

ORDINANCE NO. 776

AN ORDINANCE ADMINISTERING RIGHTS-OF-WAY, AMENDING TITLE 12 OF THE TROUTDALE MUNICIPAL CODE, AND REPEALING CHAPTER 5.20 OF THE TROUTDALE MUNICIPAL CODE

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City of Troutdale owns or holds in trust certain rights-of-way within the City.
2. Utility companies and other entities often desire to construct or install certain facilities within City rights-of-way.
3. The City desires to administer its rights-of-way by enactment of this Ordinance.
4. The provisions of Chapter 5.20 of the Troutdale Municipal Code, which require anyone installing facilities in, on or over the rights-of-way in the City to first obtain a franchise authorizing use of the rights-of-way, have been incorporated into this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. Title 12 of the Troutdale Municipal Code is amended by adding this Chapter 12.12:

Chapter 12.12 Right-of-Way Management

Sections:

12.12.010	Title
12.12.020	Intent and Scope
12.12.030	Definitions
12.12.040	Permits
12.12.050	Construction, Installation, and Relocation
12.12.060	Maintenance
12.12.070	Vacation
12.12.080	Financial, Liability, and Insurance Provisions
12.12.090	Vegetation
12.12.100	Discontinued Use
12.12.110	Assignment
12.12.120	Franchise Required

12.12.010 Title. This chapter shall be entitled "Right-of-Way Management".

12.12.020 Intent and Scope

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

12.12.030 Definitions.

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

- A. **City.** "City" means the City of Troutdale, an Oregon municipal corporation, and all of the territory within its corporate boundaries, as may change from time to time.
- B. **City Facilities.** "City Facilities" means City-owned structures or equipment located within the Right-of-Way.
- C. **Equipment.** "Equipment" means any tangible component, whether referred to singly or collectively, installed, maintained, or operated by User.
- D. **Franchise.** "Franchise" means an agreement between the City and User which grants a privilege to use public Right-of-Way within the City for a dedicated purpose and for specific compensation.
- E. **Non-City Facilities.** "Non-City Facilities" means light poles, utility poles, pipes, cable, wire, conduit, vaults, ducts, fiber or similar equipment that is not owned or operated by the City and that is lawfully placed in the Right-of-Way.
- F. **Person.** "Person" means any individual, sole proprietorship, partnership, corporation, association or other organization authorized to do business in the State of Oregon, and includes any natural person.
- G. **Right-of-Way.** "Right-of-Way" means the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys,

boulevards, sidewalks, bicycle lanes, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow User to use. Right-of-Way shall not include the airspace above the Right-of-Way used for cellular mobile radio service or broadcast television service.

- H. **User.** "User" means a Person that performs Work within the Rights-of-Way, whether or not a permit is applied for or granted.
- I. **Work.** "Work" means excavation or fill, or the construction, demolition, installation, replacement, or relocation of Equipment, within the Right-of-Way.

12.12.040 Permits.

- A. **Permit Required.** No Person shall occupy or encroach on Right-of-Way for more than 72 consecutive hours, nor store materials in, or perform Work in, Right-of-Way without obtaining a permit from the City except for maintenance of above ground Equipment. The Public Works Director or designee is authorized to establish application forms, procedures, terms, and conditions for such permits and to approve or deny permit applications.
- B. **Permit Non-Exclusive.** The permit is not exclusive. The City expressly reserves the right to grant permits or rights to other Persons, as well as the City's right to use the Right-of-Way for similar or different purposes, as allowed hereunder. The permit is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Right-of-Way. Nothing in the permit shall be deemed to grant, convey, create, or vest in User a real property interest in land, including any fee, leasehold interest, or easement.
- C. **Reservation of City Rights.** Nothing in the permit shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Right-of-Way, laying down, repairing or removing water mains or constructing or establishing any other public work, utility or improvement, including repairs, replacement or removal of City Facilities. If any of User's Equipment interferes with the construction or repair of any Right-of-Way, public work, utility, improvement, or City Facility, and the City is unable to find a reasonable alternative, User's Equipment shall be removed or relocated in a manner acceptable to the City, subject to the National Electrical Safety Code and other industry standard engineering codes. Costs for relocations or removals necessitated for anything other than City-funded projects shall be borne by the Person requesting relocation or removal. User shall pay the costs for relocation of User's Equipment for City-funded projects. When a project is funded with both private and City funds, User shall pay the percentage of the costs that is equal to the percentage of City funds that were spent on the project. Prior to relocation, the City shall make a reasonable effort to find an alternative location within a public Right-of-Way for relocated facilities. Should User fail to remove, adjust or

relocate its Equipment by the date established by the City, the City may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by User, including all costs and expenses incurred by the City due to User's delay.

