\_\_  
City Recorder Joyce Heffington

**IN AND FOR THE CITY OF BROOKINGS**  
**STATE OF OREGON**  
**ORDINANCE 13-O-714**

**IN THE MATTER OF ORDINANCE 13-O-714, AN ORDINANCE AMENDING CHAPTER 13.35 STORM WATER OF TITLE 13, PUBLIC SERVICES, OF THE BROOKINGS MUNICIPAL CODE.**

Sections:

- Section 1. Ordinance Identified.
- Section 2. Amends Chapter 13.35.

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance amends Chapter 13.35 Storm Water, of the Brookings Municipal Code.

Section 2. Amends Chapter 13.35. Chapter 13.35, Storm Water, is amended to read as follows:

**Chapter 13.35**  
**STORM WATER**

Sections:

- [13.35.010](#) Establishment of storm water system.
- [13.35.015](#) Definitions.
- [13.35.020](#) System improvements.
- [13.35.025](#) System maintenance.
- [13.35.027](#) Alteration, change, restriction, blockage or contamination of watercourses, drainage channels, storm drains prohibited – Collection or concentration of surface waters prohibited.
- [13.35.030](#) Prohibition of nonconforming storm drainage system.
- [13.35.035](#) Prohibition for constructing storm drainage systems without permit.
- [13.35.040](#) Procedure to secure permit.
- [13.35.045](#) Indemnification of city.
- [13.35.050](#) Procedure to require conformance of nonconforming storm drains.
- [13.35.055](#) Material specifications.
- [13.35.060](#) Reservation of the city's right to change specifications.
- [13.35.065](#) Violations.

**13.35.010 Establishment of storm water system.**

A. The city of Brookings, for the protection of the public welfare, for the safety of the public, and for the best interest of the city, hereby declares that the city of Brookings, Oregon, possesses, claims, maintains, exerts, and reserves unto the city complete and full jurisdiction over and unto all conforming storm drainage systems now, or hereafter, constructed within the corporate limits of the city of Brookings.

B. This chapter provides for the establishment, operation, and maintenance of a storm water system within the city of Brookings including maintenance and extension of the present storm water system. [Ord. 08-O-610 § 2.]

### **13.35.015 Definitions.**

- A. "Contaminant" means any substance or material such as, but not limited to, oil, gasoline, antifreeze, animal waste, lawn and yard fertilizers, defoliants, paint, or chemicals intended for insect control, that could cause harm, or otherwise have an adverse effect on the city's storm drainage system.
- B. "Culvert" means a transverse pipe made of concrete, steel, HDPE, PVC, terra cotta tile, or wood used for the transport of storm water/drainage.
- C. "Debris" means any foreign material such as, but not limited to, trackout, sediment from erosion, landscaping supplies, lawn clippings, leaves, brush, tree trimmings, household trash, litter, and concrete.
- D. "Development" means any manmade change to improved or unimproved real property including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
- E. "Impervious surfaces" means surface areas which either prevent or retard saturation of water into the land surface and/or cause water to run off the land surface in greater quantities or at an increased rate of flow from that present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways, patio areas, driveways, parking lots or storage areas and graveled, oiled, macadam or other surfaces which similarly impact the natural saturation or runoff patterns which existed prior to development.
- F. "Improved premises" means an area which has been altered such that the runoff from the site is greater than that which could historically have been expected.
- G. "Landscaping" means the process of arranging soil, trees, shrubs, grass, irrigation systems, or other commonly used landscaping materials on a piece of property. For this chapter, landscaping does not include routine lawn or yard maintenance such as grass mowing.
- H. "Nonconforming storm drainage component" means:
1. Any culvert or ditch that is constructed upon any property or public right-of-way within the corporate limits of the city of Brookings that has been constructed without a written permit issued by the public works department.
  2. Any storm drainage component which is not constructed to standards approved by the city, or maintained in such shape or condition or repair as to render the storm drainage component dangerous or unsafe.
  3. Any storm drain component that has not been maintained and is in a condition that could fail or obstruct a drainage path.

I. "Open drainage way" means a natural or manmade path, ditch or channel which has the specific function of transmitting natural stream water or storm runoff water from a point of higher elevation to a point of lower elevation.

