

TITLE 8

UTILITIES AND FRANCHISES

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CHAPTER 1

**WATER SERVICE RATES AND REGULATIONS**

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8-1-1: **DEFINITIONS:** For the purpose of this chapter, the following shall mean:

**AGENT:** Includes a tenant or other person on the premises of another.

**AIR GAP SEPARATION:** The physical vertical separation between the free flowing discharge end of a potable water supply pipe line and the open or nonpressure receiving vessel.

**APPROVAL OR APPROVED:** Approved in writing.

**AUXILIARY WATER SUPPLY:** Any supply of water used to augment the supply obtained from the public water system which serves the premises in question.

**BACKFLOW:** The flow in the direction opposite to the normal flow.

- CITY:** The city of Irrigon, Morrow County, Oregon.
- CITY RECORDER:** Includes the city recorder as defined by the city charter or other authorized city staff members.
- CROSS CONNECTION:** Any link or channel between the piping which carries drinking water and the piping or fixtures which carry water or other substances.
- DISTRIBUTION SYSTEM:** The network of pipes and other facilities which are used to distribute water from the source, treatment, transmission, or storage facilities to the water user.
- DOUBLE CHECK VALVE ASSEMBLY:** An assembly of two (2) independently acting check valves with shutoff valves on each side of the check valves and test cocks for checking the watertightness of each check valve.
- EMERGENCY:** A condition resulting from an unusual calamity such as a flood, storm, earthquake, drought, civil disorder, volcanic eruption, an accidental spill of hazardous material, or other occurrence which disrupts water service of the public water system or endangers the quality of water produced by the public water system.
- ORGANIZATION:** Includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity, including any receiver, special master, trustee, assignee, or other similar representative thereof.
- OWNER:** Includes a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:
- A. All or part of the legal title to the property; or
  - B. All or part of the beneficial ownership and a right to present use and enjoyment of the premises.
- PERSON:** Includes an individual or organization, except the city.
- POTABLE WATER:** Water which has sufficiently low concentrations of microbiological, inorganic chemical, organic chemical, radiological or physical substances so that individuals drinking such water at normal levels of consumption will not be exposed to disease organisms or other substances which may produce harmful physiological effect.

8-1-1

8-1-3

**REDUCED PRESSURE PRINCIPLE BACKFLOW PREVENTION DEVICE (PR DEVICE):**

A device for preventing backflow which has two (2) check valves; a differential relief valve located between two (2) check valves; two (2) shutoff valves, one on the upstream side and the other on the downstream side of the check valves; and four (4) test cocks for checking the water tightness of the check valves and the operation of the relief valve.

**SERVICE CONNECTION:** The piping connection by means of which water is conveyed from a distribution main of a public water system to a customer's premises.

**SUPERVISOR:** City public works supervisor, and includes authorized personnel and employees of the city public works department.

**WATER METER OR METER:**

Includes the corporation cock, meter, meter box and lid.

**WATER USER:**

Includes an individual or organization, or both, who receive or use city water service, and a property owner whose property is connected to city water.

**WATERWORKS SYSTEM:** Includes city water wells, pumping equipment, distribution lines, fire hydrants, meters and all other appurtenances. (Ord. 104, 6-10-1986)

**8-1-2: ADMINISTRATION:**

- A. **Public Works Supervisor:** The supervisor shall have charge of the maintenance and operation of the water supply, pumping equipment, distribution system, fire hydrants, meters and all other appurtenances of the waterworks system, under the supervision and direction of the mayor. The supervisor shall oversee all extensions and alterations of the waterworks system which are authorized by the city council. The supervisor shall also be responsible for the reading of all water meters and shall report to the city recorder on all monies due the city for all deposit fees and charges made for water service and connections.
- B. **City Recorder:** The city recorder shall be responsible for the collection of water bills, deposits and fees. All revenues therefrom shall be accounted for in the manner required by the city charter and the city council and shall be deposited regularly and accounted for in a manner which separates all water sales income from water deposit income and establishes an account for a water reserve fund account which shall be separate from all other funds and deposits of the city. (Ord. 104, 6-10-1986)

**8-1-3: APPLICATION FOR SERVICE:**

- A. **Connection To Water Main:**

1. Before connecting to any water main, application for permission must be made in writing by the owner of the premises to be served, or the owner's authorized representative, to the city. The application shall be in such form as shall be from time to time prescribed by the city.
  2. By submitting an application, the applicant agrees to be bound by the terms of this chapter and amendments and all reasonable rules and regulations as shall be promulgated by the city in implementation of this chapter.
  3. The city reserves the right to specify what size of meter will be required for the proposed use in the area for which it is intended.
- B. **Opening Water Account:** Application for water service shall be made at city hall by or on behalf of the person requesting water and water service. Persons receiving water and water service are deemed bound by the terms of this chapter and amendments and all reasonable rules and regulations as shall be promulgated by the city in implementation of this chapter.
- C. **Implied Consent; Discontinuance Of Service Without Notice:**
1. **Discontinue Service Without Notice:** Any person using water from the city waterworks system shall thereby be deemed to have consented and agreed to the terms and provisions of this chapter and to have acknowledged the right of the city to discontinue water service without notice in the event of failure to make timely payment of all rates and charges or to otherwise comply with the provisions of this chapter or regulations to implement this chapter.
  2. **Implied Consent By Owner:** The owner of any property served by water from the city waterworks system shall be deemed to have consented and agreed to the terms and provisions of this chapter and to have acknowledged the right of the city to discontinue water service without notice in the event of failure to make timely payment of all rates and charges, although the charges may have been incurred by someone else on or for the property, or to otherwise comply with the provisions of this chapter or regulations to implement this chapter. (Ord. 104, 6-10-1986)

8-1-4:           **SERVICE CONNECTIONS:**

- A. **Single-Family Residences And Multiple Dwelling Units:** All single-family residences shall have one service connection and a water meter. All multiple dwelling units, including apartments and motels, shall have a separate service connection and water meter for each unit. If requested by the owner and approved by the city council, the owner of a multiple dwelling containing five (5) or more units may have only one water meter.
- B. **Commercial:** All commercial water users shall have a water meter for each user, provided that if any owner of any building divides or separates the building so as to provide a separate place for a business, each business place will have a separate water meter. The owner of a structure in which water is provided through a single water meter shall be

liable for all water supplied to the building. If a use is changed in a commercial structure, a water meter shall be required for the new use. If requested by the owner and approved by the city council, the owner of a commercial building containing two (2) or more separate water users or business places may have only one water meter.

- C. Requests For Exceptions: Exceptions provided by subsections A and B of this section shall only be made by resolution of the city council stating the reasons therefor. The person requesting the exception shall pay for all expenses in connection with the city council's review of the request, including, but not limited to, city attorney fees, staff time, engineering fees, any materials and other related costs, whether or not the request is granted. The expenses of review may be added to the person's water billing and collected in the same manner as water rates and charges. (Ord. 104, 6-10-1986)
- D. New Water Service Prohibited To Property Outside City<sup>1</sup>:
1. Prohibited Connections: No person shall allow, provide, or permit any new connections, for, to, or on, any property outside the corporate limits of the city, to or upon any water main owned or operated by the city. Service to facilities owned or operated by the city are excepted.
  2. Nonexpansion Of Existing Connections And Services: No expansion or conversion of use will be allowed or permitted with any existing services currently provided outside the city limits. For example: Where a service is provided to a single-family dwelling, the service may not be used to serve an additional single-family dwelling, the use may not be converted from residential to commercial, a mobile home park may not expand the number of units served within the park.
  3. Payment Of Fees: The council shall, by resolution, establish fees for the use of water service outside the city limits. Such fees shall be in excess of fees charged for users of the same service within the city limits. Payment of the fees so established will preserve the right of the customer to receive water service. Failure to pay when due, any charge established by resolution for use of water service outside the city, shall be a violation of this subsection.
  4. Disconnection Of Service: Violation of any provision of this subsection is cause for disconnection of service. Once disconnected, no service shall be reconnected without a public hearing before the city council to demonstrate why it would be in the interest of the city to reestablish service. (Ord. 156-05, 10-11-2005)

8-1-5: **SERVICE PIPES AND EXTENSIONS OF WATER MAINS:**

- A. Installation: Service pipes of all sizes between the water main and the water meter shall be of the type and material specified by the supervisor. Service pipes from the water meters to the property line and within the premises shall be of schedule 40 PVC or better. Pipes of a better grade of material may be used, subject to the approval of the supervisor. Service pipes between the water main and the water meter shall be installed and maintained by the city, except where the meter is located at a distance from the water

main further than the property line, in which event arrangements shall be made as to the cost of the extra length of line.

- B. Extension: Extension to the water mains of the water system may be made by any one of the following methods, in addition to the procedures provided in this chapter or other ordinances of the city:

1. Payment Methods:

a. By the person requesting the water main paying the entire cost. The water main shall be conveyed or transferred to the city with the necessary easements, and shall meet the following requirements:

(1) The size, grade, and location of such main shall provide for anticipated future development of the property in the adjacent area, and for the connections which such development may generate.

(2) Where the main passes through private property, a twenty foot (20') easement and right of way shall be granted to the city for the maintenance, operation, and repairing of such main and for all water line purposes necessary or reasonably incident to the uses and purposes thereof, including any connections to the water system of the city, but not limited thereto.

b. A special connection charge (in addition to the service connection fee) may be charged to those connecting to the water main or line who did not share in the cost of its installation and used to reimburse the person or persons who paid for its installation. The special connection charge should be equal to the proportionate share of the total cost of the water main extension which reflects the benefits to each property which may be connected to the line or main, based on the square footage of the properties.

2. Petitioning City Council:

a. By petitioning the city council to extend the city water main in a manner to be financed as described hereafter. When considering such extension to the city water system, the city council shall have before it a report of:

(1) The total cost of installing the main of a design and capacity sufficient to serve the needs of the anticipated future development of the property and adjacent area, and for the connections which such development may generate.

(2) The proportionate share of such total cost which shall reflect the benefits to each property which may be connected to the line or main, such proportionate costs to be determined in the same manner as for a local improvement, as provided by the local improvement ordinance.

b. At such time as the city council determines that a water main shall be installed by the manner herein described, and when appropriations thereof have been budgeted, all costs for such water main shall be financed by the water fund. A special connection

charge (in addition to the service connection fee) equal to the proportional benefits, as above described, shall be paid into the water fund, together with an annual interest charge of not less than twelve percent (12%) per annum or the Oregon Bank prime rate, plus two percent (2%), whichever is greater, beginning on the date on which construction of such main was completed, by each property owner requesting to be connected to the water system. (Ord. 104, 6-10-1986)

8-1-6: **WATER METERS:**

- A. **Installation, Care And Custody Of Water Meters:** Water meters will be furnished and installed by the city, and the expense of installation will be included in the service connection fee. The water user will have custody of the water meter, but the water meter will remain the property of the city. There is hereby created the relationship of bailor and bailee between the city and the water user in regard to the care and custody of the water meter.
- B. **Repairs:** The water user shall be liable for any adjustments, repairs or replacement of a water meter or other equipment or property owned by the city which is caused by an act of the water user or tenants, agents, employees, contractors, licensees, permittees or family members of the water user, including the breaking or destruction of seals and locks on or near a water meter. If a water meter is damaged from hot water from the water user's line, the water user shall be required to pay for the cost of repairs of the water meter and for the loss of revenue occasioned by the damage, and shall immediately make the necessary corrections in the water user's water lines to prevent further damage to the water meter.
- C. **Malfunctioning Water Meters:** In case of damage to a meter, its stoppage or imperfect operation, the water user shall give immediate notice to the city. If any water meter malfunctions or fails to register not due to the fault of the water user, the water user will be charged, as determined by the supervisor to be the fairest of either: 1) the consumption rate for the same period of the previous year; or 2) the average monthly consumption rate as shown by the water meter over a period of three (3) months when the meter was accurately registering.
- D. **Inspection And Testing:** The supervisor may inspect and test water meters at any time. If a water user requests inspection and testing of a water meter, a testing fee shall be paid in advance. If the water meter is found to be inaccurate according to the standards of the American Water Works Association, a water meter will be substituted, the water bill for the preceding billing period shall be adjusted as set out in subsection C of this section and the water meter accuracy test fee refunded.
- E. **Accessibility To Water Meters:** The water user shall keep the water meter and appurtenant area free from obstruction or debris in, on or around the same, and accessible at all times, for the purpose of turning on and turning off water, reading, inspecting or repairing the water meter.



8-1-6

8-1-7

- F. **Keeping Water Meters From Freezing:** The water user shall take all necessary precautions to keep the water meter from freezing. If the water user fails to keep the water meter from freezing, the water user shall be charged with the cost of repairing any damage which may result from such failure.
- G. **Keeping Water Meter Areas Safe:** The water user shall keep the water meter box and appurtenant area in a safe condition and shall be responsible for any repair to the water meter and appurtenances or property damage or personal injury to third persons. In addition, the water user shall hold the city harmless and indemnify it against any claims by third persons. The city hereby creates a right of action in third persons injured as a result of a water user's failure to properly maintain the water meter box and/or appurtenant area.
- H. **Use Of Water Meters:** All water furnished by the city to any property with a water meter must pass through the water meter.
- I. **Meter Sizing:** All meters shall be sized and a basis for sizing shall be as follows:
  1. Three-fourths inch ( $3/4$ " ) or one inch (1") meter for single residence, commercial, duplex or small auto court (2 or 3 units).
  2. One inch (1") meter for a triplex, fourplex or under a demand requirement of not more than seven (7) cubic feet per minute.
  3. One and one-half inch ( $1\frac{1}{2}$ " ) meter for five (5) units based upon the demand requirement of not more than thirteen (13) cubic feet per minute.
  4. Flows over thirteen (13) cubic feet per minute shall have a meter sized according to applicable design standards and approved by the supervisor. (Ord. 104, 6-10-1986)

8-1-7: **WATER USER SERVICE LINES:**

- A. **Installation:** The service line from the property line shall be installed and properly maintained by the water user. All service pipes and all water pipes in all premises shall be installed in accordance with the plumbing code of the state of Oregon and the city.
- B. **Connection To Water Meter Or Upon Premises:** Before any attachment or connection is made between the water meter and the water user's service line, permission shall be obtained from the supervisor, and the work shall be performed at the expense of the water user. All connections or attachments to the water meter or upon the premises shall be in accordance with the plumbing code of the state of Oregon and the city.
- C. **Ground Wire Attachments:** The water user shall be liable for any damage to city property caused by electrical ground wire attachment to any plumbing.
- D. **Leaky Plumbing:** Water may not be furnished where there are defective or leaking faucets, water closets or other fixtures, or where there are water closets or urinals without

self-closing valves, or tanks without self-acting float valves, and the water supply may be shut off. (Ord. 104, 6-10-1986)

**8-1-8: WATER RATES AND CHARGES:**

- A. Set By Ordinance; Services Listed: Water rates, charges, deposits and water service fees shall be set by ordinance of the city and reviewed by the city council at least once annually.
- B. Adjustment Of Rates: Water rates shall not be decreased during any period that bonds issued pursuant to the water improvement project of 1986 are outstanding.
- C. Special Water Meter And Service Hookup Fees:
  1. A special rate for service will be established during the water improvement project 1986 and ending twelve (12) months after completion, but extending no later than June 30, 1988. This will address the installation of water meters: i.e., meter, meter setter with locking corporation cock, tapping saddle with shutoff, and water lines to the property line, and meter box with cover.
  2. During this period, the cost for a new service will be the cost of the materials to the city and will vary only with the size of the meter/meter setter installed. Arrangements will be available to handle low/moderate income persons which will cover up to two hundred dollars (\$200.00) for line installation from the property line to the residence.
- D. Service Connection Charge: Installation of water meters and service lines to properties previously unserved will be performed by the city through its water department or designated contractor.
- E. Damages To City Property Collected As Water Rates And Charges: Wherever this chapter provides for liability for any damage or repairs to city property by any water user, the amount of damages or repairs may be added to the water user's bill and collected in the same manner as water rates and charges. (Ord. 104, 6-10-1986; amd. 2008 Code)

**8-1-9: COLLECTION OF WATER RATES AND CHARGES<sup>2</sup>:**

- A. Application Fee; Water And Sewer Deposit: Any person for whom an account is opened shall pay an application processing fee to cover administrative costs at the same time of opening an account. Each application for use of city water and sewer service shall be accompanied by a deposit which shall be held by the city to be applied toward any unpaid water and sewer charges due from the applicant. If the account is closed, the amount of such deposit shall be returned to the applicant; provided, that the applicant is not in arrears in water and sewer. In that event, the amount, if any, over and above such arrearage for amount due the city shall be returned to the applicant. If the applicant is the owner of the property connected to water service, the deposit may be returned after the expiration of three (3) years from the date of deposit if there has been no history of delinquency in payment of water and sewer charges.

- B. **Water And Sewer Bills Combined:** All bills for water shall be prepared each month at the same time bills for sewage services are prepared and shall be collected as a combined bill for water and sewage service.
- C. **Billing To Premises:** All water service charges shall be mailed to the premises where water service is furnished unless the property owner requests, in writing, that the bill be submitted to another address.
- D. **Due Date And Place Of Payment:** All water bills for each month shall be due and payable on the twentieth day of the month. All water bills shall be paid at city hall in the city in person or by mail.
- E. **Appeals:** Any person wishing to challenge a water billing may appeal to the city recorder before the water service is suspended. Service will not be suspended during the pendency of an appeal if the water user pays the amount of any water billing not in dispute and the delinquency fee, if the amount not in dispute is twenty (20) days past due.
- F. **Delinquency Fee:** All bills unpaid after the twentieth of each month shall be considered delinquent and a delinquency fee shall be assessed.
- G. **Notice Of Delinquency And Suspension Of Water Service:** After the twentieth of each month, notification shall be given as provided in subsection C of this section that the water bill and delinquency fee must be paid within five (5) days or water service to the property will be suspended. If the water service is turned off, the water bill, delinquency fee, and the expense of reconnecting the service shall be paid in full before water service is restored.
- H. **Notice Of Delinquency To Owner:** If a water bill is delinquent, then a copy of the delinquency notice may be mailed to the property owner when the delinquency notice is mailed, if the owner has provided his or her address to the city recorder.
- I. **Duty To Disconnect Water Service:** It shall be the duty of the city recorder to notify the supervisor of any water user whose bill is outstanding after the deadline in subsection G of this section, and the supervisor shall proceed immediately to disconnect the water service, unless the city recorder has postponed the suspension of water service.
- J. **Water Charged To Other Premises Of User:** All charges for furnishing water within the city and also to premises outside the city shall be chargeable to the water user of said water at the premises or any former premises where water service was supplied. Where the water user has a delinquent bill for one premises, that delinquency shall be charged against the water user for water obtained at any other premises or source served by the city.
- K. **Water Charge Liens:** Water service charges shall be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the city pertaining to its water system, and such ledger records or other records shall be available for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for water service remains unpaid sixty (60) days after it has

been rendered, the lien thereby created may be foreclosed in the manner provided for by Oregon Revised Statutes 223.610, or any other manner provided by law or city ordinance.

- L. **Property Owner Responsibility For Payment Of Bills:** The property owner shall be responsible for payment of all water service charges. If the property is rented and the renter fails to pay the charges within sixty (60) days after they are due, the city shall submit the bill to the property owner.
- M. **Low Income Rate:** For relief of those residents who are experiencing a financial hardship, an application for the low income rate may be made to the city. The city recorder will evaluate requests and make recommendations to the city council.
- N. **No Rate Adjustment For Leaky Plumbing:** No water charges will be adjusted for any water registered by meters that may leak or waste through the plumbing or fixtures of the water user.
- O. **Outside City Water Rates:** The city may furnish water to places outside the city limits if it does not affect the city's supply, and the city council may set different rates therefor.
- P. **Exemption For Water Users Installing Shutoff Valve:** A turnoff and turnon fee will not be charged the water user if one of the purposes for turning off the water was installation of a shutoff valve between the water meter and the premises. This is a one time exemption that runs with the property and shall only be allowed once.
- Q. **Payment Dates Becoming Due On Nonbusiness Days:** If the last day for making a payment falls due on a day when city hall is closed before the end of or for all of the normal workday or on any legal holiday, Saturday or Sunday, the payment may be made until the close of business hours on the next day that city hall is open for business.
- R. **Delay Of Termination Of Water Service:** Any person faced with immediate discontinuance of water service, who is unable to pay by reason of an emergency situation in which:
  1. The discontinuance would cause severe hardship to persons other than the individual unable to pay;
  2. The emergency is a situation that will be resolved in a period of less than thirty (30) days from the delinquency billing date; and
  3. The emergency is one which will be unlikely to recur;

may request the city recorder to postpone the cut off date. The city recorder may postpone the discontinuance of service for a period not to exceed thirty (30) days from the delinquency billing date. Any person for whom termination of service has been delayed shall be required to pay the applicable fees in subsections F and G of this section.
- S. **Right To Reject Payments Because Of Indecent Matters:** The city may reject payment for any water bill upon which or upon the envelope or outside cover of which are any

delineations, epithets, terms, or language of an indecent, lewd, lascivious, or obscene character are printed or written or otherwise impressed or apparent.