- D. **Permit Fee.** The application for a permit shall be accompanied by a permit fee in an amount to be established by Resolution of the City Council.

12.12.050 Construction, Installation and Relocation.

- A. **Construction and Installation.** Subject to the terms of the permit, User may enter upon the Right-of-Way to perform all Work that is necessary to install, operate, maintain, remove, reinstall, relocate, and replace Equipment in or on User's Non-City Facilities or in or on City Facilities. Work must meet all standards applicable to the management of the Right-of-Way, and the City may determine the methods used to place Equipment.
- B. **No Interference.** User, in the performance and exercise of its rights and obligations under the permit, shall not interfere in any manner with the existence and operation of any Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, communication system or municipal property, without the express written approval of the owner or owners of the affected personal property or properties. Upon notification by the City, User may be required to review plans of others to determine if interference may occur.
- C. **Undergrounding Required.** All new utility lines shall be placed below ground in a location acceptable to the City. Therefore, User is prohibited from installing any new aerial cables, wire, or conduit. For the purposes of this section, "installing any new aerial cables, wire, or conduit" means a User installing aerial cable, wire, or conduit in a location where that User currently has no aerial cable, wire, or conduit.
- D. **Hours of Work.** Except for emergencies, User may not perform Work Monday through Friday before 7:00 a.m. or after 9:00 p.m., Saturdays before 8:00 a.m. or after 7:00 p.m., or Sundays before 10:00 a.m. or after 7:00 p.m.
- E. **Obtaining Required Permits.** If the excavation, installation, operation, maintenance, removal, reinstallation, relocation or replacement of the Equipment in the Right-of-Way requires any additional permits, User shall obtain the permits and pay any standard and customary permit fees.
- F. **Relocation.** City shall have the right to require User to change the location of its Equipment or to remove its Equipment from the Right-of-Way. Costs for relocation or removal necessitated for anything other than City-funded projects shall be borne by the Person requesting relocation or removal. User shall pay the costs for relocation of User's Equipment for City-funded projects. When a project

is funded with both private and City funds, User shall pay the percentage of the costs that is equal to the percentage of City funds that were spent on the project. Prior to relocation, the City shall make a reasonable effort to find an alternative location within a public Right-of-Way for relocated facilities. If User shall fail to relocate or remove any Equipment as requested by the City by the date established by the City, the City may cause the Equipment to be removed at User's sole expense. Upon receipt of a demand for payment from the City, User shall reimburse the City for the costs the City incurred within sixty (60) days.

- G. **Damage to Right-of-Way.** Whenever the User's installation, operation, maintenance, removal, reinstallation, replacement or relocation of Equipment damages or disturbs the Right-of-Way, User, at its sole cost and expense, shall promptly repair and return the Right-of-Way to the condition it was in before it was damaged or disturbed, as approved by the Public Works Director. If User does not repair the Right-of-Way to at least the condition that existed prior to construction within the time frame given in the permit or as otherwise agreed to by the City, then the City may, upon fifteen (15) days' (or less if public safety requires) prior written notice to User, repair the Right-of-Way at User's sole expense. Upon the receipt of a demand for payment from the City, User shall reimburse the City for the costs the City incurred within sixty (60) days.
- H. **Use by City.** The City, at its cost, may install pipes or conduit in any trench or excavation created by User, to the extent that such space therein or thereon is reasonably available. The City may also require User to excavate trenches larger than needed by User, with the excess capacity to be utilized by the City and with the City responsible for the incremental cost provided that such requirement does not impose unreasonable delay on the User's construction activities.
- I. **Safety.** User shall perform all Work in a manner that ensures safety of workers and the public. As a minimum, User shall provide signs, signals, and flaggers as necessary to control traffic.
- J. **Moving of Structures and Equipment.** Whenever it becomes necessary to allow for the passage of buildings, machinery or other objects, User shall temporarily rearrange, remove, lower or raise its wires, cables or other plant as necessary, at no cost to the City. However, any person or persons, other than the City, desiring to move any such buildings, machinery or other objects, shall pay the entire actual cost incurred by User for changing, altering, moving, removing or replacing its wires, cables, or other plant so as to permit such passage, and shall deposit in advance with User a sum equal to such cost as estimated by User. The person or persons that requested the move shall pay all direct damages caused directly by the changing, altering, moving, removing or replacing of such wires, cables or other plant, except for damages and claims that are the direct result of User's negligent acts. Except in an emergency, User shall be given not less than thirty (30) days written notice by the party desiring to move such building or other objects. Such notice shall detail the route of