J. "Person" means a natural person, firm, partnership, association or corporation.

K. "Responsible party" or "person responsible" means the owner, occupant or other person entitled to possession of the property.

L. "Runoff control" is any means approved by the city engineer by which the peak rate of storm runoff from development land surfaces is reduced.

M. "Runoff control measures" can be but are not limited to bioswales, storm water recharge systems, pervious surfaces and detention systems.

N. "Storm drainage system" shall mean a natural drainage course or manmade culverting system or ditch that conveys storm water.

O. "Trackout" means the tracking of mud, soil, debris, or contaminant onto any street, alley, sidewalk, or public way.

#### **13.35.020 System improvements.**

A. The improvement of both public and private storm drainage facilities through or adjacent to a new development shall be the responsibility of the developer. The improvement shall comply with all applicable city ordinances, policies and standards.

B. It is the policy of the city of Brookings to participate in improvements to storm drainage facilities when authorized by the city council. To be considered for approval by the council, a facility must:

1. Be a public facility.
2. Be a substantial benefit to the community.
3. Not detrimentally impact downstream facilities or increase runoff to deficient downstream drainage conveyance.
4. Be designed to convey a minimum of a 25-year storm event and overland escape route as approved by the city's engineer.
5. Be a replacement or rehabilitation of an existing public facility. [Ord. 08-O-610 § 4.]

#### **13.35.025 System maintenance.**

A. Public storm drainage facilities.

1. The city shall maintain all public storm drainage facilities located within city-owned land, city rights-of-way and city easements.

2. Public facilities include, but are not limited to:

- a. Pipe drainage systems and their related appurtenances which have been designed and constructed expressly for use by the general public and accepted by the city.
- b. Roadside drainage ditches along city streets.
- c. Flood control facilities that have been designed and constructed expressly for use by the general public and accepted by the city.

**B. Private storm drainage facilities.**

1. Private storm drainage facilities ~~must~~ shall be maintained and repaired by the responsible party.

- a. Surface drainage channels must be kept free of debris and maintenance activities must comply with local, federal and state law.
- b. Storm drain pipes must be maintained to prevent failure or obstruction.
- c. A responsible party shall, within 10 days of receiving actual notice that a watercourse, drainage channel, storm drain, or drainage appurtenance on or adjacent to property owned by the responsible party is obstructed or constricted, remove the obstruction or constriction, and in the event the watercourse forms the boundary between properties, it shall be the duty of each adjacent property owner to remove the obstruction or constriction. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 5.]

**2. Private storm drainage facilities include, but are not limited to:**

- a. Facilities located on private property and not within a city rights-of-way, or within a city easement.
- b. Private parking lot storm drains.
- c. Roofs, footings and area drains.
- d. Drains not designed and constructed for use by the general public.
- e. Access drive culverts whether or not within the City right-of-way. [Ord. 08-O-610 § 5.]

**13.35.027 Alteration, change, restriction, blockage or contamination of watercourses, drainage channels, storm drains prohibited – Collection or concentration of surface waters prohibited.**

A. No watercourse, drainage channel, or storm drain shall be altered, changed, restricted, contaminated or blocked in any manner, nor shall diffused surface waters be collected or concentrated in any manner until or unless a drainage plan prepared by an Oregon-registered professional engineer has been submitted to and approved by the city manager or his/her designee.



B. Any property owner who causes or allows any type of construction to take place on his or her property will be responsible for the prevention of any debris, contaminant or potential contaminant from entering the city's storm drainage system, and must adhere to and abide by the guidelines for erosion control and sediment prevention, as described in the City of Brookings Engineering Requirements and Standard Specifications for Public Works Infrastructure.

C. The property owner and any other person that has altered or changed a watercourse, or has caused or allowed the restriction, contamination or blockage thereof in any manner whatsoever, or increased the drainage runoff flow so as to cause flooding or damage to other properties, will be liable in for damages arising therefrom. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 88-O-429 § 3.]

**13.35.030 Prohibition of nonconforming storm drainage system.**

From and after the date of passage and the effectiveness of the ordinance codified in this chapter, no person shall construct a nonconforming storm drainage system upon any property, public easement or right-of-way within the corporate limits of the city of Brookings. [Ord. 08-O-610 § 6.]