- T. Interest From Deposits: The city recorder is authorized to invest deposits held by the city in interest bearing accounts. The interest that accrues shall be retained by the city recorder and deposited in the water fund account.
- U. Unclaimed Deposits: Deposits received as security for the payment of water and sewer which remain unclaimed for a period of two (2) years after an account is closed may be transferred to the water fund account. (Ord. 104, 6-10-1986)

8-1-10: **DISCONTINUANCE OF SERVICE BY PROPERTY OWNER:**

- A. Request For Discontinuance: Any property owner desiring to discontinue the use of water must make application therefor at city hall not less than two (2) days before the date on which the service is desired to be discontinued. Upon payment of the turnoff fee and the water bill to date, all charges for water will cease after the effective date of discontinuance for the period during which the service is to be shut off. Water service shall not be returned to the premises until the turnon fee is paid.
- B. Property Owner Liable For Repairs: Any repairs or adjustments made necessary to the water meter for lack of use by water service being discontinued shall be charged and collected from the owner of the premises and may be added to the water bill and collected in the same manner as water rates and charges. (Ord. 104, 6-10-1986)

8-1-11: **RESPONSIBILITY FOR SERVICE:**

- A. Nonliability Of City: The city shall not be liable for high or low pressure connections, chemical, bacteriological or physical conditions, interruptions, or shortage or insufficiency of supply or any loss or damage occasioned thereby. The use of water upon the premises of the water user shall be at the risk of the water user, and the responsibility of the city shall cease at the point of delivery of water. The point of delivery shall be at the water user's side of the water meter, or in case of privately owned water lines, the point of delivery shall be at the end of the city's service line.
- B. Reductions In Supply: The city may prohibit, reduce or restrict the use of water for any purpose; such regulation is within the police power and is a precautionary measure to promote the health and safety of the inhabitants of the city. If a shortage of water shall exist, the city recorder or supervisor shall have authority at any time to restrict the use of water. The city may give preference in the matter of furnishing service to water users as in its judgment shall be for the best interest of the city from the standpoint of public convenience or necessity.
- C. Interruptions In Service: Water may at any time be shut off from the mains for repairs or other necessary purposes. When this is done, the supervisor will try to give timely notice to water users affected thereby and will, so far as practicable, attempt to prevent inconvenience and damage arising from the shutting off of water. But, failure to give

notice shall not render the city responsible or liable for damages or any inconvenience, injury or loss which may result therefrom. (Ord. 104, 6-10-1986)

8-1-12: **ACCESS TO PREMISES:**

A. Reasonable Access: The supervisor or authorized agent shall have free access at all reasonable hours to inspect any premises supplied with water. No person shall refuse access to any premises for such purpose.

B. Twenty Four Hour Notice If Refused: If admission is refused or delayed, or if inspection is in any way hindered, in the opinion of the supervisor, water may be turned off to the premises after giving twenty four (24) hours' oral notice to any occupant of the premises fourteen (14) years of age or older, or three (3) days' written notice by mail to the water user. (Ord. 104, 6-10-1986)

8-1-13: **PROHIBITED ACTS:**

A. General Prohibitions: It shall be unlawful for any person, firm or corporation, not authorized by the city, to do, commit or assist in committing any of the following things or acts:

1. To open or close any fire hydrant, valve or other apparatus connected with the waterworks system of the city or lift or remove the cover of any gate, meter, valve, shutoff or other apparatus thereof.

2. To interfere with, destroy, deface, impair, injure or force open any gate, or door, or in any way whatsoever destroy, injure or deface any part of any pump house, reservoir, standpipe, tank, building or buildings, or appurtenances, fences, trees, shrubs, or fixtures or property appertaining to the waterworks system.

3. To go in, upon, descend or ascend the stairway or steps of any water storage tank, reservoir, or standpipe of the waterworks system.

4. To place any telegraph, telephone, electric light pole or any obstruction whatsoever within three feet (3') of any fire hydrant.

5. To resort to any fraudulent device or arrangement for the purpose of procuring water for himself or others from private connections on premises contrary to the city regulations or ordinances.

6. To interfere with or injure any reservoir, tank, fountain, hydrant, pipe, cock, valve, or other apparatus pertaining to the waterworks system, or to turn on or off the water in any street hydrant or other public water fixture or to hitch or tie any animal thereto.

7. To make or permit to be made any connection with the main or service pipe of the waterworks system, or to turn on or use the water of said system without first obtaining a permit therefor.

- 8. To cover over or conceal from view any water valve box, service or meter box.
- 9. To remove any water meter that has been placed by the city, or to in any manner change, interfere with or tamper with any water meter.
- 10. To turn on the water supply to any building or to any supply pipe where the supply has been turned off by the city.
- 11. To install, maintain or use any water siphon or injector type pump operation for drainage purposes which uses the water supply from the city's distribution system.

B. Water User Prohibitions: It shall be unlawful for any water user to do, commit or assist in committing any of the following:

- 1. To allow any obstruction or debris to accumulate on or near any water meter box.
- 2. To allow any debris to accumulate in any water meter box more than six inches (6") below the water meter, except during the months of November, December, January and February.
- 3. To pay any water bill upon which payment, or upon the envelope or outside cover of which, are any delineations, epithets, terms, or language of an indecent, lewd, lascivious, or obscene character are printed or written or otherwise impressed or apparent.
- 4. To receive or use water through the water user's service line after water service has been turned off by the supervisor and before water service is restored by the supervisor. (Ord. 104, 6-10-1986)

8-1-14:                   **RESPONSIBILITY FOR WATER USER EQUIPMENT:** The water user shall, at his or her own risk and expense, furnish, install and keep in good and safe condition all equipment that may be required for receiving, controlling, applying and utilizing water, and the city shall not be responsible for any loss or damage caused by improper installation of such equipment, or the negligence, want of proper care or wrongful act of the customer or any of his tenants, agents, employees, contractors, licensees or permittees in installing, maintaining, using, operating or interfering with such equipment. Further, the city shall not be liable for damage to property caused by spigots, faucets, valves, water heaters or other equipment that are open when water is turned on or off at the meter or curb stop, either when the water is turned on originally or when turned on after a temporary shutdown. (Ord. 104, 6-10-1986)

8-1-15:                   **CROSS CONNECTION CONTROL REQUIREMENT:**

- A. Identifying Cross Connections: The supervisor shall identify and evaluate the premises where potential cross connections exist.
- B. Discontinue Service: Where the supervisor has reasonable cause to believe that an existing or potential cross connection is located on the water user's premises, the supervisor shall deny or discontinue service to those premises until an appropriate backflow prevention device is installed or until the cause of the hazard is eliminated.

- C. **Water User To Notify Supervisor:** Whenever a water user obtaining water from the waterworks system treats the water in any way or adds any chemical or substance to the water, the water user shall immediately notify the supervisor.
- D. **Installation Of Backflow Prevention Devices:** Backflow prevention devices for protecting the waterworks system shall be installed on the service connection to the premises where:
1. There is an auxiliary water supply which is, or can be, connected to the potable water piping.
  2. There is piping for conveying liquids other than potable water, and where the piping is under pressure and is installed and operated in a manner which could cause a cross connection.
  3. There is intricate plumbing which makes it impractical to ascertain whether or not cross connections exist.
  4. There is a back siphonage potential.
  5. All backflow devices shall be installed in accordance with the American Water Works Association standards.
- E. **Type Of Backflow Prevention Device:** The type of backflow prevention device required under subsection D of this section shall be commensurate with the degree of hazard which exists:
1. An approved air gap of at least twice the inside diameter, but not less than one inch (1"), of the incoming supply line measured vertically above the top rim of the vessel, or an approved reduced pressure (RP) device shall be installed where the substance which could backflow is hazardous to health. Examples: sewage treatment plants, sewage pumping stations, chemical manufacturing plants, plating plants, hospitals, mortuaries, car washes, medical clinics.
  2. An approved double check valve assembly shall be installed where the substance which could backflow is objectionable, but does not pose an unreasonable risk to health.
  3. An approved pressure vacuum breaker or an atmospheric vacuum breaker shall be installed where the substance which could backflow is objectionable but does not pose an unreasonable risk to health and where there is no possibility of back pressure in the downstream piping. A shutoff valve may be installed on the line downstream of a pressure vacuum breaker but shall not be installed downstream of an atmospheric vacuum breaker.
  4. All backflow prevention devices required under this section shall be of a type and model approved by the supervisor or the Oregon health division. The city shall maintain a list of backflow prevention devices approved for use in Oregon.
- F. **Testing And Inspection Of Backflow Prevention Devices:**



1. The water user, where one or more reduced pressure device, double check valve assembly, or pressure vacuum breaker has been installed, shall have the device tested at least once per year. Backflow prevention devices found not to be functioning properly shall be promptly repaired by the water user or the city may deny or discontinue service as provided in subsection B of this section.

2. Backflow prevention devices installed before the effective date hereof which were approved at the time they were installed, but are not on the current list of approved devices maintained by the Oregon health division, shall be permitted to remain in service, provided they are properly maintained, are commensurate with the degree of hazard, are tested at least annually, and perform satisfactorily. When devices of this type are moved, or require more than minimum maintenance, they shall be replaced by devices which are on the Oregon health division list of approved devices. (Ord. 104, 6-10-1986)

8-1-16: **PENALTY; ADDITIONAL REMEDIES:**

A. Violation; Penalty: Any person violating subsections [8-1-3A](#), [8-1-7B](#), and [8-1-13B](#) of this chapter commits a violation, punishable by a fine of not more than two hundred fifty dollars (\$250.00). Each day that a violation continues is a separate offense.

B. Additional Remedies:

1. Money Judgment: In addition to the penalties provided in subsection A of this section, the city may sue in a court of competent jurisdiction to obtain a judgment for any fee due under this chapter and enforce collection of judgment as allowed by law.

2. Injunction: The city may seek an injunction to prohibit a person engaged in any activity regulated by this chapter without first complying with it.

3. Attorney Fees And Costs: In any civil action authorized by this subsection, if the city prevails, it shall be entitled to recover its reasonable attorney fees to be set by the court in addition to its costs and disbursements. These fees are recoverable at all levels of trial and appeal. (Ord. 104, 6-10-1986)

[Footnote 1](#): See also subsection [8-2-4S](#) of this title.

[Footnote 2](#): See also section [8-2-9](#) of this title.

CHAPTER 2

SEWER SERVICE RATES AND REGULATIONS

SECTION:

- 8-2-1 Definitions
- 8-2-2 Use of Public Sewers Required
- 8-2-3 Private Sewage Disposal
- 8-2-4 Service Connections
- 8-2-5 Sewer User Charges
- 8-2-6 User Classes
- 8-2-7 User Fees
- 8-2-8 Review and Revision of Rates; Notification
- 8-2-9 Collection of Sewer Rates and Charges
- 8-2-10 Appeals
- 8-2-11 Access to Premises
- 8-2-12 Prohibited Acts
- 8-2-13 Fees, Rates and Charges
- 8-2-14 Gravity Connections and Septic Tanks
- 8-2-15 Penalty; Additional Remedies

8-2-1: **DEFINITIONS:** For purposes of this chapter, the following mean:

**BOD (BIOCHEMICAL OXYGEN DEMAND):** The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees Celsius (20°C), expressed in milligrams per liter.

**BUILDING DRAIN:** That part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning five feet (5') outside the building wall.

**BUILDING SEWER:** That part of the horizontal piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to the public sewer, individual sewage disposal system, or other point of disposal.

CHURCH:	Any facility established as a place for religious worship and meetings for the public.
CITY:	The city of Irrigon.
COMMERCIAL USER:	Any premises used for commercial or business purposes which are not an industry as defined in this chapter.
DOMESTIC WASTE:	See definition of Sewage.
EASEMENT:	The right of the city to use the real property of another to construct, operate and maintain the public sewerage system.
GARBAGE:	Solid wastes from the preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.
INDUSTRIAL WASTES:	The liquid wastes from industrial processes as distinct from domestic waste.
NATURAL OUTLET:	Any outlet into a watercourse, pond, ditch, lake, or other body of surface or ground water.
OPERATION AND MAINTENANCE:	<p>Activities required to ensure the dependable and economical function of collection and treatment works.</p> <p>A. Maintenance: Preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance, and replacement of equipment.</p> <p>B. Operation: Control of the unit processes and equipment that make up the collection and treatment works. This includes keeping financial and personal management records, laboratory control, process control, safety and emergency operation planning, employment of attorneys and consultants, payment of court costs; and payment of any costs or fees reasonably associated with any of the above.</p>
PERMANENT DWELLING UNIT:	Any permanent housing unit with sanitary and kitchen facilities designed to accommodate one or more residents. It shall include mobile homes and trailers that are not located in established commercial mobile home parks or trailer parks recognized by the city.

- PERSON:** Any individual, firm, company, association, society, corporation or group.
- pH:** The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
- PREMISES:**
- A. A building or group of buildings occupied by a family unit or business entity and used for residential, business or commercial purposes; or
  - B. A building or group of buildings used and operated as a hospital, educational or religious institution; or
  - C. A separate dwelling unit within a structure designated for multi-family occupancy; or
  - D. A building containing areas and spaces separately rented to tenants; or
  - E. A single tract of land upon which areas are rented for occupancy by mobile homes used for residential purposes; or
  - F. A tract of land used for park, playground or recreational purposes; or
  - G. Any other structure or structures, public or private occupancy of which produces sewage and requires sewerage system service.
- PUBLIC BUILDING:** Any city, county, state or federal public facility such as city hall, city shop, U.S. post office, etc.
- PUBLIC SEWER:** A sewer in which all owners of abutting properties have equal rights and is controlled by public authority. The public sewer includes all appurtenances up to and including the septic tank. The public sewer ends at the inlet of the septic tank<sup>1</sup>.
- PUBLIC TREATMENT WORKS:** A treatment works owned and operated by the city.
- REPLACEMENT:** Obtaining and installing equipment accessories or appurtenances that are necessary during the design or useful life, whichever is longer, of the collection and treatment works to maintain the capacity and performance for which such works were designed and constructed.

- STEP SYSTEM (SEPTIC TANK EFFLUENT PUMPING SYSTEM):** The same as the STE system, except that it requires a pump that is owned, operated (except for the electrical service) and maintained by the city.
- SANITARY SEWER:** A sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.
- SEPTIC TANK EFFLUENT SYSTEM OR STE SYSTEM:** A gravity septic tank effluent system that is owned, operated, and maintained by the city. It is installed on private property under an easement to the city. The tank and easement are required as a condition for service to pretreat wastewater. Only septic tank effluent may be delivered to a street sewer.
- SERVICE AREA:** All the area served by the treatment works and for which there is one uniform user charge system.
- SERVICE CONNECTION:** That portion of the public sewer downstream of the building sewer, including the septic tank system and effluent piping to where it connects to the street sewer. A service connection is part of the public sewer system.
- SEWAGE:** Water carried human wastes, including kitchen, bath and laundry wastes, from residences, public buildings, commercial business buildings, and institutional establishments, together with such ground water infiltration and surface waters as may be present.
- SEWAGE TREATMENT PLANT:** An arrangement of devices and structures used for treating sewage. "Treatment works" shall be an equivalent term for "sewage treatment plant".
- SEWAGE WORKS:** All city owned facilities for collecting, pumping, treating, and disposing of sewage.
- SEWER:** A pipe or conduit for carrying sewage.
- SHALL/MAY:** "Shall" is mandatory; "may" is permissive.
- STORM SEWER:** A pipe or conduit which carries storm and surface waters and drainage, but excludes sewage and industrial wastes.
- STREET SEWER:** A common sewer owned by the city or a public sewer.
- SUSPENDED SOLIDS:** Solids that either float on the surface or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

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- TENANT:** A person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority. This term also includes "lessee".
- TREATMENT WORKS:** All facilities for collecting, pumping, treating and disposing of sewage. "Treatment system", "sewerage system" and "sewage treatment plant" shall be equivalent terms for "treatment works".
- USER:** Every person whose premises are connected to any part of the public treatment works of the city.
- USER CHARGE:** The periodic charges levied on all users of the public treatment works, and shall, at a minimum, cover each user's share of the cost of operation and maintenance (including replacement).
- WATERCOURSE:** A channel in which a flow of water occurs, either continuously or intermittently. (Ord. 115, 9-12-1989)

**8-2-2: USE OF PUBLIC SEWERS REQUIRED:**

- A. **Unlawful Deposit Of Garbage Or Waste:** It shall be unlawful for any person to place, deposit, or permit to be deposited in an unsanitary manner upon public or private property within the city, or in any area under the jurisdiction of the city, any human excrement, garbage, or other objectionable waste.
- B. **Unlawful Discharge Into Natural Outlet:** It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, any sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.
- C. **Unlawful Disposal Of Sewage:** Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, cesspool, or other on site sewage disposal facility intended or used for the disposal of sewage within the corporate limits of the city, or in any area under the jurisdiction of the city.
- D. **Required Connection And Installations:** The owner of any premises situated within the city limits shall connect to the city sewerage system if and when a public sewer main line is installed within two hundred feet (200') of the property. Each owner is hereby required to have installed an STE or STEP system approved by the city on the property to be served and to connect such facilities directly with the street sewer in accordance with the provisions of this chapter within sixty (60) days after the date of official notice to do so. (Ord. 115, 9-12-1989)

**8-2-3: PRIVATE SEWAGE DISPOSAL:**

8-2-3

8-2-4

- A. **Compliance With DEQ:** Where a public sanitary sewer is not available under the provisions of subsection [8-2-2D](#) of this chapter, the building sewer shall be connected to a private sewage disposal system complying with the requirements of the Oregon department of environmental quality.
- B. **Abandonment:** At such time as a public sewer becomes available to a property served by a private sewage disposal system as provided in subsection [8-2-2D](#) of this chapter, a connection shall be made to the public sewer in compliance with this chapter, and any on site sewage disposal system shall be abandoned and filled with suitable materials, unless the city shall otherwise permit. Such abandonment shall be undertaken in accordance with rules established by the Oregon department of environmental quality and environmental quality commission.
- C. **General Law:** The provisions of this chapter shall be in addition to, and not in derogation of, the requirements of general law. (Ord. 115, 9-12-1989)

8-2-4:

**SERVICE CONNECTIONS:**

- A. **City Authority And Supervision:** No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenances thereto. Only the city may authorize the tapping and installation of public sewers under its supervision.
- B. **Application For Service Connection:** Before connecting to any sewer, application for permission must be made in writing by the owner of the premises to be served, or the owner's authorized representative, to the city. The application shall be in such form as shall be from time to time prescribed by the city. By submitting an application, the applicant agrees to be bound by the terms of this chapter and amendments and all reasonable rules and regulations as shall be promulgated by the city in implementation of this chapter.
- C. **Permit Issuance:** If application is approved and the fees paid as provided, the city shall issue a sewer connection permit specifying the location where the connection is to be made. No permit to connect will be issued by the city if all sewage from the premises is not to be collected and conveyed to the new service connection, or building plumbing does not meet code.
- D. **Implied Consent:**
  - 1. **Discontinue Service Without Notice:** Any person using the city sewer system shall thereby be deemed to have consented and agreed to the terms and provisions of this chapter and to have acknowledged the right of the city to discontinue water or sewer service without notice in the event of failure to make timely payments of all rates and charges and to otherwise comply with the provisions of this chapter or regulations to implement this chapter.
  - 2. **Owner Responsible For Renter Delinquency:** The owner of any property served by the city sewer system shall be deemed to have consented and agreed to the terms and

provisions of this chapter and to have acknowledged the right of the city to discontinue water or sewer service without notice in the event of failure to make timely payment of all sewer rates and charges, although the charges may have been incurred by someone else on or for the property, or to otherwise comply with the provisions of this chapter or regulations to implement this chapter.