movement of such buildings or other objects over and along the streets, alleys, avenues, thoroughfares and public highways of the City. Upon receiving required notice, User shall complete such moves as soon as practicable, and without undue delay. Furthermore, the passage of buildings, machinery or other objects shall be with as much haste as possible and shall not be necessarily delayed or cause User unnecessary expense or waste of time.

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

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

12.12.080 Financial, Liability and Insurance Provisions.

A. Insurance.

1. When the City, at its sole discretion, determines that the User's Work or manner of performance warrants, User shall maintain public liability and property damage insurance that protects User and the City, as well as the City's officers, agents, and employees, from the claims referred to in Paragraph C of this Section. The insurance shall provide coverage at all times of not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$50,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$500,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The certificate of insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City. If the insurance is canceled or materially altered, User shall provide a replacement policy with the terms as outlined in this Section. User shall maintain continuous uninterrupted coverage, in the terms and amounts required.

2. User shall maintain on file with the City a certificate of insurance certifying the coverage required above.

B. Financial Assurance. When the City, at its sole discretion, determines that User's Work or manner of performance warrants, the City may request and the User shall provide a financial security. The form of the financial security (bond, cashiers check, letter of credit, etc.) shall be determined by the Director or the Director's designee. The value of the financial security shall be in an amount determined by the Director or the Director's designee but shall not exceed 110% of the estimated value of the Work the User is obligated to perform. The estimated value of the Work shall be verified by the Public Works Director or designee. The financial assurance instrument shall be reviewed and approved as to form by the City Attorney.

C. Indemnification.

1. User shall indemnify, defend, and hold the City, its officers, agents, and employees harmless from any claims for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any act done under the permit, by or for User, its agents or employees, or by reason of any neglect or omission of User to keep its Equipment in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide User with prompt notice of any such claim, which User shall defend. No settlement or compromise of any such claim will be done by the City or the User without the prior written approval of the other party. User and its agents, contractors and others shall consult and cooperate with the City while conducting its defense.

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

12.12.090 Vegetation. User shall prune or cause to be pruned any vegetation to the extent allowed by law, including but not limited to tree limbs and roots, that protrudes into the Right-of-Way and inhibits the operation of the User's Equipment. Except for an emergency, before pruning any vegetation, User shall obtain any required permits from the City. All pruning shall be done using proper arboricultural practices. User shall be responsible for the costs of pruning and of replacing or treating any vegetation that is not pruned in accordance with proper arboricultural practices and that is damaged or dies as a result. If User fails to replace or treat damaged or dead vegetation within thirty (30) days after receiving written notice from the City, the City may replace or treat the vegetation at User's

sole expense. Upon receipt of a demand for payment from the City, User shall pay the City for the costs the City incurred within sixty (60) days.

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

12.12.110 Assignment. The permit shall not be assigned or transferred without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

12.12.120 Franchise Required. If User desires a permit to install Equipment within the Right-of-Way for the purpose of providing a commercial service, then User must also enter into a Franchise agreement with the City unless User is exempt from the requirement to obtain a franchise as specifically set forth in another provision of the Troutdale Municipal Code. Any time there are provisions in a franchise agreement that are also addressed in this Chapter, the more restrictive requirements shall apply.


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

Section 3. Chapter 5.20 of the Troutdale Municipal Code is hereby repealed.

YEAS: 5


NAYS: 2 Councilor Ripma and Councilor Kyle

ABSTAINED: 0



Paul A. Thalhofer, Mayor
April 12, 2006

Date



Debbie Stickney, City Recorder

Adopted: April 11, 2006