**13.35.035 Prohibition for constructing storm drainage systems without permit.**

No owner of property located within the corporate limits of the city of Brookings, or any other person shall construct a storm drainage system, or excavate any ground for the purpose of construction of a storm drainage component thereon, without first having applied for and received from the city a development permit for such construction and excavation. A development permit from the city will not be granted without submittal of plans and a copy of permits or letter of non-interest from Department of State Lands and Army Corps of Engineers, if required by law. Exception: gutters, downspouts and internal systems that do not discharge water off of subject property, or internal systems that discharge water to a pre-designed and/or pre-approved drainage system. [Ord. 08-O-610 § 7.]

**13.35.040 Procedure to secure permit.**

Any owner of property located within the corporate limits of the city of Brookings, or any other person desiring to construct or excavate for a storm drainage component within the corporate limits, must comply with the following procedure. An application in writing shall first be made to the public works department setting forth the description of the land upon which a storm drainage component is to be constructed and upon which the excavation, if any, is to be made. This application shall also set forth the material to be used in the construction together with a statement as to how the storm drainage component is to be established. This application may require plans drawn by an Oregon licensed civil engineer and must include a minimum easement width of 15 feet. The city will consider the application, and if the provisions of this chapter have been met, a permit will be issued to the applicant to construct and excavate to the extent that such excavation is necessary to accomplish the purpose applied for. [Ord. 08-O-610 § 8.]

A public works permit is required per Chapter 12.45 BMC for any and all work in a public right-of-way, waterway or drainage course and may be terminated by order of the city for failure by the property owner to properly maintain the improved waterway and drainage appurtenances in a safe and workmanlike manner.

**13.35.045 Indemnification of city.**

This chapter shall not be construed to hold the city responsible for any damage to persons or property by reason of the issuance of any permit for drainage improvements or development, the installation of any improvements, the collection or concentration of any diffused surface waters or the alteration, change, restriction, blockage, flooding or damages to watercourses or to other properties resulting therefrom, all of the aforesaid being the responsibility of the private property owners of the properties affected or involved.

**13.35.050 Procedure to require conformance of nonconforming storm drains.**

If the city manager finds that a nonconforming storm drainage component exists he may order the storm drainage component to be repaired per the "General Engineering Requirements and Standard Specifications" of the city of Brookings. The procedure as stated in BMC 8.15.090, General abatement procedure, will be followed. [Ord. 08-O-610 § 10.]

**13.35.055 Material specifications.**

All material used in the construction of any storm drainage system or component must be in compliance with the city of Brookings "General Engineering Requirements and Standard Specifications" document. [Ord. 08-O-610 § 11.]

**13.35.060 Reservation of the city's right to change specifications.**

The city reserves the right to revise, change, or require additions or alterations to any stated specifications, when in their judgment the health, safety, and welfare of the community warrant such actions. [Ord. 08-O-610 § 12.]

**13.35.065 Violations.**

A. It is a violation for any property owner or other responsible party to cause or allow the growth of vegetation or the presence of a blockage or accumulation of debris within any natural or manmade drainage channel within the city to the point that the natural flow of water within that drainage is substantially impeded, diverted or altered from its most efficient course. Violations of this chapter are deemed a nuisance and will be abated pursuant to BMC 8.15.090.

B. The violation of any section of this chapter shall be punishable pursuant to BMC 1.05.010. [Ord. 08-O-610 § 13.]

First Reading: \_\_\_\_\_ Passage: \_\_\_\_\_  
Second Reading: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Signed by me in authentication of its passage this \_\_\_\_\_, day of \_\_\_\_\_, 2013

ATTEST:

\_\_\_\_\_  
Mayor Ron Hedenskog

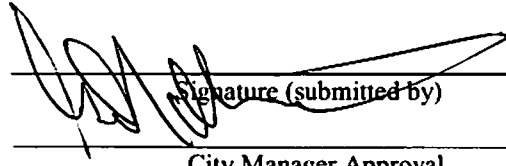
\_\_\_\_\_  
City Recorder Joyce Heffington

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: August 26, 2013

Originating Dept: City Manager

  
\_\_\_\_\_  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

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**Subject:** Ordinance/agreement Granting a Franchise to Frontier Communications Northwest, Inc.