- E. Easement: A written easement on a form prescribed by the city to construct, operate, and maintain the system shall be given to the city before permit issuance. It shall be the responsibility of the property owner to keep clean and maintain the building sewer from the building to the connection with the septic tank (or public sewer).
- F. Expenses Borne By Owner: After original installation during construction of the Irrigon sewer system, all costs and expenses incident to the installation and connection of the building sewer and septic tank effluent system shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation.
- G. Separate Building Sewer: For all new buildings, a separate and independent building sewer shall be provided for and from every building to a septic tank effluent system. Where necessary for existing buildings, two (2) or more buildings can share a single septic tank effluent system where a multiservice cleanout (inspection port) is provided for each connection. Each separate and individual building shall pay the applicable fees and charges.
- H. Installation Requirements; Plumbing Code:
  - 1. The building sewer shall be of materials conforming to the uniform plumbing code.
  - 2. For all new buildings, the building drain and building sewer shall conform to uniform plumbing code.
- I. Elevation: Building sewers serving buildings with basements shall, whenever possible, be brought from the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by an approved pump and discharged to the building sewer.
- J. Prohibited Connections: No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or ground water to either building sewer or treatment works.
- K. Notice Of Connection:
  - 1. The applicant for the sewer system connection will notify the city at least two (2) weeks prior to the need for such sewer in order for the city to arrange for the installation.
  - 2. The materials, excavation, and installation of the sewer system by the city or its authorized personnel shall be in accordance with the plans and specifications of the city.



Individual electrical and pump needs will have to be determined for each sewer service connection.

- L. Specifications: The specifications for the installation and connection of the building sewer and septic tank effluent system are outlined in section [8-2-14](#) of this chapter.
- M. Excavations: All excavations required for the installation of a service connection shall be open trench work. Pipe laying and backfill shall be performed in accordance with regulations of the city.
- N. Tight Connections: All joints and connections shall be made gastight and watertight.
- O. Inspection: The applicant for connection to the public sewer shall notify the city office when the service connection is ready for inspection and connection to the public sewer. After final approval of the service connection by the city, the final connection to the public sewer may be made. No permit to connect will be allowed by the city if all sewage from the premises is not to be collected and conveyed to the new service connection. At the option of the city, a one hour internal hydrostatic test may be required on all service connections. All water, plugs, and other facilities for making the test shall be furnished by the applicant. Minimum head over the top of the pipe shall be two feet (2') and maximum allowable leakage shall be one gallon per hour per one hundred feet (100') of installed length.
- P. Notice Of Unsatisfactory Connection: When any work has been inspected and the results are not satisfactory, a written notice to that effect shall be given instructing the owner of the premises, or the agent of such owner, to repair the service connection or other work authorized by the permit in accordance with the rules and regulations of the city. (Ord. 115, 9-12-1989)
- Q. Connection With Septic Tanks; City Responsibility:
  1. The city sewer includes the collection lines, interception lines, and septic tanks with their inlet lines, filters and outlet lines.
  2. The septic tank inlet lines include the portion ahead of the septic tank needed to complete the connection between the building and the septic tank.
  3. The city assumes responsibility for maintenance of the system from point of connection to disposal. (Res. 88-15, 6-13-1989)
- R. Additional Requirements: No statement contained in this section shall be construed to exempt the applicant from obtaining any additional permits and meeting any additional requirements as set forth by the city, county, state, or other governing body. (Ord. 115, 9-12-1989)
- S. New Sewer Service Prohibited To Property Outside City<sup>2</sup>:

1. **Prohibited Connections:** No person shall allow, provide, or permit any new connections, for, to, or on, any property outside the corporate limits of the city, to or upon any public sewer facility owned or operated by the city. Service to facilities owned or operated by the city are excepted.

2. **Nonexpansion Of Existing Connections And Services:** No expansion or conversion of use will be allowed or permitted with any existing services currently provided outside the city limits. For example: Where a service is provided to a single-family dwelling, the service may not be used to serve an additional single-family dwelling, the use may not be converted from residential to commercial, a mobile home park may not expand the number of units served within the park.

3. **Payment Of Fees:** The council shall, by resolution, establish fees for the use of sewer service outside the city limits. Such fees shall be in excess of fees charged for users of the same service within the city limits. Payment of the fees so established will preserve the right of the customer to receive sewer service. Failure to pay when due, any charge established by resolution for use of sewer service outside the city, shall be a violation of this subsection.

4. **Disconnection Of Service:** Violation of any provision of this subsection is cause for disconnection of service. Once disconnected, no service shall be reconnected without a public hearing before the city council to demonstrate why it would be in the interest of the city to reestablish service. (Ord. 156-05, 10-11-2005)

8-2-5: **SEWER USER CHARGES:**

- A. **General:** User charges shall be levied on all premises connected to the public treatment works, which shall cover the cost of operation, maintenance, replacement, debt service and other administrative costs of such treatment works. The user charge system shall distribute these costs in proportion to each user's contribution to the wastewater loading of the treatment works.
- B. **User Classes:** Certain users shall be grouped into classes of users discharging approximately the same volume of wastewater and shall be levied a flat charge which is based on the average flow volume for that class.
- C. **Appeal:** Should any user believe that incorrect assignment to a particular user class has been made, that user may apply for review of user charges as provided in section [8-2-10](#) of this chapter.
- D. **Reassignment Of User:** Should the city determine that a user is incorrectly assigned to a user class, it shall reassign a more appropriate user class to that user and shall notify that user of such reassignment.
- E. **Records:** Records of all assigned user classes shall be kept on file with the city recorder and shall be open for public inspection. (Ord. 115, 9-12-1989)

8-2-6: **USER CLASSES:**

- A. Classes Established: The sewer user charges are hereby established as follows:
1. Class I, Permanent Dwelling Units: Class I services shall include each and every permanent dwelling unit (any housing unit with sanitary and kitchen facilities designed to accommodate one or more residents, multiple housing units, and mobile homes and trailers not located in established mobile home and trailer parks primarily for the use of the residents and their guests).
  2. Class II, Rental Units Of Commercial Mobile Home Parks And Trailer Parks: Commercial mobile home and trailer park units (all rental spaces occupied or vacant in commercial mobile home and trailer parks) shall be grouped as class II services.
  3. Class III, Commercial Business, Public Buildings, Churches And Schools: All commercial businesses, schools, public buildings, churches, and sewer service connections not classified as class I or class II services shall be grouped into class III services. (Ord. 115, 9-12-1989)
- B. New Users And Vacancies: The sewer user charge for all occupied property shall begin sixty (60) days after the sewer service becomes available or the day that connection is made to the public sewer, whichever occurs first. The sewer user charge for all unoccupied property shall begin within thirty (30) days after the property is ready for occupancy or on the first day of occupancy, whichever occurs first. All unoccupied property which is ready for occupancy at the time the sewer service becomes available shall be treated as occupied property. Sewer user charges shall cease when a residence or mobile home park space becomes vacant. A shutoff or turnon charge shall be made for the termination or restoration of service to such residence. Exceptions: Motel units and apartment units are excepted from this relief and remain subject to sewer charges from the first date of permitted occupancy by the building code inspector. RV parks shall pay for all developed spaces. Mobile home courts shall be charged only for rented spaces. Mobile home court owners or operators shall submit verification of rented spaces to obtain relief from charges. (Ord. 115, 9-12-1989; amd. Ord. 115-2, 8-26-1997, eff. retroactive to 8-12-1997)

#### 8-2-7: USER FEES:

- A. Monthly Fees: Monthly user fees for each user class are as provided in section [8-2-13](#) of this chapter. (Ord. 115, 9-12-1989)
- B. Connection Fees: Where sewer service requires the extension of a lateral collector or trunk sewer line, the connection fees shall be based on actual costs. Connection fees for new service connections shall be as provided in section [8-2-13](#) of this chapter. (Ord. 115, 9-12-1989; amd. Ord. 115-1, 6-24-1997)
- C. Delinquency Fee: Interest at the rate of one percent (1%) per month shall accrue on all accounts from the date of delinquency. In addition, a penalty shall be assessed from the date of delinquency which shall be added to the account and shall accrue interest in the same manner as all other delinquent charges beginning the following month. The

delinquency fee for sewer bills will not be assessed if a delinquency fee for the user's water bill has already been assessed.

- D. Inspection Fee: An inspection fee shall be charged for each connection. Such fee will be paid at the time of application for service. (Ord. 115, 9-12-1989)

**8-2-8: REVIEW AND REVISION OF RATES; NOTIFICATION:**

- A. Annual Review: The sewer user charges established in section [8-2-13](#) of this chapter, shall, as a minimum, be reviewed annually and revised periodically to reflect actual costs of operation, maintenance, replacement and financing of the treatment works, and to maintain the equitability of the user charges with respect to distribution of the costs of operation and maintenance in proportion to each user's contribution to the total wastewater loading of the treatment works.
- B. Notification Required: Each user shall be notified, on not less than an annual basis in conjunction with a regular bill, of that portion of the user charges which are attributable to the operation, maintenance, and replacement of the wastewater collection treatment and disposal system. (Ord. 115, 9-12-1989)

**8-2-9: COLLECTION OF SEWER RATES AND CHARGES<sup>3</sup>:**

- A. Application Fee; Water And Sewer Deposit: Any person for whom an account is opened shall pay an application processing fee to cover administrative costs at the time of opening an account. If an applicant is not the owner of the property for which service is being applied, the owner must sign a water/sewer service agreement and agree that if the applicant fails to make payments in accordance with the provisions of this chapter, the bill shall become a charge to the owner of the said premises and a lien upon the real property thereof. Each application for use of city water and/or sewer service shall be accompanied by a deposit which shall be held by the city to be applied toward any unpaid water and sewer charges due from the applicant. If the account is closed, the amount of such deposit shall be returned to the applicant; provided, that the applicant is not in arrears in water or sewer. In that event, the amount, if any, over and above such arrearage for amount due the city shall be returned to the applicant. If the applicant is the owner of the property connected to sewer service, the deposit may be returned after the expiration of three (3) years from the date of deposit if there has been no history of delinquency in payments of water, sewer or garbage charges.
- B. Water And Sewer Bills Combined: All bills for sewer shall be prepared each month at the same time bills for water service are prepared and shall be collected as a combined bill for water and sewer service.
- C. Billing To Premises: The property owner shall be billed for any sewer service provided to any tenant unless an agreement is signed by the owner requesting that the tenant be billed and agreeing to be responsible for any unpaid sewer charges. If the property is rented or leased and the tenant fails to pay the charges within thirty (30) days after they are due, the city shall submit the bill to the property owner.

- D. Due Date And Place Of Payment: All sewer bills for each month shall be due and payable on the twentieth day of each month. All sewer bills shall be paid at city hall.
- E. Appeals: Any person wishing to challenge a sewer billing may appeal to the city administrator before water service is suspended. Service will not be suspended during the pendency of an appeal if the sewer user pays the amount of any sewer billing not in dispute and the delinquency fee, if the amount not in dispute is twenty (20) days past due.
- F. Late Payment: All bills unpaid after the twentieth of each month shall be considered delinquent and a delinquency fee shall be assessed.
- G. Notice Of Delinquency And Suspension Of Water Or Sewer Service: After the twentieth of each month, notification shall be given that the sewer bill and delinquency fee must be paid within five (5) days or water or sewer service to the property will be suspended. If water or sewer service is turned off, the sewer bill, the delinquency fee, and the expense of reconnecting water or sewer service shall be paid in full before water or sewer service is restored.
- H. Notice Of Delinquency To Owner: If a sewer bill of a tenant is delinquent, then a copy of the delinquency notice shall be mailed to the property owner when the delinquency notice is mailed.
- I. Sewer Service Charged To Other Premises Of User: All charges for furnishing sewer service within the city and also to premises outside the city shall be chargeable to the owner or tenant at the premises or any former premises where sewer service was supplied. Where the owner or tenant has a delinquent bill for one premises, that delinquency shall be charged against the owner or tenant for sewer service obtained at any other premises or source served by the city.
- J. Sewer Charge Liens: Whenever a bill for sewer service remains unpaid sixty (60) days after it has been rendered, the delinquent charges, together with any penalties, interest or costs, may be certified to the county assessor for collection pursuant to Oregon Revised Statutes 454.225. Or, in the alternative, sewer service charges may be a lien against the premises served from and after the date the county clerk records the lien in the county clerk lien record. The recorded lien shall be available for inspection to anyone interested in ascertaining the amount of such charges against the property. The lien thereby created may be foreclosed in the manner provided for by Oregon Revised Statutes 223.610, or any other manner provided by law or city ordinance.
- K. Property Owner Responsibility For Payment Of Bills: The property owner shall be responsible for payment of all sewer service charges. If the property is rented and the tenant fails to pay the charges within thirty (30) days after they are due, the city shall submit the bill to the property owner. (Ord. 115, 9-12-1989)
- L. Outside City Sewer Rates: The city may continue to furnish sewer service to property outside the city limits where such property currently obtains city sewer service. Charges for such service shall be set by resolution as determined appropriate by the city council. In no case shall the charge for out of city service be lower than a comparable property

within the city would pay for sewer, including user rate, and the tax rate set to retire any sewer bond paid by city residents. (Ord. 158-05, 11-8-2005)

- M. **Payment Dates Becoming Due On Nonbusiness Days:** If the last day for making a payment falls due on a day when city hall is closed before the end or for all of the normal workday or on any legal holiday, Saturday or Sunday, the payment may be made until the close of business hours on the next day that city hall is open for business.
- N. **Delay Of Termination Of Water Service:** Any person faced with immediate discontinuance of water service, who is unable to pay by reason of an emergency situation in which:
1. The discontinuance would cause severe hardship to persons other than the individual unable to pay;
  2. The emergency is a situation that will be resolved in a period of less than thirty (30) days from the delinquency billing date; and
  3. The emergency is one which will be unlikely to reoccur;
- may request the city administrator to postpone the cutoff date. The city administrator may postpone the discontinuance of service for a period not to exceed thirty (30) days from the delinquency billing date. Any person for whom termination of service has been delayed shall be required to pay the applicable fees in subsections F and G of this section.
- O. **Sewer Fund:** The city recorder is hereby directed to deposit in the sewer fund all of the gross revenues received from charges and fees collected for the use of the sewerage system as herein provided.
- P. **Use Of Sewer Fund:** The revenues thus deposited in the sewer fund shall be used exclusively for the operation, maintenance, and repair of the sewerage system; reasonable administration costs; expenses of collection of charges imposed by this chapter and of connection fees provided for in this chapter, together with any attorney fees, investigative fees or court costs incurred therein; and payments of the principal and interest on any debts in connection with the sewerage system of the city. (Ord. 115, 9-12-1989)

8-2-10:

**APPEALS:**

- A. **Appeal:** Any sewer user who feels his user charge is unjust and inequitable as applied to his premises within the intent of the foregoing provisions may make written application to the city council requesting a review of his user charge. Said written request shall explain the basis upon which the user feels his user charge is unjust compared to the other users within the same classification.
- B. **Review:** Review of the request shall be made by the city council and the city administrator and they shall determine if it is substantiated or not, including recommending further study of the matter by the city administrator.

8-2-10

8-2-12

- C. Revised Charges: If the request is determined to be substantiated, the user charges for that user shall be recomputed based on the approved revised class, and the new charges thus recomputed shall be applicable retroactively up to six (6) months. (Ord. 115, 9-12-1989)

8-2-11: **ACCESS TO PREMISES:**

- A. Reasonable Access: Duly authorized employees of the city, bearing proper credentials and identification, shall have the authority to inspect or cause to be inspected, all buildings and premises, except the interior of dwellings, as often as may be necessary, for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter.
- B. Twenty Four Hour Notice If Refused: If admission is refused or delayed, or if inspection is in any way hindered, in the opinion of the supervisor, water may be turned off to the premises after giving twenty four (24) hours' oral notice to any occupant of the premises fourteen (14) years of age or older, or three (3) days' written notice by mail to the water user.
- C. Examination: All measurements, tests, and analyses of the characteristics of the waters and waste to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standards And Methods For The Examination Of Water And Wastewater", published by the American Public Health Association, and shall be determined at a control manhole provided or upon suitable samples taken at such control manhole. In the event that no special manhole has been required, a control manhole shall be provided by the user. Sampling shall be carried out by customarily accepted methods to reflect the effective constituents upon the sewage works and to determine the existence of hazards to life, limb, or property. (The particular analysis involved will determine whether a 24 hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from a 24 hour composite of all outfalls, whereas pHs are determined from periodic grab samples.) (Ord. 115, 9-12-1989)

8-2-12: **PROHIBITED ACTS:**

- A. Storm Water Discharge: No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water, or unpolluted industrial process water to any sanitary sewer. Storm water and all similar drainage shall be discharged to such sewers as are specifically designated as storm sewers or to a natural outlet.
- B. Prohibited Discharges:
1. No person shall discharge or cause to be discharged any of the following waters or wastes into any public sewer:
    - a. Any sewage not first treated through a city approved septic tank.

b. Petroleum, coal tar, vegetable or mineral oils, and products and their derivatives and wastes.

c. Any water and waste which may contain more than one hundred milligrams per liter (100 mg/l) of fat, oil or grease.

d. Antimony, arsenic, barium, beryllium, bismuth, boron, cadmium, chromium (hexa), chromium (tri), cobalt, copper, iron, lead, manganese, mercury, molybdenum, nickel, rhenium, selenium, silver, strontium, tellurium, tin, uranyl, tin and zinc.

e. Explosive or inflammable liquids and gases.

f. Any garbage that has not been properly shredded.

g. Any waters or wastes having a pH lower than 5.5 or higher than 9.0 or having other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the sewage works, or any explosive, acid or alkalies or corrosive liquids, gases or substances of sufficient strength to damage sewer, manholes, pumping stations or treatment plant units.

h. Any noxious or malodorous gas or substance capable of creating a public nuisance.

i. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit (150°F).

j. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood or any other solid or viscous substance capable of causing obstructions to the flow in sewers or other interferences with the proper operation of the sewerage works.

k. Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, or create any hazard in the receiving waters of the sewage treatment plant.

l. Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such material in septic tank sludge removal or dewatering.

m. Any substance in excess of specified categorical standards as may be established by the environmental protection agency and Oregon department of environmental quality under their respective pretreatment programs.

2. Any person found violating this subsection may be held responsible for a pumping and disposal fee in addition to the penalties provided in section [8-2-15](#) of this chapter.

C. Harmful Contributions: No person shall discharge or cause to be discharged, any substances, materials, waters or wastes, if it appears likely to the authorized local and/or



state and/or federal agencies that such waste can harm either sewer, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance, or will violate standards established by the authorized local, state and/or federal agencies.

- D. Industrial Waste: No person shall discharge into the sewerage system any wastewater other than domestic wastewater which would not be acceptable to secondary treatment plants as determined by the Oregon state department of environmental quality pretreatment guidelines.
- E. Grease Collection Traps Or Interceptors: Grease, oil, and sand interceptors (traps) shall be provided by the owner when, in the opinion of the city, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, and other harmful ingredients, except that such interceptors (other than a septic tank meeting city standards) shall not be required for private living quarters. All interceptors shall be of a type and capacity approved by the city and shall be located so as to be readily and easily accessible for cleaning and inspection, and shall be maintained by the owner, at his expense, in continuously efficient operation at all times.
- F. Protection From Damage: No person shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the public sewer system.
- G. Prohibited Building: No person shall construct any structure or appurtenance within five feet (5') of a septic tank without prior approval of the city.
- H. Prohibited Parking: Parking or driving a vehicle over septic tanks on private property is prohibited, except with permission as granted by the city where the STE or STEP system has been designed for such loads. (Ord. 115, 9-12-1989)

8-2-13: **FEES, RATES AND CHARGES:** The city council shall, from time to time, set fees, rates and charges by resolution. Prior to passage of such resolution, the council shall give notice to the public of the intended rate resolution and provide opportunity for public comment. (Ord. 158-05, 11-8-2005)

8-2-14: **GRAVITY CONNECTIONS AND SEPTIC TANKS:**

A. Gravity Connections (STE):

1. A gravity effluent filter will be installed in each gravity connection. The gravity effluent filter will consist of an assembly which drops through and is suspended from the access opening in the tank. For each single-family residential connection, the assembly will consist of a twelve inch (12") diameter by forty eight inch (48") long PVC vault with a fiberglass or PVC bottom. Effluent will enter the vault through one and one-half inch (1½") diameter ports that are located between the sludge and scum layers of the tank. The vault will be fitted with a forty inch (40") long by one-eighth inch (1/8") mesh polyethylene screen that is circular in shape and slips inside the vault. The screen will be fitted with a noncorrosive O-ring seal at the bottom and top to ensure a tight fit to the

wall of the vault. A one and one-fourth inch (1<sup>1</sup>/<sub>4</sub>" ) flexible PVC hose will connect the bottom of the vault to the outlet of the tank. The hose will be equipped with PVC quick disconnect fittings on each end. All connections will be made with PVC solvent weld compound or stainless steel band clamps.

2. One end of the hose will be secured to the fitting located in the bottom of the vault assembly. The other end of the hose will be secured to a one and one-fourth inch (1<sup>1</sup>/<sub>4</sub>" ) male adapter that will be grouted into the outlet hole of the septic tank. The assembly will be equipped with an intake pipe arrangement which will allow the effluent to normally pass through a one-fourth inch (1<sup>1</sup>/<sub>4</sub>" ) diameter hole into the collection system. The top of the intake pipe will be fitted with polyethylene screen mesh and will extend above the normal surface level of the effluent, but below the top of the septic tank. The gravity effluent filters will be manufactured by ORENCO Systems, Inc., or approved equal. (Ord. 115, 9-12-1989)

3. Gravity connections may be made using a "biofilter" unit (ORENCO) of approximate size as determined by the city maintenance supervisor in place of the filter vault described previously. (Ord. 115-1, 6-24-1997)

**B. Septic Tank Effluent Pump (STEP) Connections:**

1. Each STEP pump installation will consist of a fifteen inch (15") diameter by forty eight inch (48") long screened vault assembly very similar to the gravity effluent filter; however, these installations will include an effluent pump installed inside the screen in place of the connecting PVC hose arrangement extending from the bottom of the vault to the outlet of the tank.

2. The screen vault will be fitted with a PVC shroud in which to install the pump. The pump will set vertically in the four inch (4") PVC shroud and rest on the bottom of the vault. The discharge will rise from the top of the pump and connect to the service connection line. A short length of schedule 40 PVC pipe with a one-eighth inch (1<sup>1</sup>/<sub>8</sub>" ) diameter hole drilled in it will be installed near the discharge of the pump. Each pump discharge line will be one inch (1") in diameter and include a five (5) gallon per minute PVC flow control device. The discharge piping will be terminated with quick disconnect fittings where it connects to the service connection line. The service connection line will include a PVC check valve and PVC ball valve. The STEP installation will be manufactured by ORENCO Systems, Inc., or an equal.

3. Each STEP assembly will include a set of mercury level controls including three (3) floats: one "on" float, one "off" float, and one alarm float. The pumping unit will be a single phase one hundred fifteen (115) volt, Sta-Rite four inch (4") submersible turbine ORENCO model 80SI 3HH or approved equal.

4. Each STEP pump installation will require installation of a Simplex control panel. The control panel will be mounted on the surface of an existing structure such as the house or garage. The power for the control panel will come from the existing electrical service for the house.

C. Septic Tank Riser Assemblies:

1. The gravity effluent filters and STEP pump installations will be protected by septic tank riser assemblies on both existing and new septic tanks. On existing septic tanks, the inspection hole will be covered with a fiberglass tank adapter plate which will convert the existing hole to an eighteen inch (18") diameter round hole. The adapter plate will be secured to the top of the existing septic tanks with an epoxy compound providing a watertight seal. The top of the tank will be thoroughly cleaned prior to installing the adapter plate. The connection of the riser to the septic tank or adapter plate will be watertight.

2. Each gravity effluent filter installation will be fitted with a twenty one inch (21") diameter PVC riser connected to the top of the tank or adapter plate. Each STEP pump installation will be fitted with a twenty four inch (24") diameter PVC riser connected to the top of the tank or adapter plate. Each riser assembly will extend to and be cut off flush with grade elevation. The top of each riser assembly will be fitted with a fiberglass lid including a neoprene gasket so that an airtight seal will be made when the lid is in place. The lid will be secured to the top of the riser assembly with a minimum of two (2)  $\frac{1}{4}$ -inch stainless steel bolts. The exposed portion of each riser assembly will be flush with grade unless it is in a traffic area requiring a traffic lid. The risers assemblies will be manufactured by ORENCO Systems, Inc., or approved equal.

D. New Septic Tanks:

1. Specifications And Design:

a. New septic tanks will be modified one thousand (1,000) gallon precast concrete or fiberglass tanks and will have been designed by a registered engineer and approved by the local and state regulatory agencies. The manufacturer will provide the structural design and certification to the city for review upon request. The design or analysis will be in accordance with accepted engineering practice.

b. Design loads for the tanks will be:

Top	300 pcf
Lateral loads	62.4 pcf

c. All tanks will be guaranteed in writing by the tank manufacturer for a period of two (2) years from the date of delivery to the project.

2. Concrete Tanks:

a. Walls, bottom, and top of reinforced concrete tanks will be designed across the shortest dimension using one-way slab analysis. Stresses in each face of monolithically constructed tanks may be determined by analyzing the tank cross section as a continuous fixed frame.

b. The walls and bottom slab will be poured monolithically; alternatively, water stops may be provided.

c. Reinforcing steel will be ASTM A-615 grade 60,  $f_y = 60,000$  psi. Details and placement will be in accordance with ACI 315 and ACI 318.

d. Concrete will be ready mix, with cement conforming to ASTM C150, type II. The cement content will not be less than six (6) sacks per cubic yard and the maximum aggregate size will be three-fourths inch ( $3/4$ ""). The water/cement ratio will be kept low, and concrete will achieve a minimum compressive strength of three thousand (3,000) psi in twenty eight (28) days.

e. Concrete tanks will be protected by applying a waterproof coating (Thoroseal or Sonna Bjorn HLM 5,000 or equal) on both the inside and outside surfaces, in compliance with Council of American Building Officials (CABO), report #NRB-168; 6181. If a curing compound is used, it must be compatible with the waterproof coating used.

f. Tanks will not be moved from the manufacturing site to the job site until the tank has cured for seven (7) days or reached two-thirds ( $2/3$ ) of the design strength.

g. Tanks will be manufactured and furnished with access openings of size and configuration to accommodate the gravity effluent filter or STEP pump to be used with the tank.

h. The tanks will be furnished without concrete access hole lids unless otherwise specified.

i. All tanks will be tested for watertightness. Each tank will be tested at the factory prior to shipping by filling to the soffit and letting stand. After twenty four (24) hours, the tank will be refilled to the soffit and the exfiltration rate will be determined by measuring the water loss during the next two (2) hours. The two (2) hour loss will not exceed six (6) gallons.

j. The test at the job site will be completed before the existing septic tank is removed. The test method at the job site will be as previously outlined for factory testing.

### 3. Fiberglass:

a. The fiberglass tanks will be constructed with a glass fiber and resin content specified by the manufacturer. No exposed resin coated glass fibers will be allowed. The manufacturer will supply to the city, without charge, satisfactory evidence of testing by an approved laboratory showing compliance with IAPMO IGC 3-74, excepting as herein modified. All metal parts will be 300 series stainless steel.

b. The wall thickness will average at least one-fourth inch ( $1/4$ ""). When less than three-sixteenth inch ( $3/16$ "") in thickness or any delamination is suspected within any portion of the tank, the city may drill a maximum of two (2)  $1/4$ -inch diameter holes

through each tank wall for inspection purposes. If the required minimum three-sixteenth inch ( $\frac{3}{16}$ " ) thickness is not found, the tank will have failed the test and will be subjected to rejection at the discretion of the city.

c. Holes required in the tank will be provided by the manufacturer. Resin will be properly applied to all cut or ground edges so that no glass fibers are exposed and all voids are filled.

d. ABS schedule 40 pipe and fittings will be used at the inlets. Dual Tite or Ty-seal neoprene gaskets, or approved equal, will be used at the inlet to join the tank wall and the ABS inlet piping.

e. Inlet plumbing will penetrate eighteen inches (18") into the liquid from the inlet flow line.

f. The test at the job site will be completed before the existing septic tank is removed. The test will involve filling the tank to the brim with water. The tank will show no leakage from section seams, pinholes, or other imperfections. Any leakage is cause for rejection.

E. Grease Interceptors: Grease interceptors will be installed at service connections for commercial restaurants and other services as directed by the city. They will be concrete tanks constructed as specified by the city. The concrete will conform to the concrete specifications for septic tanks. The grease interceptors will be watertight and subjected to a leakage test as outlined for the septic tanks as directed by the city.

F. Standard Traffic Lids: The standard lid shall include one thirty inch (30") cast iron ring and cover and a concrete slab seven feet four inches by ten feet (7'4" x 10') reinforced as shown in the details.

G. Service Connection Lines:

1. The service connection lines connecting the septic tank outlets to the main sewer collection system will be one and one-fourth inch ( $1\frac{1}{4}$ " ) diameter, class 200 PVC pipe. A service connection "wye" will be installed for connection to service line piping.

2. Lines will be installed with a small portable trencher wherever practical.

3. The trench will be installed on a negative slope, with no inflection points, from the outfall of the septic tank to the service connection pipe stub installed at the main collection system. A minimum of twenty four inches (24") of depth will be maintained for the service connection trenches.

4. The service connection lines will be fabricated alongside the trench. A PVC swing check valve (KBI model KSC or equal) will be installed in each service connection line at the point the line connects to the sewer collection piping, or as otherwise directed by the city. The service connection lines will be hydraulically flushed with water to remove all foreign debris prior to placing the pipe in the trench.

5. After the service connection line has been thoroughly flushed, temporary caps or other provisions acceptable to the city shall be installed on the ends of the line, then lowered into the trench, and positioned for connection to the collection system and the septic tank outlet. The line will be installed on a continuous negative slope.
6. Special care will be taken to ensure no foreign debris enters the pipe. The service connection line will then be joined to the service connection pipe stub by removing the temporary cap and installing a PVC compression fitting.
7. The same procedure will be used in connecting the service connection line to the outlet of the septic tank.
8. The service connection pipe will be backfilled with the material removed from the trench, providing it is free of stones greater than one and one-half inches (1½") in diameter. If the material removed from the trench is found to be unsuitable for backfill around the pipe, the city may direct the contractor to import a suitable bedding material for the pipe. The bedding material will be placed so that it surrounds the pipe, beneath and above, a minimum of three inches (3"). The remainder of the trench will then be backfilled with the excavated material. A locating tape as specified by the city will be installed over the pipe twelve inches (12") below grade.
9. The trench backfill will be compacted to a minimum of ninety five percent (95%) of maximum density in lawn areas, driveways, and other developed residential lot areas. The surface of the trench will be restored to its preexisting condition to the extent reasonably possible. When the trench crosses existing grassed areas, this includes placement and establishment of new sod at the end of the backfill operation. Furthermore, any and all disturbance to yard areas will be promptly repaired and restored to the extent reasonably possible to its preconstruction condition. (Ord. 115, 9-12-1989)

8-2-15:

**PENALTY; ADDITIONAL REMEDIES:**

- A. Violation; Penalty: Any person violating subsections [8-2-3A](#) and 3B, and [8-2-4A](#), or any of sections [8-2-2](#) or [8-2-12](#) of this chapter, shall be subject to civil penalty of not to exceed one hundred dollars (\$100.00) per violation. In the case of a continuing violation, every day's continuance of the violation is a separate violation.
- B. Additional Remedies:
  1. Money Judgment: In addition to the penalties provided in subsection A of this section, the city may sue in a court of competent jurisdiction to obtain a judgment for any fee due under this chapter and enforce collection of the judgment as allowed by law.
  2. Injunction: The city may seek an injunction to prohibit a person engaged in any activity regulated by this chapter which does not comply with this chapter.
  3. Attorney Fees And Costs: In a civil action authorized by this subsection, if the city prevails, it shall be entitled to recover its reasonable attorney fees to be set by the court in

addition to its costs and disbursements. These fees are recoverable at all levels of trial and appeal.

4. Liability: The city and its officers, agents, or employees shall not be answerable for any liability or injury or death to any person or damage to any property arising during or growing out of the performance of any work by any such applicant. The applicant shall be answerable for, and shall save the city and its officers, agents, and employees harmless from any liability imposed by law upon the city or its officers, agents, or employees, including all costs, expenses, fees, and interest incurred in defending same or in the performance of his work or any failure which may develop therein.

5. Recovery Of Damages: Any person who, as the result of violating any of the provisions of this chapter, causes any expenses, loss, or damage to the Irrigon sewer service district, shall immediately become liable to the city for the full sum of such expense, loss, or damage. The council may, at its discretion, instruct the city attorney to proceed against any such person in any court of competent jurisdiction, in a civil action to be brought in the name of the Irrigon sewer service district, for the recovery of the full sum of any such expense, loss, or damage sustained by the city. (Ord. 115, 9-12-1989)

[Footnote 1](#): See also subsection [8-2-4Q](#) of this chapter.

[Footnote 2](#): See also subsection [8-1-4D](#) of this title.

[Footnote 3](#): See also section [8-1-9](#) of this title.

CHAPTER 3

SOLID WASTE COLLECTION

ARTICLE A. SOLID WASTE COLLECTION AND DISPOSAL FRANCHISE

SECTION:

- 8-3A-1 Short Title
- 8-3A-2 Purpose, Policy and Scope
- 8-3A-3 Definitions
- 8-3A-4 Activities and Practices Regulated
- 8-3A-5 Exclusive Franchise and Terms of Franchise
- 8-3A-6 Practices Prohibited Without a Franchise
- 8-3A-7 Responsibility of Franchisee
- 8-3A-8 Rates
- 8-3A-9 Billing, Collection and Franchise Fee
- 8-3A-10 Charges to City
- 8-3A-11 Ownership of Recyclable Materials
- 8-3A-12 Public Responsibility
- 8-3A-13 Suspension, Modification or Revocation of Franchise
- 8-3A-14 Interruption of Franchisee'
- 8-3A-15 Termination of Service by Franchisee
- 8-3A-16 Binding Arbitration
- 8-3A-17 Penalties
- 8-3A-18 Amendments
- 8-3A-19 Acceptance

8-3A-1: **SHORT TITLE:** This article shall be known as the *SOLID WASTE MANAGEMENT ORDINANCE* and may be cited and pleaded as such and shall be referred to within this document as "this article". (Ord. 189-08, 6-24-2008)

8-3A-2: **PURPOSE, POLICY AND SCOPE:** It is declared to be the public policy of the city of Irrigon to regulate solid waste management to:

- A. Ensure safe, economical and comprehensive solid waste service;
- B. Ensure rates that are just, reasonable and adequate to provide necessary public services;
- C. Prohibit rate preferences and any other practice that might be discriminatory; and
- D. Provide for technologically and economically feasible recycling and resource recovery by and through the franchisee. (Ord. 189-08, 6-24-2008)



8-3A-3: **DEFINITIONS:** When used in this article, unless the context requires otherwise:

**CITY:** Where the city limits are extended, the city shall include such extended geographic boundaries.

**COMPENSATION:** Includes:  
A. Any type of consideration paid for service, including, but not limited to, rent, the proceeds from resource recovery, any direct or indirect provision for payment of money, goods, services or benefits by tenants, lessees, occupants, or similarly situated persons;  
B. The exchange of service between persons; and  
C. The flow of consideration from a person owning, possessing or generating solid waste to another person who provides services or from a person providing services to another person owning, possessing or generating solid waste.

**COUNCIL:** The city council of the city of Irrigon.

**FRANCHISEE:** Sanitary Disposal, Inc., to whom a franchise is granted by the city council pursuant to this article. Such franchise shall grant exclusive rights to provide service and solid waste management service for compensation.

**GROSS RECEIPTS:** All revenues received from providing solid waste management service under this franchise.

**RECYCLABLE MATERIAL:** Any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

**RESOURCE RECOVERY:** The process of obtaining useful material or energy resources from solid waste, including energy recovery, material recovery, recycling and reuse of solid waste.

**SERVICE:** The collection, transportation, storage, transfer, disposal of or the resource recovery from solid waste.

**SOLID WASTE:** All putrescible and nonputrescible wastes, including, but not limited to, garbage, rubbish, refuse, ashes, wastepaper, cardboard, grass clippings, compost, tires, equipment and furniture; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home

or industrial appliances; manure, vegetable or animal solid and semisolid wastes; dead animals; infectious waste as defined in Oregon Revised Statutes 459.386, and other wastes; but the term does not include:

A. Hazardous waste as defined in Oregon Revised Statutes 466.005.

B. Materials used for fertilizer or for other productive purposes or which are salvageable as such materials and are used on land in agricultural operations such as the growing or harvesting of crops and the raising of fowl or animals.

C. Beverage containers, subject to reuse or refund provisions, contained in Oregon Revised Statutes 459A.700 to 459A.740.

(Collection of infectious solid waste, as defined by Oregon Revised Statutes 459.387, is not a part of the franchise agreement described in this article.)

**SOLID WASTE  
MANAGEMENT:**

The prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

**WASTE:**

Material that is no longer usable or wanted by the sources of the material, which material is to be utilized or disposed of by another person. For the purpose of this definition, "utilized" means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery or landfilling for reclamation, habilitation or rehabilitation of land. (Ord. 189-08, 6-24-2008)

**8-3A-4:**

**ACTIVITIES AND PRACTICES REGULATED:**

A. Except as otherwise provided in this article, it shall be unlawful for any person, other than the franchise holder under the provisions of this article, to provide solid waste management service in the city of Irrigon for compensation.

B. Nothing in this franchise shall:

1. Prohibit a federal or state agency that collects, stores, transports or disposes of waste, solid waste, or recyclable materials, or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for the federal or state agency.

2. Prohibit any person in the city from hauling his own waste, solid waste or recyclable materials in a lawful manner; provided, however, that no person will be permitted to haul such waste, solid waste or recyclable material for any other person or firm.