**Recommended Motion:** Adopt Ordinance 13-O-715, granting Frontier Communications Northwest, Inc., a franchise for telephone service purposes within the City of Brookings.

**Financial Impact:** Increased General Fund revenues estimated at \$12,000 annually.

**Background/Discussion:**

The City authorizes private utility companies such as Frontier Communications to use public streets and rights of way for the conduct of their business through a franchising device that is a unique mix of an agreement and an ordinance.

The franchise agreement/ordinance with Frontier Communications expired in 2004 and renewal was delayed for several years due to litigation involving a large number of franchising agencies. Those issues were resolved in 2010. The City has been pursuing the negotiation of a new franchise ordinance/agreement with Frontier since 2011. These negotiations have recently concluded and a new ordinance/agreement is ready for Council consideration. Following are the key elements of the proposed ordinance/agreement:

- Term: 10 years. The previous ordinance/agreement term was 20 years.
- Franchise Fee: 7.0 per cent. The current fee is 3.3 per cent (established in 1984). 7.0 per cent is the maximum franchise fee allowable by law. See also "Permit Fees."
- Permit Fees: The previous ordinance/agreement provided that Frontier pay permit fees for each excavation into the City street. The proposed ordinance/agreement provides that the City cannot levy permit fees in consideration for the 7.0 per cent franchise fee.
- Undergrounding: The proposed ordinance/agreement provides that Frontier would be responsible for the cost of undergrounding facilities in the Urban Renewal Area, subject to possible participation by the City such as installing conduit as a part of a street project, but that the City would compensate Frontier for the cost of undergrounding if directed to do so by the City in all other areas of the City.
- Scope: The proposed ordinance/agreement clearly limits the scope of the authority to use public ways to telecommunications and not including other services, such as television.
- Relocation: Provides that Frontier must relocate poles, underground conduit or equipment whenever it is directed to do so by the City and Frontier's expense.

The proposed ordinance/agreement has been reviewed by special utility franchise legal counsel retained by the City.

**Attachment(s):**

- a. Ordinance 13-O-715

**IN AND FOR THE CITY OF BROOKINGS**  
**STATE OF OREGON**  
**ORDINANCE 13-O-715**

**IN THE MATTER OF ORDINANCE 13-O-715, AN ORDINANCE OF THE CITY OF BROOKINGS GRANTING FRONTIER COMMUNICATIONS NORTHWEST, INC., ITS SUCCESSORS AND/OR ASSIGNS, ("GRANTEE"), A FRANCHISE, AS DESCRIBED HEREIN, FOR ALL TELEPHONE SERVICE PURPOSES WITHIN THE CITY OF BROOKINGS.**

- Section 1. Grant of Franchise
- Section 2. Emergency Repair
- Section 3. Installation of Facilities
- Section 4. Restoration of Facilities
- Section 5. Construction Conflicts to be Avoided
- Section 6. Adjustments to Facilities
- Section 7. Indemnification
- Section 8. Franchise Fee
- Section 9. Grantee Use of Poles
- Section 10. Term
- Section 11. Acceptance

The City of Brookings Ordains as follows:

Section 1. Grant of Franchise. There is hereby granted by the City of Brookings ("City") to Frontier Communications Northwest Inc. ("Grantee"), the non-exclusive right and privilege within the City to place, erect, lay, maintain and operate in, upon, over and under the streets, alley, avenues, thoroughfares and public highways (hereinafter, "Public Right of Way") within the City, poles, wires whether copper, fiber optic or other technology and other appliances and conductors for telecommunications service (as defined in the Telecommunications Act of 1996) purposes. This franchise does not authorize the provision of cable service as defined by federal law. Should Grantee desire to provide cable services, Grantee will obtain a separate franchise in accordance with applicable law.

Subject to the terms and conditions of this franchise, such wires and other appliances and conductors may be strung upon poles or other fixtures above ground or laid underground in pipes or conduits or otherwise protected, and such other apparatus may be used as may be necessary or proper to operate and maintain the same. In locations where aerial utility facilities exist as of the Effective Date, Grantee shall be allowed to overbuild, upgrade, maintain, replace or add to its existing aerial facilities and supporting structures Where all facilities in such area are underground or have been mandated to be placed underground per a plan as outlined by the City, Grantee shall install all new wires and other appliances and conductors underground, except that Grantee shall be allowed to place above ground, in locations approved by the City, its cabinet-type facilities that are normally placed above ground.