3. Prohibit a generator of source separated recyclable material from selling or exchanging such material to any person for fair market value for recycling or reuse.
4. Prohibit any person from transporting, disposing of or resource recovering sewage sludge, septic pumping or cesspool pumping.
5. Prohibit any person licensed as a motor vehicle dismantler under Oregon Revised Statutes 822.110 et seq., from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts.
6. Prohibit any person from transporting solid waste through the city that is not collected within the city.
7. Prohibit a contractor registered under Oregon Revised Statutes chapter 701 from hauling waste created in connection with demolition, construction or remodeling of a building or structure or in connection with land clearing and development. Such waste shall be hauled in equipment owned by the contractor and operated by the contractor's employees.
8. Prohibit the collection, transportation and reuse of repairable or cleanable discards by private charitable organizations regularly engaged in such business or activity and not engaged in the regular business of collection of putrescible solid waste.
9. Prohibit a nonprofit charitable, benevolent or civic organization from collecting recyclable materials; provided, that such collection is not a regular or periodic business of such organization. The organization shall comply with all applicable provisions of this article.
10. Prohibit a person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business of janitorial service, gardening or landscaping service, or rendering. (These sources do not include the collection, transportation or disposal of accumulated or stored wastes generated or produced by other persons.)
11. Require franchisee to store, collect, transport, dispose of or resource recover any hazardous waste as defined by or pursuant to Oregon Revised Statutes chapter 466; provided, however, that franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and article. (Ord. 189-08, 6-24-2008)

8-3A-5: **EXCLUSIVE FRANCHISE AND TERM OF FRANCHISE:** There is hereby granted to Sanitary Disposal, Inc., an Oregon corporation, the exclusive right, franchise and privilege of using the streets of the city to provide solid waste management service for commercial, industrial, and residential establishments within the city of Irrigon. The rights, privileges and franchise herein granted shall begin on July 1, 2008, and shall be considered as a continuing five (5) year franchise. That is, beginning January 1 of each year, the franchise will be considered renewed for an additional five (5) year term, unless, at least thirty (30) days prior to January 1 of any year, either party shall notify the other party in writing of intent to terminate further renewals of the franchise. Upon the giving of such notice of termination, the franchisee

shall have a franchise which will terminate five (5) years from the date of notice of termination of renewals. The council may later extend the term or reinstate continuing renewals upon mutual agreement with the franchisee. Nothing in this section restricts the council from suspending, modifying or revoking the franchise for cause as outlined in succeeding sections of this article. This franchise may be transferred only upon approval of the city council. The sale of shares, merger, consolidation, reorganization or restructuring in which the current shareholders are no longer the principal owners and managers shall be treated as a transfer of interest requiring approval. (Ord. 189-08, 6-24-2008)

8-3A-6: **PRACTICES PROHIBITED WITHOUT A FRANCHISE:** Unless exempted by section [8-3A-4](#) of this article, no person shall:

- A. Solicit customers for service;
- B. Advertise the providing of service; or
- C. Transport solid waste other than his own. (Ord. 189-08, 6-24-2008)

8-3A-7: **RESPONSIBILITY OF FRANCHISEE:**

- A. The franchisee shall provide collection service to any resident of the city of Irrigon as long as the resident pays for said service.
- B. The franchisee shall make available solid waste management service, as defined in this article, at least once a week to customers in the city.
- C. The franchisee shall use proper and suitable equipment for the hauling, removal and transportation of solid waste. All equipment for transporting solid waste on public roadways within the city of Irrigon shall be covered, and all equipment for handling said waste material shall be equipped with a watertight and drip proof metal body. Equipment shall be kept clean at all times, and sufficient equipment shall be on hand to properly and adequately remove all solid waste subject to the terms of this article.
- D. Lids shall be replaced on all receptacles by the collector, after being emptied.
- E. The franchisee shall use a disposal facility site that is approved by the department of environmental quality (DEQ) and the city.
- F. The franchisee shall, without charge to the city, pick up, carry away and dispose of any and all waste materials placed by the city of Irrigon in suitable containers which hold solid waste generated by the city of Irrigon. It is understood, however, that the franchisee may impose reasonable charges to the city for extraordinary disposal activities, such as the removal of demolition materials.
- G. The franchisee may subcontract with others to provide a portion of the service where the franchisee does not have the necessary equipment or service capability. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this article. Franchisee shall provide

written notice to the city of its intention to subcontract any portion of the service and receive city approval prior to entering into such agreement. The subcontractor shall comply with all provisions of this article.

- H. The franchisee, in conjunction with the city, shall develop and implement an "opportunity to recycle" program that meets the mandated state recycling program requirements.
- I. The franchisee shall permit inspection by the city of the franchisee's facilities, equipment and personnel at reasonable times. The franchisee shall keep proper books and records covering solid waste collection, removal, disposal and recycling operations, which books and records shall be open to inspection by the city at reasonable times.
- J. The franchisee shall comply with all laws relating to solid waste management service.
- K. The franchisee shall submit a certificate of public liability insurance with a thirty (30) day notice of cancellation clause, acceptable to the city, which will cover its business operation including each vehicle operated by said franchisee. The insurance coverage shall be amounts not less than the minimum requirements of the Oregon tort claims act as now enacted or hereafter amended. The insurance shall indemnify and save the city harmless against liability or damage which may arise or occur from an injury to persons or property as a result of said franchisee's operation of the solid waste business. (Ord. 189-08, 6-24-2008)

8-3A-8:                   **RATES:** Any person who receives solid waste management service from the franchisee shall be responsible for payment of such service. The rates to be charged to all persons by the franchisee shall be reasonable and uniform, taking into consideration the cost of performing the service rendered by the franchisee, the anticipated increase in the cost of providing this service, the necessity that the franchisee have a reasonable operating margin and rates and fees charged in other and similar municipalities. The rates may be changed by resolution during the term of the franchise, if approved by the city council. Said rates shall be on file at the recorder's office for public inspection. (Ord. 189-08, 6-24-2008)

8-3A-9:                   **BILLING, COLLECTION AND FRANCHISE FEE:** Sanitary Disposal, Inc., shall do all billing and collection of the service fees. The city shall receive a payment of seven percent (7%) of the gross income from collections, paid quarterly within thirty (30) days after the end of the quarter. This percentage shall be reviewed and may be changed by action of council at any time when the franchisee submits a request for rate review. (Ord. 189-08, 6-24-2008)

8-3A-10:               **CHARGES TO CITY:** The city can request the franchisee to provide drop boxes, haul and dispose of waste generated on city owned properties for a charge equal to the disposal costs the transfer station pays Finley Buttes Landfill for disposing of the waste. The franchisee shall provide the city a copy of the Finley Buttes Landfill rates whenever there is a rate adjustment. (Ord. 189-08, 6-24-2008)

8-3A-11:               **OWNERSHIP OF RECYCLABLE MATERIALS:** All recyclable materials located, placed or deposited in a container, drop box or receptacle intended to be collected by the franchisee shall belong to the franchisee. It shall be unlawful for any person

other than the franchisee to remove recyclable material from such receptacles, and any person removing such materials in violation of this section shall be guilty of a misdemeanor and subject to the penalties defined in this article. (Ord. 189-08, 6-24-2008)

8-3A-12: **PUBLIC RESPONSIBILITY:** In addition to and not in lieu of compliance with Oregon Revised Statutes chapter 459 and other applicable laws and regulations:

- A. Customers shall take appropriate actions to ensure that hazardous materials, chemicals, paint, corrosive materials, infectious waste or hot ashes are not put into a can, cart, container or drop box. When materials, customer abuse, fire or vandalism causes excessive wear or damage to a cart, container or drop box, the cost of the repair or replacement may be charged to the customer.
- B. No unauthorized person shall place materials in or remove materials from a solid waste collection container without permission of the owner of the container. For the purpose of this section, the franchisee is the "owner" of containers supplied by the franchisee. Persons to whom the franchisee supplies containers shall be authorized persons within the meaning of this section.
- C. No unauthorized person shall remove solid waste placed out for collection and resource recovery.
- D. Unless permitted by the franchisee, no person shall install or use any container over thirty two (32) gallons in capacity for pick up by the franchisee other than those supplied by the franchisee. The purpose of this subsection is to ensure safe equipment sizes and weights and facilitate the franchisee utilizing the most efficient collection equipment and methods.
- E. The franchisee is not required to service an underground container unless the person responsible for it places the container above the ground prior to the time of collection.
- F. Each customer shall provide safe access to the solid waste container or waste without risk or hazard to franchisee's employees, the public or the franchisee.
- G. No container designed for mechanical pick up shall exceed safe loading weights or volumes as established by the franchisee to protect service workers, the customer, the public and the collection equipment.
- H. No container designed for manual pick up shall exceed thirty two (32) gallons in size or sixty (60) pounds in weight when loaded and eighteen (18) pounds when empty. Such containers shall be made of metal or be solid, fireproof, rodentproof and not be subject to cracking or splitting, and have proper handholds and bails. Container must be kept in good condition by the customer.
- I. Customers using mechanically emptied containers furnished by the franchisee shall provide a smooth, level, hard surfaced area approved by the franchisee for the container.

- J. Unless special service or service equipment is provided by the franchisee for handling unconfined waste, materials such as rubbish and refuse, brush, leaves, tree cuttings and other debris for manual pick up and collection shall be in securely tied bundles or in boxes, sacks or other receptacles, and solid waste so bundled, tied or contained shall not exceed sixty (60) pounds in weight.
- K. Where a customer requires an unusual volume of service or a special type of container requiring substantial investment in equipment, the franchisee may require a contract with the customer as necessary to finance and assure amortization of such equipment. The purpose of this provision is to assure that such equipment does not become a charge against other ratepayers who are not benefited. In no event shall such a contract be in effect longer than this article.
- L. Stationary compacting devices for solid wastes shall comply with federal and state safety standards and provide adequate protection to the user and franchisee.
- M. Any vehicle used by a person to transport solid waste shall be so loaded and operated as to prevent the wastes from dropping, sifting, leaking, blowing or otherwise escaping from the vehicle onto any public right of way or lands adjacent.
- N. No person shall block access to any container, drop box or roll-off box supplied by the franchisee.
- O. Every person who generates or produces solid waste shall have all putrescible solid waste removed at least every seven (7) days. More frequent removal may be required where a facility or service involves the public health. All solid waste shall be removed in sufficient frequency to prevent health hazards or pollution.
- P. All putrescible materials shall be stored in manually emptied containers supplied by the generator or producer or in mechanically emptied containers or drop boxes supplied by the franchisee. When manually or mechanically emptied containers are used, they shall be covered except during loading and emptying. When drop boxes are used, all putrescible materials shall be placed in plastic bags and tied.
- Q. The producer or generator of solid waste shall clean containers and shall keep the area around such container free of accumulated solid waste or wastes. The franchisee shall provide maintenance as required to containers supplied by the franchisee.
- R. No person shall burn, dump, bury, collect, remove or in any other manner dispose of solid waste upon any street, alley, public place or private property within the city except as provided in this article. Other than contracting with the franchisee, alternate approved disposal methods shall be as follows:
1. Wastepaper, boxes, rubbish and debris, brush, leaves, grass, wood and cuttings from trees, lawns, shrubs and gardens (excepting paper, cardboard, or wood containers in commercial quantities) may be burned on private property only if the method of burning is approved by the city and is done in accordance with Oregon department of environmental quality rules and regulations.

2. Composting of lawn, garden, brush, leaves, grass, etc., wastes through accepted composting methods including vermiform composting.

S. All putrescible solid waste must be drained of excess liquids and wrapped.

T. Ashes will be taken only if placed in a plastic bag and tied. (Ord. 189-08, 6-24-2008)

**8-3A-13: SUSPENSION, MODIFICATION OR REVOCATION OF FRANCHISE:**

A. Failure to provide necessary service or otherwise comply with the provisions of this article after written notice and a reasonable opportunity to comply shall be grounds for modification, suspension or revocation of the franchise.

B. After written notice from the council that such grounds exist, the franchisee shall have twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the council.

C. At the public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the council.

D. If the franchisee fails to comply within the time specified or if the council hearing is held, with the order of the council entered upon the basis of findings at the public hearing, the council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance. (Ord. 189-08, 6-24-2008)

**8-3A-14: INTERRUPTION OF FRANCHISEE'S SERVICE:** The franchisee agrees, as a condition of this franchise, that whenever the city council finds that the failure of service or threatened failure of service would result in the creation of an immediate and serious health hazard or serious public nuisance, the city council may, after a minimum of twenty four (24) hours' actual notice to the franchisee, and a public hearing if the franchisee requests it, provide or authorize another person to temporarily provide the service or to use and operate the land, facilities and equipment of the franchisee to provide emergency service. If a public hearing is requested by the franchisee, it may be held immediately by the city council after compliance with the minimum notice requirements for such meetings established by the Oregon public meetings law. The city council shall return any seized property and business upon abatement of the actual or threatened interruption of service and after payment to the city for any net cost incurred in the operation of the solid waste service. (Ord. 189-08, 6-24-2008)

**8-3A-15: TERMINATION OF SERVICE BY FRANCHISEE:** The franchisee shall not terminate service to all or a portion of the customers unless:

A. The street or road access is blocked, and there is no alternate route and provided that the franchisee shall restore service no later than twenty four (24) hours after the street or road access is opened;

B. As determined by the franchisee, excessive weather conditions render providing service unduly hazardous to persons providing service or to the public or such termination is



caused by accidents or casualties caused by an act of God, a public enemy or a vandal, or road access is blocked;

- C. A customer has not paid for provided service after a regular billing and after a written notice to said customer, which notice shall be sent not less than fifteen (15) days after the first regular billing;
- D. Ninety (90) days' written notice is given to the city council and to affected customers, and written approval is obtained from the city council; or
- E. The customer does not comply with the service standards of section [8-3A-12](#) of this article. (Ord. 189-08, 6-24-2008)

8-3A-16:           **BINDING ARBITRATION:** In the event that an irreconcilable difference arises between the city and franchisee on their respective duties and responsibilities under the franchise or this article, an arbitration board shall be chosen, consisting of three (3) persons, one chosen by the city, one chosen by the franchisee and one chosen by the two (2) appointed arbiters who must be approved by both the city and the franchisee. The arbiters shall choose a time, date and place within thirty (30) days of appointment of the last arbiter, to hear both sides of the dispute and promptly render a decision that is binding on both the city and the franchisee. Where good cause is shown and recorded in the minutes, the time for decision may be extended for as is absolutely necessary. The procedure chosen may be that of the American Arbitration Association or that specified in Oregon Revised Statutes chapter 36 for court supervised arbitration. Costs shall be split equally between the city and the franchisee unless the arbitrators make an award of costs including, without limitation, arbiters' time. (Ord. 189-08, 6-24-2008)

8-3A-17:           **PENALTIES:** Any person violating any of the provisions of this article shall, upon conviction thereof, be fined not to exceed two hundred fifty dollars (\$250.00). Every day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. Franchise holders shall be subject to the penalties provided herein for the violation of the provisions of this article. (Ord. 189-08, 6-24-2008)

8-3A-18:           **AMENDMENTS:**

- A. The city or the franchisee may propose amendments to this franchise. Proposed amendments shall be in writing and shall be delivered to the city and the franchisee.
- B. The city council shall hold a public hearing on the proposed amendments. Franchisee shall be given at least thirty (30) days' written notice of such hearing. The city council may, after the public hearing, adopt the amendments. The franchise shall be amended upon acceptance of the amendments by the franchisee. (Ord. 189-08, 6-24-2008)

8-3A-19:           **ACCEPTANCE:** This article shall become effective when accepted by the franchisee and shall then be and become a valid and binding contract between the city and the franchisee; provided, however, that this article shall be void unless franchisee shall, within ninety (90) days after the final passage of this article, file with the city recorder a written acceptance of this article and the franchise herein granted. (Ord. 189-08, 6-24-2008)

CHAPTER 3

SOLID WASTE COLLECTION

ARTICLE B. MANDATORY COLLECTION SERVICE

SECTION:

- 8-3B-1 Findings
- 8-3B-2 Definitions
- 8-3B-3 Administration
- 8-3B-4 Required Removal
- 8-3B-5 Required Subscription; Responsibility for Payment
- 8-3B-6 Nonsubscription and Nonpayment, Termination of Service; Water Shutoff
- 8-3B-7 Billing Disputes
- 8-3B-8 Minimum Level of Service
- 8-3B-9 Residential Reduction or Elimination of Service
- 8-3B-10 Exemption from Service
- 8-3B-11 Violation; Penalty

8-3B-1: **FINDINGS:**

- A. It is declared to be the policy of the city to regulate solid waste management to:
  - 1. Ensure safe, economical and comprehensive solid waste service;
  - 2. Protect against the dangerous and unhealthy accumulation of solid and other types of waste;
  - 3. Protect public health and the environment;
  - 4. Provide public service standards; and
  - 5. Protect against improper and dangerous handling of hazardous wastes.
- B. The achievement of this policy requires that the city phase in compulsory participation in solid waste collection and disposal within the city. (Ord. 155-05, 10-25-2005)

8-3B-2: **DEFINITIONS:** As used in this article:

CITY: The city of Irrigon.

COUNCIL: The city council.

**FRANCHISE:** The person granted the exclusive right, privilege and franchise to provide solid waste management service within the city by an ordinance adopted by the city council and accepted by such person, or a subcontractor of such person.

**PERSON:** An individual, partnership, association, corporation, trust, firm, estate, or other private legal entity.

**SERVICE:**

- A. Collection Service: Collection of solid waste.
- B. Disposal Service: Transportation and disposal of solid waste at a disposal site.
- C. Resource Recovery Service: All services incidental to resource recovery.

**SOLID WASTE:**

A. All putrescible and nonputrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, and swill; wastepaper and cardboard; grass clippings; compost; residential, commercial, industrial, demolition and construction wastes; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicle parts and vehicle tires; manure, vegetable or animal solid or semisolid waste; dead animals; infectious waste as defined by Oregon Revised Statutes; and all other wastes not excepted by this definition.

B. Solid waste does not include:

1. Hazardous waste.

2. Sewer sludge and septic tank and cesspool pumping or chemical toilet waste.

3. Beverage containers as defined in Oregon Revised Statutes 459A.700.

4. Materials used for fertilizer or for other productive purposes or which are salvageable, as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowl or animals.

**SOLID WASTE MANAGEMENT:** The prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; and facilities necessary or convenient to such activities.

8-3B-2

8-3B-6

**WASTE:** Material that is no longer directly usable by the source, generator or producer of the material, which material is to be disposed of or to be resource recovered by another person. The fact that all or any part of the material may have value and thus be recovered or that the source, generator or producer of material has separated or segregated such material from other waste does not remove the material from this definition. (Ord. 155-05, 10-25-2005)

8-3B-3: **ADMINISTRATION:** The city manager may prepare forms, rules and regulations for the administration of this article. (Ord. 155-05, 10-25-2005)

8-3B-4: **REQUIRED REMOVAL:**

- A. **Frequency:** Every person who generates or produces solid waste or wastes shall remove or have removed all solid wastes at least every seven (7) days. More frequent removal may be required where a facility or service involves the public health. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances, or pollution.
- B. **Vehicles:** Any vehicles used by any person to transport wastes shall be so loaded and operated as to prevent the wastes from dropping, sifting, leaking, blowing or other escapement from the vehicle onto any public right of way or lands adjacent thereto. (Ord. 155-05, 10-25-2005)

8-3B-5: **REQUIRED SUBSCRIPTION; RESPONSIBILITY FOR PAYMENT:**

- A. **Responsibility:** At the time the owner and/or occupant of any dwelling or other property within the city applies for a new city water account, the owner and/or occupant shall subscribe to and pay for service rendered to the dwelling or property. The franchisee and the owner of the property may agree in writing that the occupant will initially be responsible for payment for service, but if the franchisee previously has so notified the owner in writing, then the owner shall be responsible for payment for service provided to the occupant if the occupant does not pay for the service. The subscription for service shall be made within seven (7) days of the application for the city water account.
- B. **Failure To Pay:** If the property owner or occupant of property fails to subscribe to service as required by this section, the city shall mail written notice to the property owner or occupant and, if occupied by a person not the owner, the occupant, stating the service required and the remedies for noncompliance. If the property owner or occupant fails to subscribe to service within thirty (30) days of the date of the notice from the city of the requirement for service, the city may terminate water service to the property in the manner provided for in section [8-3B-6](#) of this article. Service will not be restored until the city has been provided proof of service subscription. (Ord. 155-05, 10-25-2005)

8-3B-6: **NONSUBSCRIPTION AND NONPAYMENT; TERMINATION OF SERVICE; WATER SHUTOFF:**

- A. **Billing And Notice:** The city does the billing and collecting for the collection of solid waste. The billing is sent to an owner and/or occupant required to have mandatory collection. At the time of subscription to the service, each owner or occupant shall be supplied with a notice printed in 14-point size that failure to pay for service can result in the city discontinuing water to the property. The owner and/or occupant shall sign an acknowledgment of receipt of this notice.
- B. **Water Shutoff Authorized:** In the event a property owner or occupant of property fails to subscribe to service after notice from the city as specified in section [8-3B-5](#) of this article, or in the event of termination of service by the franchisee for nonpayment, the city may shut off water service to the property pursuant to the following procedure:
1. **Notice:** Prior to shutting off water service to the property, the city shall give written notice to the property owner and, if occupied by a person other than the owner, the occupant, advising of the city's intent to shut off water service to the property for nonsubscription to or nonpayment of service anytime after twenty (20) days from the date the notice was mailed and posted. The notice shall be given by certified mail, return receipt requested, and by regular mail, and shall be posted conspicuously on the property.
  2. **Right To Hearing:** The property owner and/or occupant shall have the right to an administrative hearing before the city manager or the city manager's designee to establish that service has been subscribed to and paid for, or that service has been subscribed to and there are no unpaid billings. In the event the property owner or occupant requests such a hearing in writing prior to the shutting off of water service, then water service shall remain on until the hearing is held, a written decision is made and mailed to the property owner, and no appeal was taken to the city council as provided in subsection B3 of this section or, if an appeal was taken and the city council upholds the city manager's decision, until the date specified in the city council's decision.
  3. **Appeal:** A property owner and/or occupant may appeal the decision of the city manager by filing a written notice of appeal with the city council within ten (10) days of the date of the decision. The appeal before the city council shall be limited to a review of the record and the receipt of oral arguments regarding the record.
- C. **Notice Of Billing Dispute:** The city shall not terminate water service if it has notice of a billing dispute. (Ord. 155-05, 10-25-2005)

8-3B-7: **BILLING DISPUTES:** In the event of a dispute as to the amount owed between the franchisee and the owner or occupant of the property or the city and the owner or occupant of the property regarding service billing, the franchisee or the city shall resolve the dispute in any manner prescribed by law, prior to terminating service. (Ord. 155-05, 10-25-2005)

8-3B-8: **MINIMUM LEVEL OF SERVICE:** The minimum level of service to any dwelling or other property, including commercial uses, is one pick up of solid waste container per one week interval, except as provided in sections [8-3B-9](#) and [8-3B-10](#) of this article. The minimum level of service, however, is subject to the provisions of the Oregon Revised Statutes and regulations promulgated pursuant thereto, and other provisions of city

ordinances as they relate to the public responsibility to prevent health hazards, nuisances or pollution. (Ord. 155-05, 10-25-2005)

8-3B-9:                   **RESIDENTIAL REDUCTION OR ELIMINATION OF SERVICE:**

- A.     Residential Reduction In Service: Upon proof by affidavit of a lack of need for full residential service, a person may be allowed to reduce residential service to once a month. Evidence of a lack of need may include showing that recycling, composting or other environmentally accepted methods of disposal are being used.
  
- B.     Residential Elimination Of Service: Upon proof by affidavit of a lack of need for residential service, a person may be allowed to eliminate the residential service under the following circumstances:
  - 1. By subscribing to commercial grade service at another location within the city; or
  
  - 2. By transporting residential waste at least on a weekly basis to the franchisee or to an identified appropriate solid waste disposal site; or
  
  - 3. By using recycling, composting, or other environmentally accepted methods of disposal of solid waste and transporting, at appropriate intervals, any solid waste that cannot be recycled, composted, or disposed of in an environmentally safe manner to the franchisee or to an identified appropriate solid waste disposal site.
  
- C.     Decisions And Appeals: The city manager or a designee shall make the determination regarding a reduction or elimination of residential service, and that decision shall be final unless appealed in writing to the city council within ten (10) days from notice of the determination. (Ord. 155-05, 10-25-2005)

8-3B-10:                   **EXEMPTION FROM SERVICE:** Property which is unoccupied and does not receive water service by choice of the owner is exempt from service. (Ord. 155-05, 10-25-2005)

8-3B-11:                   **VIOLATION; PENALTY:** Any person violating any of the provisions of this article shall, upon conviction thereof, be fined not to exceed two hundred fifty dollars (\$250.00). Every day such violation is committed or permitted to continue shall constitute a separate offense and be punishable as such. (Ord. 155-05, 10-25-2005)

CHAPTER 4

CATV FRANCHISE

SECTION:

- 8-4-1 Definitions
- 8-4-2 City Right to Use Company Poles and Rights of Way
- 8-4-3 Construction and Installation Standards
- 8-4-4 City Right to Inspect Company Construction
- 8-4-5 Allowance for Excavation and Restoration
- 8-4-6 City Right to Improve Public Property
- 8-4-7 Movement of Buildings and Machinery
- 8-4-8 Underground and Overhead Facilities
- 8-4-9 Safety Requirements
- 8-4-10 Insurance and Indemnity
- 8-4-11 Franchise Assignment
- 8-4-12 Franchise Fee and Licensing
- 8-4-13 Service Without Discrimination
- 8-4-14 Grant of Authority and Acceptance
- 8-4-15 Severability and Effective Date

8-4-1: **DEFINITIONS:** For the purpose of this chapter, the following terms, phrases, words, abbreviations and their derivations will have the meanings herein given. When consistent with the context, words used in the present tense include the future tense. Words in the plural include the singular number. Words in the singular number include the plural number.

**BASIC SIGNAL SERVICE:** The reception of and distribution of regular broadcast television and radio signals.

**CATV:** Community antenna system.

**CITY:** The city of Irrigon, Oregon.

**COMPANY:** Almega Cable Inc.

**COUNCIL:** The governing body of the city.

**EXPANDED SIGNAL SERVICE:** Any communications service received by the signal reception system for subscription to which is not of regular broadcast, but in addition to basic signal service provided by the company either directly or as a service for other subsidiaries, affiliates or any other person engaged in communications service, including, but not limited to, pay TV, burglar alarm service data or other electronic

transmission service, meter reading service, or home shopping services.

FRANCHISE AREA: The area within the corporate limits of the city of Irrigon.

PERSON: Any person, firm, partnership, association, corporation, company or organization of any kind.

PROPERTY OF THE COMPANY: All property owned, installed or used by the company in the conduct of a signal receiving service in the city.

SIGNAL RECEPTION SERVICE: The business operation and function offered by the company and is synonymous and equivalent to CATV service, and antenna receiving service.

SIGNAL RECEPTION SYSTEM: A system composed of antenna, cable, wires, lines, towers, waveguides or any other conductor, convertors, equipment or facilities, designed, constructed or wired for the purpose of providing an antenna reception service by means of receiving, amplifying and distributing various signals by coaxial cable, audio and/or visual radio frequency, electronic or electrical signals to and from persons, subscribers and locations in the franchise area capable of receiving both basic signal service and expanded signal service for subscription.

STREET: The surface of and the space above and below any public street, right of way, road, highway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications or utility easement, now or hereafter existing as such within the franchise area.

SUBSCRIBER: Any person or entity subscribing to and receiving service from the company's signal reception service.

THEFT OF SERVICE: The reception of or the attempts to receive any service of the company, or to tamper with, alter, remove or vandalize company's equipment or cable so that service may be received without payment to company. (Ord. 71 revised, 4-9-1996; amd. Ord. 149, 4-13-2004; Ord. 149 revised, 8-10-2004; Ord. 194-08, 11-18-2008)

8-4-2: **CITY RIGHT TO USE COMPANY POLES AND RIGHTS OF WAY:** The city will have the right to make additional use, for any public or municipal purpose, of any poles or conduits owned or controlled or maintained exclusively by or for the company in any street, provided such use by the city does not interfere with the use by the company. The city will indemnify and hold the company harmless against and from any and all claims, demands, causes, or actions, suits, proceedings, damages, costs or liabilities of any kind and nature whatsoever arising out of such use of the company's poles or conduits. (Ord. 71 revised, 4-9-1996)



8-4-3: **CONSTRUCTION AND INSTALLATION STANDARDS:**

- A. **Conformance With Rules And Regulations:** All installations within the franchised areas, made under the authority granted in this franchise, will be made in such a manner as to conform to all applicable rules and regulations for the public health, safety and welfare of the city and its inhabitants.
- B. **Clearance Requirements Of State:** The construction or expansion of the system will meet or exceed all clearance requirements of the state public utility commission.
- C. **Signal Reception, City Approval:** The city hereby approves and authorizes the company to receive all available signals for subscription within the franchise area, which the company deems economically feasible. (Ord. 71 revised, 4-9-1996)

8-4-4: **CITY RIGHT TO INSPECT COMPANY CONSTRUCTION:**

- A. **Installations:** The city reserves the right to inspect any installations within the franchised area installed under the rights granted herein.
- B. **Signals:** The city reserves the right to inspect the quantity and/or quality of signals composing the basic signal service at any point or points within the franchised area, as the city deems necessary.
- C. **Remedy Offending Installation, Service Or Signal:** The city may require any offending installation, service or signal to be removed, altered or replaced at the expense of the company. (Ord. 71 revised, 4-9-1996)

8-4-5: **ALLOWANCE FOR EXCAVATION AND RESTORATION:**

- A. **Excavations:**
  - 1. It will be lawful for the company to make all needed excavations in any of such streets, alleys, avenues, thoroughfares and public highways in the city for the purpose of placing, erecting, laying and maintaining poles or other supports, conduits, wires or equipment or repairing, renewing, or replacing the same. Said work will be done in compliance with the necessary rules, regulations, ordinances, or orders which may, during the continuance of the franchise, be adopted from time to time by the city or its lawfully constituted agents.
  - 2. All transmission and distribution structures, lines and equipment erected by the company within the franchise area will be so located as to cause minimum interference with the proper use of the streets and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of the property owners whose land is adjacent to any of the aforementioned streets, public ways or places. The company owned system will be constructed and operated in compliance with all city, state and national construction and electrical codes and will be kept current with new codes. The company will install and maintain its wire, cables, fixtures, and other

equipment in such a manner that will not interfere with any installations of the city or any public utility serving the city.

3. In case of the disturbance of any street, public way, or paved area resulting from the operations of the company, the company will, at its own cost and expense and in a manner approved by the city, restore the street, public way or paved area to as good or better condition as it was before the work was done.

4. The company will protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the company when reasonably required by the city because of traffic conditions, public safety needs, street construction activities, changes or reestablishment of street grades, installation of sewer lines, storm drains, water lines, power lines, signal lines, and any other type of improvements by public agencies and do so at company expense. However, in the case of similar requests by nonmunicipal agencies, the company will be entitled to reimbursement for the cost incurred by it in connection with the relocations required.

- B. Restoration: Whenever the company disturbs any of the streets, alleys, etc., for construction purposes, it will restore the disturbed area to as good or better condition as soon as possible. Failure to do so will give the city the right to establish a reasonable time within which the repairs are to be accomplished. Should the time period elapse without the repairs being made, the city will oversee the repairs needed and bill the company for all expenses. (Ord. 71 revised, 4-9-1996)

8-4-6: **CITY RIGHT TO IMPROVE PUBLIC PROPERTY:**

- A. Improving Public Rights Of Way: Nothing in this chapter will be construed in any way to prevent the city or its lawfully constituted agents from improving the public rights of way or the city's infrastructure in or upon which the company's poles, wires, or other installations may have been placed.
- B. Right Of Public To Use Public Property: Any right granted the company hereunder will always be subject to the right of the public to use the public property, and nothing herein will be construed as granting any right that may interrupt or infringe upon the use by the people. (Ord. 71 revised, 4-9-1996)

8-4-7: **MOVEMENT OF BUILDINGS AND MACHINERY:**

- A. Notice To Company: Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cable, wires or other apparatus of the company to permit the passage of any building, machinery, or other objects, the company will perform such rearrangements on receipt of written notice seven (7) days prior to the event from the person or persons moving the building, machinery, or other object.
- B. Contents Of Notice; Hold Harmless Agreement: The written notice will bear the approval of the official designated by the city council and will show the route of movement of the building, machinery, or other object and will provide that the costs incurred by the company in accommodating the request will be borne by the person or persons giving the

notice. The notice will also indemnify and hold the company harmless from all damages or claims caused directly or indirectly from the temporary rearrangement of the company's aerial plant. (Ord. 71 revised, 4-9-1996)

**8-4-8: UNDERGROUND AND OVERHEAD FACILITIES:**

**A. Underground Facilities And Procedures:**

1. For any system extension in the existing developments, the company will place its system underground in localities where both telephone and power lines are underground. For existing facilities, the company will replace aerial facilities with underground facilities concurrently and in cooperation with similar programs of the telephone and power utilities. At no time will the signal reception system be the only aerial facility where undergrounding is required. The company will have the option of sharing or not sharing utility trenches.

2. The company may, at its option, extend energized or unenergized cable or conduit to all new residential developments as they are constructed. Cost of trenching, and easements required for service to the development will be borne by the developer and/or landowner. All installations and construction by the developer will be to the specifications of the company. The company will not need to extend its signal reception system for service until forty percent (40%) of the residential dwelling units have agreed to subscribe to receive basic signal service.

3. The company may petition the council to defer or indefinitely suspend any expansion required by this chapter after showing that such expansion would cause unreasonable financial hardship on the company. Any such decision will be made by the council after a public hearing.

**B. Overhead Facilities And Procedures:**

1. The company will extend services to any existing development or group of residences at the standard rate if:

a. The existing development or group of residences to be served has a density of at least forty (40) residences per mile of trunk line required to provide service to the new area; and

b. Seventy five percent (75%) of those residences contract to be served.

2. The company will establish a rate structure in areas outside the franchise area so that service to those areas will not be subsidized by subscribers within the city.

3. The company will not provide inferior service within the franchise area in order to service subscribers outside that area.

8-4-8

8-4-12

- C. Operational Standards: The company will operate and maintain its signal reception system in full compliance with the standards set forth by the federal communications commission for a cable television system. (Ord. 71 revised, 4-9-1996)

8-4-9:           **SAFETY REQUIREMENTS:**

- A. The company will protect the public from its operations and property by employing commonly accepted methods and devices for such protection.
- B. All company property installed in the streets will be maintained in a safe condition and in good repair. (Ord. 71 revised, 4-9-1996)

8-4-10:           **INSURANCE AND INDEMNITY:** The company will provide a certificate of insurance showing minimum coverage as follows:

- A. Compliance with Oregon workers' compensation act.
- B. Bodily injury liability insurance with limits of three hundred thousand dollars (\$300,000.00) each person, and three hundred thousand dollars (\$300,000.00) each occurrence.
- C. Property damage liability insurance with limits of one hundred thousand dollars (\$100,000.00) each accident, and three hundred thousand dollars (\$300,000.00) aggregate.
- D. The company will indemnify and defend the city from any claim, loss or liability arising out of or related to the operations by the company within the franchise area. The company's duty to indemnify will not apply to or prevent any claim by the company against the city for injury to the company or company property for which the city may be liable.
- E. Upon request by the city, the company agrees to include the city as additional insured under the liability insurance policies described above. (Ord. 71 revised, 4-9-1996)

8-4-11:           **FRANCHISE ASSIGNMENT:** This franchise will not be assigned by the company without prior approval of the city council. This approval will not be withheld without reason. (Ord. 71 revised, 4-9-1996)

8-4-12:           **FRANCHISE FEE AND LICENSING:**

- A. Right To Charge And Collect Rates:
  - 1. The company will have the right to charge and collect reasonable compensation from subscribers for all services rendered: basic, expanded, and other services including installation charges.

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2. Any increase in the rate schedule for basic signal service will not become effective until the company has given notice of the increase to the city at least thirty (30) days prior to the effective date along with an explanation for the increase.

- B. **Publication Of Rate Schedule:** The company will publish its rate schedule and post such schedule at the company's office in accordance with the federal communications commission rules. (Ord. 71 revised, 4-9-1996)
- C. **Consent To Transfer; Franchise Fee:** The franchise authority hereby consents to the transfer, to the extent required by the terms of the franchise, and franchisee and franchiser agree that the franchise fee for the term of the franchise shall be seven percent (7%) of the gross proceeds of the franchisee obtained within the city of Irrigon. (Ord. 194-08, 11-18-2008)

8-4-13:                   **SERVICE WITHOUT DISCRIMINATION:** The company agrees to serve all potential and current subscribers in the franchise area in accordance with this franchise agreement, without discrimination. (Ord. 71 revised, 4-9-1996)

8-4-14:                   **GRANT OF AUTHORITY AND ACCEPTANCE:**

- A. The city hereby grants to Almega Cable Inc., the right and privilege to engage in the business of operating a signal reception system in the city for the purpose of providing basic signal service and expanded signal service to the citizens of Irrigon. This includes the right to construct, erect, install, repair, replace, and maintain all pertinent equipment, cables, wires, etc., needed to conduct the operations of a signal reception service in public places as laid out now or in the future and to use and operate on land owned or leased by other persons, firms, corporations including, but not limited to, public utilities or any other grantee franchised or permitted to operate a business within the corporate boundaries of the city. (Ord. 71 revised, 4-9-1996; amd. Ord. 149, 4-13-2004; Ord. 149 revised, 8-10-2004; Ord. 194-08, 11-18-2008)
- B. The term of the original franchise is extended from June 17, 2005 to June 17, 2010.
- C. The company will have the right to the privileges granted herein upon acceptance of the obligations and agreement to abide by the regulations imposed herein in writing to the city within thirty (30) days after the effective date hereof.
- D. For the duration of this franchise, should either party have just cause to renegotiate any part of this chapter, it can be done through a written request for review. If an agreement cannot be reached by the two (2) parties, an arbitration board will be established to mediate a solution agreeable to both parties<sup>1</sup>. (Ord. 71 revised, 4-9-1996)

8-4-15:                   **SEVERABILITY AND EFFECTIVE DATE:**

- A. In the event that any sentence, clause, paragraph or section of this chapter is held void by any court of competent jurisdiction, it shall not affect the balance hereof, and this chapter shall become effective thirty (30) days after passage by the city council.

- B. Previous versions of this chapter are declared null and void at the conclusion of this thirty (30) day period. (Ord. 71 revised, 4-9-1996)

[Footnote 1:](#) ORS 221.420(2)(c).

## CHAPTER 5

## NATURAL GAS FRANCHISE

## SECTION:

- 8-5-1 Grant of Franchise
- 8-5-2 Term of Franchise
- 8-5-3 Successive Terms; Notice
- 8-5-4 Binding Contract
- 8-5-5 Compliance With Laws and Regulations
- 8-5-6 Laying of Pipelines
- 8-5-7 Placement of Mains
- 8-5-8 Excavations
- 8-5-9 Installation of Services and Devices
- 8-5-10 Gas Service; Rates
- 8-5-11 Maps and Records
- 8-5-12 Rules and Regulations
- 8-5-13 Compensation to City
- 8-5-14 Forfeiture of rights and Privileges
- 8-5-15 Remedial Action By City
- 8-5-16 Severability
- 8-5-17 Abandonment or Termination of Franchise
- 8-5-18 Save Harmless Agreement

8-5-1: **GRANT OF FRANCHISE:** Cascade Natural Gas Corporation, hereinafter called "grantee", a Washington corporation, its successors and assigns, is hereby granted the right, privilege and franchise to construct, operate, and maintain in, through and along the present and future streets, alleys, parkways, and public places in the city of Irrigon, Oregon, hereinafter called "city", the mains, pipes, boxes, reducing and regulating stations, laterals, conduits and connections, including service connections, together with all of the necessary appurtenances for the purpose of supplying gas for heat, power or other purposes to the city and its inhabitants for the full term of this franchise, subject to the limitations herein set forth; and provided further, that this grant is a nonexclusive grant. Before the grantee may use or occupy any street, alley, parkway or public place, the grantee shall first obtain permission from the city to do so and shall comply with any special conditions the city desires to impose on such use or occupation. (Ord. 144, 4-8-2003)

8-5-2: **TERM OF FRANCHISE:** The term of this franchise shall be the chronological period commencing on April 8, 2003, and terminating upon June 30, 2008, so long as the notice provided for by section [8-5-3](#) of this chapter has been given by one of the parties. In the event that no such notice is given, it will renew automatically for successive periods of five (5) years each, "each a successive term" thereafter unless canceled at the end of a term by either party by written notice to the other given no less than one hundred eighty (180) calendar days

prior to the end of the primary term of the then successive current term. All rights and privileges granted, and duties imposed by this chapter upon the grantee shall extend to and be binding upon its successors, legal representatives or assigns, but this privilege and the rights granted under this chapter cannot be transferred by the grantee, either by assignment, sale, merger, consolidation, operation of law or otherwise without first obtaining the written consent of the city thereto, to be expressed by an ordinance. Notwithstanding anything to the contrary herein contained, permission is hereby granted to the company to mortgage this franchise, together with the gas utility facilities and properties of the company, within the city to secure any legal bond issue or other bona fide indebtedness of the company, with no requirement that the trustees file any acceptance of this franchise, and the liabilities and obligations of said trustees shall in any event be limited to the properties and assets of the company comprising the trust estate. (Ord. 144, 4-8-2003)

8-5-3: **SUCCESSIVE TERMS; NOTICE:** The anticipated term of this franchise is as set forth in section [8-5-2](#) of this chapter. Provision is made for a primary term and successive terms. In the event that neither party gives written notice as provided in this section or section [8-5-2](#) of this chapter, then the successive term shall be under the same terms and conditions as are set forth in this chapter. The notice shall be in writing and shall be governed by the following provisions:

A. Notice shall be directed as follows:

To the city: City of Irrigon

P.O. Box 428

Irrigon, OR 97844

To grantee: Cascade Natural Gas Corporation

P.O. Box 24464

Seattle, WA 98124-0464

It shall be the responsibility of each party to provide change of address information to the



other party and, until such notification is provided in writing, the other party shall have the right to rely upon the correctness of the address most recently provided.