Section 2. Emergency Repair and Maintenance of Existing Facilities. In case of an emergency, it shall be lawful for Grantee to make all needful excavations and erections in any Public Right of Way in the City for the purpose of repairing and maintaining Grantee's telecommunications services facilities, including existing poles or other supports or conduits for wires, whether copper, fiber optic or other technology, and appliances and auxiliary equipment without a Public Works permit. All emergency maintenance and repair work, erections, erections of poles and appliances and laying of wires shall be done in compliance with such applicable rules, regulations, ordinances, or orders in effect at the time of the work.

Grantee shall notify the City Public Works and Development Services Department ("Public Works Department") of any emergency repair and maintenance work as soon as reasonably practicable, and in any event within 48 hours. Any act done by any contractor or subcontractor contracting with Grantee shall, for the purpose of this franchise, be deemed to be the act of Grantee. All work shall be maintained against defects in materials and workmanship and depending on the extent of work, may require additional sureties as defined in Section 3 herein.

Section 3. Installation of New Facilities and Expansion of Service. Except as expressly set forth in the in this Section, prior to commencing ordinary construction, extension, or installation of new telecommunications services facilities, maintenance of existing telecommunications services facilities, or relocation of any of the Grantee's telecommunications services facilities in the Public Rights of Way within the City, the Grantee shall obtain a Public Works Permit by submitting to the City's Public Works Department representatives a plan showing the location of the proposed construction, extension or relocation for purposes of utility location. Construction shall be in accordance with the City ordinances, rules and requirements and Call Before You Dig requirements of the Oregon Revised Statutes. Grantee shall obtain approval from the City Engineer via a Public Works Permit, and meet with the Public Works Department representative if requested, prior to commencement of such construction. Permit applications shall be signed by an authorized representative of Grantee and include a map or blueprint showing the location of all proposed excavations, pipes, conduits or other apparatus. Any act done by any contractor or subcontractor contracting with Grantee shall, for the purpose of this franchise, be deemed to be the act of Grantee. All work shall be maintained against defects in materials and workmanship.

When the City determines that the nature and performance of Grantee's work in the City requires separate assurance that the work will be complete or that the work shall be maintained against defects in material or workmanship, the City may require Grantee to furnish to the City a performance or maintenance bond for the estimated value of all work for the stated interval to insure compliance by Grantee with rules, regulations, ordinances and orders of the Council relating to its operations within the City as provided for under this section, after receipt of notice and an opportunity for Grantee to cure any defect.

Grantee must comply with applicable City ordinances, resolutions, rules and orders that generally apply to the reasonable management of the safety and use of Public Rights of Way within the City as such requirements exist at the time of Grantee's work. However, by entering this agreement, Grantee is not waiving its right to challenge or otherwise dispute the legality, validity, or enforceability of any changes to City ordinances, resolutions, rules or orders enacted after the Effective Date. In addition, to the extent permitted by law, this Ordinance does not require Grantee to comply with existing or future ordinances, resolutions, rules or orders that conflict with any specific provision of this Ordinance.

The word "applicable", as used in this paragraph shall mean such rules, regulations, ordinances or orders as the City Council may deem necessary to manage the safety of the Public Right of Way and to protect the public and any member of the public residing within the City, who might be affected by any excavation work or installation of the Grantee.

Grantee shall furnish to the City, and maintain a current copy on file, a certificate of insurance insuring against the risks of personal injury, bodily injury and property damage in the minimum amounts and coverage provided for by City ordinance as of the Effective Date, naming the City as additional insured against those risks for any act or omission that is not an intentional wrongful act of the City and including the following statement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 30 days after receipt by the City, by registered

mail, of a written notice addressed to the City of such intent to cancel or not to renew."

Grantee shall not be required to obtain prior approval or provide notice of construction, permit applications or maps/blueprints for 1) Customer service connections/drops, repairs or maintenance that do not require installation of facilities in the Public Right of Way, altering, cutting or breaking of the roadway, curb or sidewalk, or 2) Routine maintenance or repair of above ground Equipment, and the installation of new replacement cables or wires on existing aerial facilities, when the installation, maintenance or repair will not impact vehicular traffic by closing or blocking a lane of vehicular travel for more than two (2) hours.

If requested by the City, Grantee shall furnish the City with record drawings as maintained in the ordinary course of business showing Grantee's facilities within the Public Right of Way in a format (electronic or hard copy) acceptable to City and Grantee within 60 days after such work is complete. Drawings shall be certified by an authorized representative of Grantee and Grantee shall not be required to have the drawings signed or stamped by a registered or professional engineer. While it is not anticipated that the furnishing of record drawings would require disclosure of sensitive proprietary information of Grantee, in the event that such sensitive proprietary information is nevertheless included and Grantee requests confidentiality of such information the City will maintain confidentiality of such sensitive proprietary information to the extent permitted under Oregon Public Records Law including, without limitation, ORS 192.502(4).

Section 4. Restoration of Facilities. Whenever Grantee shall disturb any Public Right of Way, it shall restore the same to a condition as specified in the current version of the City of Brookings Engineering Requirements and Standard Specification for Public Works Infrastructure equal to the condition which existed prior to construction, unless the City allows Grantee to restore such area to a lesser standard, as soon as practical without unnecessary delay, and failing to do so in a timely manner, the City shall have the right to set a reasonable time within which such repairs and restoration of streets and other public places shall be completed, and to notify Grantee in writing of its time requirement for repair and restoration, and upon failure of such repairs being made by Grantee, within the time so reasonably prescribed, the City may cause such repairs to be made at the expense of Grantee, after having provided Grantee with written notice and a reasonable opportunity to cure.

The City may cause the Grantee to remove or relocate any pole, underground conduit or equipment belonging to the Grantee, including relocating aerial facilities to an underground location, whenever the relocation is for public necessity, and the cost shall be borne by the Grantee unless such cost is chargeable by law or tariff to another party, or necessitated for the benefit of a third party other than the City.

Whenever it is a public necessity to remove a pole, underground conduit, or equipment belonging to the Grantee or on which a wire or circuit of the Grantee is stretched or fastened, the Grantee shall, upon 60 days written notice from the City, meet with City representatives and agree in writing to a plan and date certain to remove such poles, underground conduit, equipment, wire, or circuit at Grantee's expense. If Grantee fails, neglects, or refuses to do so, the City may remove it at Grantee's expense.

"Relocation for public necessity" shall mean removal or relocation to accommodate the construction or reconstruction of transportation roadways and the construction or reconstruction of public improvements and infrastructure, including but not limited water and sewer facilities; it shall not include projects that are purely for beautification purposes unless said project is located within the City's Urban Renewal Area (Map attached), or relocation to accommodate private or third party construction of public infrastructure that is required as a condition of approval of private property development or

redevelopment. When facilities are relocated for the benefit of a third party as described in the previous sentence, the cost shall be borne by the party requesting relocation. Nothing herein shall be deemed to preclude the City from agreeing in writing, in its sole discretion, to contribute to utility operators' costs for such relocation.

Section 5. Construction Conflicts to be Avoided. Nothing in this Ordinance shall be construed in any way to prevent the proper authorities of the City from putting in a sewer system, grading, rocking, paving, repairing, altering or improving any of the Public Right of Way within the City in or upon which the poles, wires, or other conductors of Grantee shall be placed, but all such work or improvements shall be done, if possible, so as not to obstruct or prevent the Grantee's use of said poles, wires, conductors, conduits, pipes or other apparatus.

Section 6. Adjustments to Facilities. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the wires, cables or other plant of Grantee for the passage of buildings, machinery or other objects, Grantee shall temporarily rearrange, remove, lower or raise its wires, cables or other plant as the necessities of the case require; provided, however, that the person or persons desiring to move any such buildings, machinery or other objects, shall pay the entire actual cost to Grantee of changing, altering, moving, removing or replacing its wires, cables or other plant so as to permit such passage, and shall deposit in advance with Grantee a sum equal to such cost as estimated by Grantee and shall pay all damages and claims of any kind whatsoever, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of said wires, cables or other plant, except as may be incurred through the sole negligence of Grantee. Grantee shall be given not less than thirty (30) days written notice by the party desiring to move such building or other objects. Said notice shall detail the route of movement of such building or other objects over and along the streets, alleys, avenues, thoroughfares and public highways and shall bear the approval of the City. Such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause Grantee unnecessary expense or waste of time. Neither the City nor any of its employees shall be held liable for the consequences of any act done in connection with the moving of a non-City owned building or non-City owned other object or rearrangement of wires or for the cost of rearranging the wires.