- B. The notice shall be deemed to have been given on the earlier occurring to the date of the postmark, if mailed, or personal delivery of the other party. If mailed, notice shall not be deemed to have been effectuated unless the communication has been posted in the United States postal service with proper postage prepaid and properly addressed.
- C. If the notice anticipated by this section and section [8-5-2](#) of this chapter is given and no successor franchise is granted and accepted, the franchise shall be deemed to have terminated upon June 30 of the year in which notice is given. (Ord. 144, 4-8-2003)

8-5-4:                   **BINDING CONTRACT:** This chapter and the written acceptance thereof by the grantee shall constitute the contract between the city and the grantee, and the same shall be binding upon and inure to the benefit of the grantee, its successors and assigns, under the conditions herein imposed. (Ord. 144, 4-8-2003)

8-5-5:                   **COMPLIANCE WITH LAWS AND REGULATIONS:** All of the grantee's gas property and facilities shall be constructed and at all times maintained in good working order and condition and in accordance with standard engineering practice, and with all lawful governmental regulations including any applicable state laws. The city shall have the authority at all times in furtherance of the safety, convenience and welfare of the public to control by appropriate regulations, the location, elevation and manner of construction and maintenance of the grantee's gas property and facilities on the city streets, alleys, parkways and public places, subject to the provisions of any state and federal laws applicable thereto in conformance with the standard engineering practice. The grantee agrees to promptly conform to such regulations. (Ord. 144, 4-8-2003)

8-5-6:                   **LAYING OF PIPELINES:** All pipelines of the grantee shall be laid in such a manner as not to interfere with any present public or private irrigation or drain ditches, sewers, water mains, conduits, sidewalks, paving or other public improvements, and all repairs thereto or replacements required shall be accomplished as provided in section [8-5-8](#) of this chapter. The city reserves the right to construct, change or repair any public improvements, and to change the grades of any streets, alleys, or sidewalks. The grantee shall first be given written notice of such intention to change any streets, alleys or sidewalks where any part, or parts, of the grantee's distribution system may be involved. If any changes or repairs are required, grantee shall, at its own expense, lower, change or alter those pipelines or appurtenances involved accordingly and in accordance with standard engineering practices and any regulations pertaining thereto. The city shall consult with and give due consideration to the concerns of the grantee prior to any such moving or changing. Grantee shall not interfere with the conduits, water lines, drains, sewers, sidewalks, paving or other public improvements or public utilities of city operated utilities therein. If practicable, no pipeline shall be laid closer than two feet (2') to any water mains or other pipe or conduit of other utilities. In the event federal, state or other funds are available in whole or in part for utility relocating purposes, the city shall apply for such funds and the grantee will be reimbursed to the extent any such funds are actually obtained. (Ord. 144, 4-8-2003)

8-5-7

8-5-10

8-5-7:                   **PLACEMENT OF MAINS:** Gas mains shall be laid in utility easements or in the alleys wherever possible rather than public streets, except when necessary to cross streets. (Ord. 144, 4-8-2003)

8-5-8:                   **EXCAVATIONS:**

- A.    Hold Harmless Agreement: Whenever earth, materials, sidewalks, paving or improvements of any kind are disturbed, injured, or removed by the grantee, the grantee shall protect and save the city harmless for any loss or damages therefrom.
- B.    City Approval Required: Except in emergencies, prior to making an excavation in the traveled portion of any street, bridge or public place, and when required by the city, in any untraveled portion of any street, bridge or public place, the grantee shall obtain from the city approval of the excavation of its location.
- C.    Compliance With City Specifications: All restorations shall be done in strict compliance with city specifications, requirements and regulations in effect at the time of such restoration.
- D.    Backfilling, Surface Restoration By City: The city may require that any excavation made by the grantee in any street, bridge or public place be filled and the surface replaced by the city, and that the cost thereof, including the cost of inspection, supervision and administration, be paid by the grantee.
- E.    Deposit Of Cash Or Security: The city may require the grantee to deposit with the city, prior to the excavation of any street, bridge or public place, cash or adequate security, to assure payment of the cost of filling and excavation in any street, bridge or public place, and restoring the affected portion thereof, including the cost of inspection, supervision and administration. (Ord. 144, 4-8-2003)

8-5-9:                   **INSTALLATION OF SERVICES AND DEVICES:** The grantee shall, at all times during the term of this franchise, install and maintain at its own expense such service devices, street services, regulating and measuring devices (exclusive of meters), as may be necessary for supplying service to the consumers, such requirement extending only to the property line along the line of the main where the main is in the street, and to the abutting property line where the main is in the alley. All reasonable extensions for supplying service to the consumers who are inhabitants of the city shall be made, supplied and furnished by the grantee, under such reasonable rules and regulations as may be prescribed by the Oregon public utility commission, in accordance with the provisions herein contained. (Ord. 144, 4-8-2003)

8-5-10:                 **GAS SERVICE; RATES:** The gas to be supplied to the city and its inhabitants shall be merchantable gas. Said gas shall be supplied to the consumers' meters at such reasonable pressure as may be prescribed by the Oregon public utility commission. The rates, rules and regulations in respect to the condition, character, quality and standards of services to be furnished by the grantee and all such matters shall be that which is lawfully prescribed by the Oregon public utility commission. (Ord. 144, 4-8-2003)

8-5-11

8-5-14

8-5-11: **MAPS AND RECORDS:** The grantee shall, at all times, keep maps and records showing the locations and sizes of all gas mains laid or owned by it in the city, and such maps and records shall be available to the officials of the city at all reasonable times. If the city requests, grantee shall post additional signage above its gas mains. (Ord. 144, 4-8-2003)

8-5-12: **RULES AND REGULATIONS:** The grantee, its successors and assigns, may make such reasonable rules and regulations for the protection of its property for the service and charges to its customers, for the prevention of loss and waste, for safety purposes, for the conduct and operation of its business in respect to the sale or distribution of gas as may be advisable or necessary from time to time, all in accordance herewith and in conformity with existing laws and regulations. (Ord. 144, 4-8-2003)

8-5-13: **COMPENSATION TO CITY:**

- A. As compensation for the right, privilege and license herein granted, grantee shall pay to the city an amount equal to three percent (3%) of the gross revenues collected from its customers for gas consumed within the city. Gross revenue shall be computed by deducting from the total billings of the grantee the total of all uncollectible items. Such compensation shall be due for each calendar month or fraction thereof, within thirty (30) days from and after the close of such calendar month or fraction thereof. Within thirty (30) days after the termination of this privilege, compensation shall be paid for the period elapsing since the close of the last calendar month for which compensation has been paid.
- B. Acceptance by the city of any payment due under this section shall not be deemed to be a waiver by the city of any breach of this privilege occurring prior thereto, nor shall the acceptance by the city of any such payments preclude the city from later establishing that a larger amount was actually due, or from collecting the balance due thereon. (Ord. 144, 4-8-2003)

8-5-14: **FORFEITURE OF RIGHTS AND PRIVILEGES:** In case of failure on the part of the grantee, its successors or assigns, to comply with any of the provisions of this chapter, or if the grantee, its successors or assigns, do or cause to be done, any act or thing prohibited by or in violation of the terms of this chapter, the grantee, its successors or assigns, shall forfeit all rights and privileges granted by this chapter, and all rights here shall cease; provided, that such forfeiture shall not occur nor take effect until the city shall carry out the following proceedings:

Before the city may proceed to forfeit this franchise, it shall serve, by registered mail, a written notice upon the district manager and upon the registered agent for receipt of service for the state of Oregon, of the grantee, its successors or assigns, setting forth clearly and in detail the failure or violation complained of, and the grantee, its successors or assigns, shall have ninety (90) days thereafter in which to comply with the condition of this franchise. If the violation continues beyond said ninety (90) days, then the city council, at its sole discretion, shall have the right to determine that this franchise is forfeited if the breach of this franchise is material or substantial. Provided, however, that such failure or default or violation shall not constitute grounds for forfeiting this franchise if due materially, substantially and reasonably to act of God, fire, flood,

storm or other element or casualty, theft, war, disaster, strike, lockout or boycott, beyond the control of grantee, its successors and assigns. (Ord. 144, 4-8-2003)

8-5-15:                   **REMEDIAL ACTION BY CITY:** The city reserves and has the right to pursue any remedy to compel or enforce the grantee, its successors or assigns, to comply with the terms hereof, and furnish the service herein called for, and the pursuance of any right or remedy by the city shall not prevent the city from thereafter declaring a forfeiture for any reason herein stated, nor shall the delay of the city in declaring a forfeiture stop it from thereafter doing so, unless the action of the city shall have prevented, caused or contributed materially to the failure to perform or do the act or thing complained of. (Ord. 144, 4-8-2003)

8-5-16:                   **SEVERABILITY:** In the event that any sentence, clause, paragraph or section of this chapter be held void by any court, it shall not affect the balance hereof, and this chapter shall become effective upon passage and approval by the city and its acceptance in writing by the Cascade Natural Gas Corporation, which acceptance must be filed within thirty (30) days after the passage and approval by the council of the city. (Ord. 144, 4-8-2003)

8-5-17:                   **ABANDONMENT OR TERMINATION OF FRANCHISE:** In the event that this franchise is abandoned, forfeited or terminated by any means, all property of the grantee not removed after ninety (90) days shall become the property of the city. (Ord. 144, 4-8-2003)

8-5-18:                   **SAVE HARMLESS AGREEMENT:** The grantee, by its use of this right and privilege, covenants and agrees with the city to at all times protect and save harmless the city from all claims, accidents, suits, liability, loss, expense or damage of every kind and description which may accrue to or be suffered by any person or persons, firm, corporation or any building, or any damage arising out of the ownership, excavation, installation, construction, repair or operation of said gas system or any act done by the grantee under this right and privilege. Grantee will maintain in full force and effect, with an insurance carrier or carriers authorized to transact business in the state of Oregon a certificate of insurance demonstrating financial responsibility. (Ord. 144, 4-8-2003)

## CHAPTER 6

## UMATILLA ELECTRIC COOPERATIVE FRANCHISE

## SECTION:

- 8-6-1 Grant of Franchise
- 8-6-2 Nonexclusive Franchise
- 8-6-3 Installation and Maintenance of Poles, Wires, Fixtures
- 8-6-4 Service and Rate Requirements
- 8-6-5 Raise Wires for Moving Buildings
- 8-6-6 Use of Grantee's Poles and Wires
- 8-6-7 Hold Harmless Agreement
- 8-6-8 Compensation to City
- 8-6-9 Acceptance of Terms
- 8-6-10 Termination of Franchise

8-6-1: **GRANT OF FRANCHISE:** The city of Irrigon, hereinafter called the "city", does hereby grant to Umatilla Electric Cooperative, a corporation, and to its successors and assigns, hereinafter called the grantee, a license and franchise for a period of twenty (20) years from and after the effective date hereof, to construct, maintain and operate in and on the present and future streets, alleys, bridges and public places of the city, electric light and power lines, with all the necessary or desirable appurtenances, for the purpose of supplying electricity and electric service to the city and the inhabitants thereof, and to persons and corporations beyond the limits of the city, subject to the terms and conditions and to the making of the payments hereinafter specified. (Ord. 148, 3-9-2004)

8-6-2: **NONEXCLUSIVE FRANCHISE:** The license and franchise hereby granted shall not be exclusive, and the city expressly reserves the right, at any time during the term of the license or franchise hereby granted, to grant licenses or franchises for such purpose to other persons or corporations, as well as the right in its own name as a municipality to use said streets and public places for such purposes, in the event that the city shall hereafter decide to engage in the business of supplying electricity and electric service for municipal or other uses. If, during the term hereof, the city shall decide to engage in such business, and shall elect to acquire by condemnation or otherwise the property used by the grantee in furnishing electric service hereunder, value and damages shall be payable to grantee as provided by Oregon law. (Ord. 148, 3-9-2004)

8-6-3: **INSTALLATION AND MAINTENANCE OF POLES, WIRES, FIXTURES:** The locations and methods of installation and maintenance of all poles, wires, fixtures, underground conduits, and appurtenances shall be subject at all times to reasonable regulation by the city council, or by such committee of the council or such official of the city as may be designated by the council; and all such poles, wires, fixtures, underground conduits and appurtenances shall be so constructed and maintained as to interfere as little as practicable with

street or other traffic. All of such poles, wires, fixtures, underground conduits, and appurtenances shall be installed and at all times maintained by the grantee in safe order and condition and in accordance with good electrical practice, and the grantee, at its own cost and expense, shall promptly repair all streets, alleys, bridges and public places in any way disturbed by the grantee, and shall restore the same to as good a condition as the same were in prior to the doing of any work thereon or therein by the grantee. The grantee shall comply with all lawful present and future charter provisions, ordinances, rules or regulations of the city relating to the use or improvement of the streets, alleys, bridges and public places in the city. (Ord. 148, 3-9-2004)

8-6-4:                   **SERVICE AND RATE REQUIREMENTS:** The service to be furnished hereunder by the grantee shall be continuous and shall be adequate for the requirements of the city and its inhabitants, subject to accidents, interferences or interruptions beyond the reasonable control of the grantee, and shall be furnished under such reasonable rules and regulations as the grantee may make from time to time for the proper conduct of its business. Such service and all rates and charges therefor, and all rules and regulations pertaining thereto or to the making of necessary and proper extensions of service, shall be subject at all times to any rules, regulations and orders lawfully prescribed by the authority having jurisdiction in the premises. (Ord. 148, 3-9-2004)

8-6-5:                   **RAISE WIRES FOR MOVING BUILDINGS:** When necessary, in order to permit any duly authorized person to move any building or other structure across or along any street, alley, bridge or public place within the city, the grantee shall temporarily raise or remove its wires, fixtures and appurtenances upon such streets, alleys, bridges or public places, upon reasonable notice in advance from the recorder of the city, and at such time and in such manner as may be necessary reasonably to accommodate such moving, consistent with the maintenance of proper service to the grantee's customers; provided, however, that the cost to the grantee of such temporary raising or removal, and of any interruption of the grantee's service to its customers caused thereby, shall first be paid or satisfactorily secured to the grantee by the owner or mover of such building or other structure. (Ord. 148, 3-9-2004)

8-6-6:                   **USE OF GRANTEE'S POLES AND WIRES:** The city shall have the right, without payment or charge therefor, to attach its fire alarm or police signal wires to the poles of the grantee, but at its own risk and only in accordance with good electrical practice. Such fire alarm or police signal wires shall be subject to interference by the grantee only when and to the extent necessary for the proper construction, maintenance, operation or repair of the grantee's poles, wires, fixtures, conduits, and appurtenances. (Ord. 148, 3-9-2004)

8-6-7:                   **HOLD HARMLESS AGREEMENT:** The grantee hereby agrees and covenants to indemnify and save harmless the city and the officers thereof against and from any and all claims, and all damages, cost and expense to which it or they may be subjected by reason of any act or neglect of the grantee, its agents or servants, in any manner arising out of the construction, maintenance, or operation of any property of the grantee in or on any street, alley or highway within the city. (Ord. 148, 3-9-2004)

8-6-8:                   **COMPENSATION TO CITY:** The grantee shall pay to the city on or before the twentieth day of the month following the close of each calendar quarterly period during the term hereof a franchise fee or charge equivalent to three percent (3%) of the grantee's

gross operating revenue accruing during such period from the sale of electric light and power within the corporate limits of the city, and in lieu of ad valorem taxes, an additional one and one-half percent (1<sup>1</sup>/<sub>2</sub>%) of said gross revenues, other than such revenue derived from transactions in interstate or foreign commerce, or from business done with the government of the United States or any agency thereof, and after deducting therefrom any amounts paid by the grantee to the United States or state of Oregon as excise or business taxes upon the sale or distribution of electric service in the city. The first of such calendar quarterly periods shall begin on the first day of the month next following the effective date hereof. The amounts so payable by the grantee shall be in lieu of, and not in addition to, all other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the city in respect of the use or exercise of the license or franchise granted hereby. (Ord. 148, 3-9-2004)

8-6-9:                   **ACCEPTANCE OF TERMS:** This chapter shall be in full force and effect from and after the expiration of thirty (30) days after the date of its final passage by the council and its approval by the mayor of the city, but shall become null and void unless, within thirty (30) days after such effective date, the grantee shall file in the office of the recorder the grantee's unqualified written acceptance hereof and of all the terms, conditions, restrictions and obligations to be complied with or performed by it hereunder. (Ord. 148, 3-9-2004)

8-6-10:                   **TERMINATION OF FRANCHISE:** If the grantee shall fail to perform or comply with any of the obligations and requirements imposed by this chapter after the receipt of written notice from the city specifying the respect in which the grantee is deemed to be in default hereunder, and demanding that such default be remedied within a reasonable time to be fixed in such notice, the right and franchise granted hereby may be terminated and annulled by the city council, after reasonable opportunity for the grantee to be heard and an appropriate determination with respect to such alleged default. (Ord. 148, 3-9-2004)

## CHAPTER 7

## TELECOMMUNICATIONS

## ARTICLE A. TELECOMMUNICATIONS SYSTEM FRANCHISE

## SECTION:

8-7A-1	Scope; Authority
8-7A-2	Grant of Franchise
8-7A-3	Term of Franchise
8-7A-4	Franchise Fee; Payment of Procedure
8-7A-5	Applicable Ordinances
8-7A-6	Covenant to Indemnify and Hold City Harmless
8-7A-7	Construction and Relocation
8-7A-8	City Street Rights; Requirements for Undergrounding
8-7A-9	City Consent for Assignment or Transfer
8-7A-10	Miscellaneous Provisions
8-7A-11	Other Authority Surerseded

8-7A-1:                   **SCOPE; AUTHORITY:** This franchise agreement is authorized pursuant to the actions of the city council, is between the city of Irrigon (city) and Eastern Oregon Telecom, a limited liability corporation of the state of Oregon (grantee), and dated May 11, 2004. (Ord. 150, 5-11-2004)

8-7A-2:                   **GRANT OF FRANCHISE:** City grants to grantee, its successors and assigns, a franchise to construct, operate and maintain a telecommunications system, with all necessary facilities in, under, and over the surface of the city public rights of way. (Ord. 150, 5-11-2004)

8-7A-3:                   **TERM OF FRANCHISE:** The term of this franchise shall be ten (10) years from the date listed above unless terminated sooner as provided in this agreement. (Ord. 150, 5-11-2004)

8-7A-4:                   **FRANCHISE FEE; PAYMENT PROCEDURE:** Grantee shall pay as a franchise fee to the city, through the duration of this franchise, an amount initially equal to three percent (3%) of the grantee's gross revenues; provided, however, that the city may increase this franchise fee up to an amount not to exceed five percent (5%) of grantee's gross revenues for years four (4) through ten (10) of this franchise. Payment of the franchise fee shall be made quarterly or before April 30, July 31, October 31 and January 31 for the calendar quarters immediately preceding.

Franchise fee payments not received by the city on or before the due date shall be assessed interest at the rate of one percent (1%) over the existing prime rate as set by the bank with which the city contracts for its banking services, compounded daily. Interest shall be due on the entire



late payment from the date on which the payment was due until the date on which the city receives the payment.