Section 7. Conditions on Sale, Transfer or Assignment. The franchise granted shall be binding upon the successors, legal representatives and assigns of the Company. Company may sell, transfer or otherwise assign this Franchise without City's consent upon approval from appropriate regulatory authority (Public Utility Commission of Oregon or Federal Communications Commission) provided that no such transfer, sale or assignment of this franchise shall be binding on City unless and until City has notice of same in writing, until the transferee in writing has accepted the terms and conditions of this Franchise and until the transferee has submitted satisfactory proof to city of the liability insurance coverage required by this Franchise and has submitted bonds or other guarantees that any work begun by Company and then in progress under the terms of a City permit shall be performed by the transferee to City's standards.

Section 8. Indemnification. Grantee shall indemnify, defend and hold harmless the City and its officers, agents and employees from any and all claims, damages, cost and expenses to which it or they may be subjected by reason of any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise granted by this Ordinance. If both the Grantee and the City are found to be partially liable for damages, the Grantee's liability under this section shall not exceed its proportion of negligence or fault. The City shall give Grantee prompt notice of any claim (or advance notice of claim) received by the City as to which the City seeks indemnity from Grantee and shall tender the defense of any such claim to Grantee. The aforementioned indemnity is not applicable to that which is attributable to or arises from the negligence or willful misconduct of

the City and its officers, agents and employees. Neither party may bind the other to a settlement of any such claim or to payment of any of the costs of such claim without the written consent of the party to be bound.

Section 9. Franchise Fee. In consideration of the rights, privileges and franchise hereby granted, Grantee shall pay to the City from and after the date of the acceptance of this franchise, and until its expiration, 7.00% per annum of its gross revenue derived from telecommunications services rendered to customers within the city limits. The City acknowledges that the franchise fee in this Section is subject to the limitation in ORS 221.515 for such time as that statute remains in effect. Payment of said fee shall be made quarterly, within thirty (30) days of the end of each calendar quarter for the preceding quarter. The City reserves the right to audit the payments made by Grantee to assure they comply with the requirements of this franchise. All costs and charges associated with a review or audit of the franchise fee payments as specified in this agreement shall be the responsibility of the City. Any audit finding(s) that are mutually agreed to by the parties shall be corrected within 180 days after mutual agreement. Written notice for any audit review or other claim shall be provided within three years after the payment has been remitted by Grantee to the City.

Section 10. Grantee Use of Poles. In further consideration of the rights and privileges herein granted, the Grantee hereby grants to the City the right and privilege free of charge to suspend and maintain on poles placed by Grantee in the Public Rights of Way, such wires as are necessary for the exclusive use of the City for non-commercial fire alarm and police purposes in accordance with the terms and conditions of Grantee's pole attachment or conduit joint use Agreement and applicable law. Any such wiring installations made and to be made by the City shall be made in conformity to the requirements of all applicable Federal, State and City electrical codes and in conformity with standard practices. City agrees to transfer their facilities, at the City's cost, to new poles placed by Grantee within 30 days of notification.

Section 11. Term. The rights, privileges and franchise herein granted shall continue and be in force the period of five (10) years from and after the date this ordinance takes effect, provided that Grantee accepts the franchise as required in Section 11 ("Effective Date"),

Section 12. Acceptance. The Grantee shall file with the City Recorder its written acceptance of the rights and franchise hereby granted and the regulations hereby imposed, within sixty (60) days from and after the date when this Ordinance shall become effective; and this Ordinance shall become null and void unless such acceptance is so filed. The Grantee shall at all times, fully and faithfully, perform all of the terms, provisions and conditions of this Ordinance and all other ordinances and orders of the Council as specified herein.

First Reading:	_____	Passage:	_____
Second Reading:	_____	Effective Date:	_____

Signed by me in authentication of its passage this \_\_\_\_\_, day of \_\_\_\_\_, 2013

ATTEST:

\_\_\_\_\_  
Mayor Ron Hedenskog

\_\_\_\_\_  
City Recorder Joyce Heffington