- A. Each payment shall be accompanied by a written report to the city, verified by an officer or other authorized representative of grantee, containing an accurate statement in summarized form, as well as in detail, of grantee's gross revenues and the computation basis and method. Such report shall be in a form satisfactory to the city.
- B. No acceptance of any payment by grantee shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the city may have for further or additional sums payable. All amounts paid shall be subject to confirmation and recomputation by the city; provided, that such audit and computation is completed within three (3) years of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the three (3) year period, then any claim that the city might have had for additional compensation shall be forever waived and relinquished. The grantee agrees to reimburse the city for:
1. The reasonable costs of such confirmation if the city's recomputation discloses that the grantee has paid ninety five percent (95%) or less of the franchise fees owing for the period at issue upon receipt of an invoice from the city showing such costs were actually incurred and directly related to the audit; or
  2. One-half ( $\frac{1}{2}$ ) of the reasonable costs of such confirmation if the city's recomputation discloses that the grantee had paid more than ninety five percent (95%) but less than ninety eight percent (98%) of the franchise fees owing for the period at issue.
  3. The city's costs which may be reimbursed under this section shall not exceed one thousand dollars (\$1,000.00) per audit or financial review.
  4. If the city determines that grantee made any underpayment, and that the underpayment exceeded five percent (5%) of the amount due, grantee shall pay interest compounded at the rate of one percent (1%) over the existing prime rate as set by the bank with which the city contracts for its banking services, compounded monthly. Interest shall be due on the entire underpayment from the date on which payment was due until the date on which full payment is received.
- C. If the grantee disputes the city's determination of underpayment, the grantee shall place the disputed amount in an escrow account until final resolution.
- D. All grantee's books, maps, and records directly concerning its gross revenues under this franchise and its calculation of franchise fee payments to the city shall be open for inspection by the proper officers or agents of the city, upon no less than forty eight (48) hours' prior written notice, during normal business hours, to determine the amount of compensation due the city under this franchise, and shall be kept so as to accurately show the same.

- E. Payment of the franchise fee shall not exempt grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of grantee that may be lawfully imposed by the city or any other taxing authority, except as may otherwise be provided in the ordinance or laws imposing such other license fee, tax or charge. (Ord. 150, 5-11-2004)

8-7A-5:                   **APPLICABLE ORDINANCES:** The charter of the city and general ordinance provisions of the city affecting matters of general city concern and not merely existing contractual rights of grantee, now in effect or adopted in the future, are incorporated by reference and made a part of this franchise. Nothing in this franchise shall be deemed to waive the requirements of the various codes and ordinances of the city regarding permits, fees to be paid, or the manner of construction. (Ord. 150, 5-11-2004)

8-7A-6:                   **COVENANT TO INDEMNIFY AND HOLD CITY HARMLESS:**

- A. Construction Or Excavation: Grantee agrees and covenants to indemnify, defend and hold the city, its officers, agents and employees, harmless from any claim 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 persons or property by reason of any construction, excavation or any other act done under this franchise, by or for grantee, its agents or employees, or by reason of any neglect or omission of grantee to keep its telecommunications system in a safe condition, but not if arising out of or by reason of any negligence or wilful misconduct by the city, its officers, agents or employees. The city shall provide grantee with prompt notice of any such claim which grantee shall defend with counsel of its own choosing, and no settlement or compromise of any such claim will be done by the city without the prior written approval of grantee. Grantee and its agents, contractors and others shall consult and cooperate with the city while conducting its defense of the city.
- B. Relocation: Grantee also shall 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 grantee's failure to remove, adjust or relocate any of its facilities in the streets in a timely manner in accordance with a relocation schedule furnished to grantee by the city engineer, unless grantee's failure arises directly from the city's negligence or wilful misconduct. (Ord. 150, 5-11-2004)

8-7A-7:                   **CONSTRUCTION AND RELOCATION:**

- A. Grantee Responsibility For Construction, Permits And Fees: Subject to applicable regulations of the city, grantee may perform all necessary construction to construct, operate and maintain its telecommunications system. All construction and maintenance of any and all telecommunications system facilities within streets incident to grantee's provision of telecommunications services shall, regardless of who performs installation or construction, be and remain the responsibility of grantee. Grantee shall apply for and obtain all permits necessary for installation or construction of any such facilities, and for excavation and laying of any telecommunications system facilities within city streets. Grantee shall pay all applicable fees due for city construction permits.

- B. **Work Schedule:** Prior to beginning construction, grantee shall provide the city with an initial construction schedule for work in the streets and the estimated total cost of such work. The schedule shall be submitted at least two (2) weeks in advance of construction.
- C. **Excavations; Permits And Notices:** Grantee may make excavations in the city streets for any facility needed for the maintenance or extension of the grantee's telecommunications system, subject to obtaining permits from the city. Prior to doing such work, grantee must apply for, and obtain, appropriate permits from the city, and give appropriate notices to any other franchisees, licensees or permittees of the city owning or maintaining facilities which may be affected by the proposed excavation.
- D. **Emergency Repairs:** In the event that emergency repairs are necessary for grantee's facilities in the streets, grantee shall immediately notify the city of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Grantee must comply with all ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.
- E. **Underground Facilities; Familiarity With One Call Statutes:** Grantee is responsible for becoming familiar with, and understanding the provisions of Oregon Revised Statutes chapter 757, governing the location of underground facilities (the one call statutes). Grantee shall comply with the terms and conditions set forth in the one call statutes.
- F. **Remove Or Relocate Facilities:** Grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any of its facilities when directed to do so by the city in compliance with this code.
- G. **Interference With Utility Facilities:** Grantee's telecommunications system shall be constructed and maintained in such manner as not to interfere with city sewers, water systems, electric systems or any other facilities of the city. (Ord. 150, 5-11-2004)

**8-7A-8: CITY STREET RIGHTS; REQUIREMENTS FOR UNDERGROUNDING:**

- A. **City Authority:** Nothing in this franchise shall be construed to prevent the city from constructing sewers, water systems, electric systems, grading, paving, repairing or altering any street or constructing or establishing any other public work or improvement.
- B. **Failure Of Grantee To Remove Or Relocate Facilities:** If any of the grantee's telecommunications system interferes with the construction or repair of any city sewer, water or electric system, street or public improvement, the grantee's system shall be removed or replaced in the manner the city shall direct. Any and all such removal or replacement by grantee shall be without expense to the city. Should grantee fail to remove, adjust or relocate its facilities by the date established by the city engineer's written notice to grantee, the city may cause or effect such removal, adjustment or relocation, and the expense thereof shall be paid by grantee, including all costs and expenses incurred by the city due to grantee's delay.

- C. **Relocating Facilities Underground:** Whenever any existing electric or telecommunications utilities are located underground within a public right of way of the city, grantee shall also locate its telecommunications facilities underground. Whenever any overhead electric utilities are relocated underground, grantee shall also locate its telecommunication facilities underground. Any and all such installation and relocation under this subsection shall be without expense to the city. (Ord. 150, 5-11-2004)

8-7A-9: **CITY CONSENT FOR ASSIGNMENT OR TRANSFER:** Ownership or control of a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

- A. **Required Information:** Grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the city not less than one hundred twenty (120) days prior to the proposed date of transfer:
1. Complete information setting forth the nature, terms and conditions of the proposed transfer or assignment.
  2. All information required of a telecommunications franchise applicant pursuant to this chapter with respect to the proposed transferee or assignee.
  3. Any other information reasonably required by the city.
- B. **Qualifications:** No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this title.
- C. **Reimburse City For Costs:** Grantee shall reimburse the city for all direct and indirect fees, costs, and expenses reasonably incurred by the city in considering a request to transfer or assign a telecommunications franchise.
- D. **City Approval Required; Revocation Of Franchise:** Any transfer or assignment of a telecommunications grant, system or integral part of a system without prior approval of the city under this section shall be void and is cause for revocation of the franchise. (Ord. 150, 5-11-2004)

8-7A-10: **MISCELLANEOUS PROVISIONS:**

- A. **Compliance With Local, State And Federal Laws:** Both grantee and the city shall comply with all applicable federal and state laws. Grantee shall comply with all applicable city ordinances, resolutions, rules and regulations adopted or established pursuant to the city's lawful authority.
- B. **Severability:** If any section, provision or clause of this franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state

laws or regulations, the remainder of this franchise shall not be affected, unless the city council determines such section, provision, or clause was material to the city's agreement to issue a franchise to the grantee.

C. **City Authority To Regulate; Grantee Obligation:** The city council or the city administrator shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this franchise by reason of any failure of the city to enforce prompt compliance, nor does the city waive or limit any of its rights under this franchise by reason of such failure or neglect.

D. **Litigation; Courts:** Any litigation between the city and the grantee arising under or regarding this franchise shall occur, if in the state courts, in the Morrow County circuit court, and if in the federal courts, in the United States district court for the district of Oregon.

E. **Sending Or Delivering Notice:**

1. Any notice provided for under this franchise shall be sufficient if in writing, and: a) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; b) sent by overnight or commercial air courier (such as Federal Express); or c) sent by facsimile transmission addressed as follows, or to such other address as the receiving party shall specify in writing:

<p>If to the city:</p>		<p>City Administrator, City of Irrigon 500 N. Main Avenue</p> <p>P.O. Box 428 Irrigon, OR 97844 FAX 541-922-9322</p>
<p>If to the grantee:</p>		<p>Anthony A. George, CEO Eastern Oregon Telecom, LLC</p> <p>P.O. Box 848 Hermiston, OR 97838 FAX 541-564-4342</p>

8-7A-10

8-7A-11

2. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one business day after shipment by commercial air courier or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday). (Ord. 150, 5-11-2004)

8-7A-11:               **OTHER AUTHORITY SUPERSEDED:** Upon effectiveness of this franchise, any and all authority to operate previously granted to grantee by the city shall be superseded by this franchise. (Ord. 150, 5-11-2004)

CHAPTER 7

TELECOMMUNICATIONS

ARTICLE B. TELECOMMUNICATIONS SERVICES

SECTION:

- 8-7B-1 Definitions
- 8-7B-2 Registration of Telecommunications Carriers
- 8-7B-3 Construction Standards
- 8-7B-4 Location of Telecommunications Facilities
- 8-7B-5 Telecommunications Franchise
- 8-7B-6 General Franchise Terms
- 8-7B-7 General Provisions
- 8-7B-8 Penalties; Other Remedies

8-7B-1: **DEFINITIONS:** For the purposes of this article, the following terms, phrases, words, abbreviations, and their derivations will have the meanings herein given. When consistent with the context, words used in the present tense include the future tense. Words in the plural include the singular number. Words in the singular include the plural number.

**ABOVEGROUND FACILITIES:** See definition of Overhead Or Aboveground Facilities.

**AFFILIATED INTEREST:** The same meaning as Oregon Revised Statutes 759.010.

**CABLE ACT:** The cable communication policy act of 1984, 47 USC section 521 et seq., as now and hereafter amended.

**CABLE SERVICE:** The one-way transmission to subscribers of: a) video programming; or b) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**CITY:** The city of Irrigon, Oregon.

**CITY COUNCIL:** The elected governing body of the city of Irrigon, Oregon.

**CITY PROPERTY:** Means and includes all real property owned by the city, other than "public rights of way" and "utility easement" as those terms are defined in this section, and all property held in a proprietary capacity by the city, which are not subject to right of way franchising as provided in this article.

CONDUIT:	Any structure, or portion thereof, containing one or more ducts, conduits, handholds, bolts, or other facilities used for any telegraph, telephone, cable television, electrical, or communications conductors, or cable right of way owned or controlled, in whole or in part, by one or more public utilities.
CONSTRUCTION:	Any activity in the public right of way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.
CONTROL OR CONTROLLING INTEREST:	The actual working control in whatever manner exercised.
DAYS:	Calendar days unless otherwise specified.
DUCT:	A single, enclosed raceway for conductors or cable.
EMERGENCY:	Will have the meaning provided for in Oregon Revised Statutes 401.025.
FEDERAL COMMUNICATIONS COMMISSION OR FCC:	The federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services, and providers on the national level.
FRANCHISE:	An agreement between the city and a grantee which grants a privilege to use public rights of way and utility easements within the city for a dedicated purpose and for specific compensation.
GRANTEE:	The person to which a franchise is granted by the city.
GROSS REVENUES:	All revenue, including any and all cash, credits, property, or consideration of any kind, which is earned or derived by a grantee from the provision of telecommunications services within the city.
OREGON PUBLIC UTILITIES COMMISSION OR OPUC:	The statutorily created state agency in the state of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in Oregon law, or its lawful successor.
OVERHEAD OR ABOVEGROUND FACILITIES:	Utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.



PERSON: An individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

PRIVATE TELECOMMUNICATIONS NETWORK: A system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the state of Oregon pursuant to Oregon Revised Statutes 190.240 and 283.140.

PUBLIC RIGHTS OF WAY: Include, but are not limited to: streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways, including the subsurface under and air space over these areas. This definition applies only to the extent of the city's right, title, interest or authority to grant a franchise to occupy and use such areas for telecommunications facilities. "Public rights of way" shall also include "utility easements" as defined in this section.

STATE: The state of Oregon.

TELECOMMUNICATIONS: The transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

TELECOMMUNICATIONS ACT: The communications policy act of 1934, as amended by subsequent enactments including the telecommunications act of 1996 (47 USC section 151 et seq.) and as hereafter amended.

TELECOMMUNICATIONS CARRIER: Any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates, or manages telecommunications facilities within the city.

TELECOMMUNICATIONS FACILITIES: The plant and equipment, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services.

TELECOMMUNICATIONS SERVICE: The transmission for hire of information in electromagnetic frequency, electronic or optical form, including, but not limited to, voice, video or data, whether or not the transmission medium is owned by the provider itself, and whether or not the transmission medium is wireline or wireless. "Telecommunications service" includes all forms

of telephone services and voice, data and video transport, but does not include: a) cable service; b) private telecommunications network services; c) over the air radio or television broadcasting to the public at large from facilities licensed by the federal communications commission; and d) direct to home satellite service.

**TELECOMMUNICATIONS SYSTEM:**

See definition of Telecommunications Facilities.

**TELECOMMUNICATIONS UTILITY:**

The same meaning as Oregon Revised Statutes 759.005(1).

**UNDERGROUND FACILITIES:**

Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for "overhead facilities".

**USABLE SPACE:**

All the space on a pole, except the portion below ground level, the twenty feet (20') of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet (6') of a pole is buried below ground level.

**UTILITY EASEMENT:**

Any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes.

**UTILITY FACILITIES:**

The plant, equipment and property, including, but not limited to, the poles, pipes, mains, conduits, ducts, cable, wires, plant, and equipment located under, on, or above the surface of the ground within the public right of way of the city and used or to be used for the purpose of providing utility or telecommunications services. (Ord. 165-06, 10-10-2006)

**8-7B-2: REGISTRATION OF TELECOMMUNICATIONS CARRIERS:**

**A. Purpose:** The purpose of registration is:

1. To assure that all telecommunications carriers who have facilities and/or provide services within the city comply with the ordinances, rules and regulations of the city.
2. To provide the city with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the city, or that own or operate telecommunications facilities within the city.

3. To assist the city in the enforcement of this article and the collection of any city franchise fees or charges that may be due the city.
- B. **Registration Required:** Except as provided in subsection D of this section, all telecommunications carriers having telecommunications facilities within the corporate limits of the city, and all telecommunications carriers that offer or provide telecommunications service to customer premises within the city, shall register. The appropriate application and license from: 1) the Oregon public utility commission (PUC); or 2) the FCC qualifies as necessary registration information. Applicants also have the option of providing the following information:
1. The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information.
  2. The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an emergency.
  3. A description of the registrant's existing or proposed telecommunications facilities within the city, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the city.
  4. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided.
- C. **Registration Fee:** Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee in the amount of one hundred dollars (\$100.00) or as otherwise established by resolution of the city council.
- D. **Exceptions To Registration:** The following telecommunications carriers are excepted from registration:
1. Telecommunications carriers that are owned and operated exclusively for its own use by the state or a political subdivision of this state.
  2. A private telecommunications network, provided that such network does not occupy any public rights of way of the city.
  3. Telecommunications carriers operating under an existing franchise as of the effective date hereof. (Ord. 165-06, 10-10-2006)

8-7B-3:

**CONSTRUCTION STANDARDS:**

- A. General: No person shall commence or continue with the construction, installation or operation of telecommunications facilities within a public right of way, except as provided in this section, and with all applicable codes, rules, and regulations.
- B. Construction Codes: Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the national electrical code and the national electrical safety code.
- C. Construction Permits: No person shall construct or install any telecommunications facilities within a public right of way without first obtaining a construction permit, and paying the construction permit fee established in subsection G of this section. No permit shall be issued for the construction or installation of telecommunications facilities within a public right of way:
1. Unless the telecommunications carrier has first filed a registration statement with the city pursuant to section [8-7B-2](#) of this article; and if applicable,
  2. Unless the telecommunications carrier has first applied for and received a franchise pursuant to section [8-7B-5](#) of this article.
- D. Permit Applications: Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the city and shall be accompanied by drawings, plans, and specifications in sufficient detail to demonstrate:
1. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
  2. That the facilities will be constructed in accordance with the franchise agreement.
  3. The location and route of all facilities to be installed aboveground or on existing utility poles.
  4. The location and route of all new facilities on or in the public rights of way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights of way. Existing facilities shall be differentiated on the plans from new construction.
  5. The location of all of applicant's existing underground utilities, conduits, ducts, pipes, mains, and installations which are within the public rights of way along the underground route proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk, or right of way.
  6. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights of way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

- E. Applicant's Verification: All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.
- F. Construction Schedule: All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city.
- G. Construction Permit Fee: Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount consistent with this article or as otherwise determined by resolution of the city council. Such fee shall be designed to defray the costs of city administration of the requirements of this article.
- H. Issuance Of Permit: If satisfied that the applications, plans and documents submitted comply with all requirements of this article and the franchise agreement, the city shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.
- I. Notice Of Construction: Except in the case of an emergency, the permittee shall notify the city not less than two (2) working days in advance of any excavation or construction in the public rights of way.
- J. Compliance With Permit: All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.
- K. Noncomplying Work: Subject to the notice requirements in subsection [8-7B-5P](#) of this article, all work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this article, shall be removed at the sole expense of the permittee.
- L. Completion Of Construction: The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All construction work within city rights of way, including restoration, must be completed within one hundred twenty (120) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate city official as contemplated by subsection F of this section.
- M. As Built Drawings: If requested by the city, the permittee shall furnish the city with two (2) complete sets of plans drawn to scale and certified to the city as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. These plans shall be submitted to the city engineer or designee within sixty (60) days after completion of construction, in a format mutually acceptable to the permittee and the city.

N. Restoration Of Public Rights Of Way And City Property:

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

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

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

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

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

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

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

a. Timely completion of construction;

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

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

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

e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work. (Ord. 165-06, 10-10-2006)

8-7B-4: **LOCATION OF TELECOMMUNICATIONS FACILITIES:**

- A. **Location Of Facilities:** All facilities located within the public right of way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:
1. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right of way of the city, a grantee with permission to occupy the same public right of way must also locate its telecommunications facilities underground.
  2. Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right of way of the city, a grantee that currently occupies the same public right of way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right of way, absent extraordinary circumstances or undue hardship as determined by the city and consistent with applicable state and federal law.
- B. **Interference With Public Rights Of Way:** No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights of way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights of way. All use of public rights of way shall be consistent with city codes, ordinances and regulations.
- C. **Relocation Or Removal Of Facilities:** Except in the case of an emergency, within ninety (90) days following written notice from the city, a grantee shall, at no expense to grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights of way whenever the city shall have determined that such removal, relocation, change or alteration is reasonably necessary for:
1. The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights of way.
  2. The operations of the city or other governmental entity in or upon the public rights of way.
  3. The public interest.
- D. **Removal Of Unauthorized Facilities:** Within thirty (30) days following written notice from the city, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility, or related appurtenances within the public rights of way of the city shall, at its own expense, remove such facilities or appurtenances from the public rights of way of the city. A

telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- 1. One year after the expiration or termination of the grantee's telecommunications franchise.
- 2. Upon abandonment of a facility within the public rights of way of the city. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety (90) days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced.
- 3. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation.
- 4. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit.

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

- 1. By January 1 of each year, grantees shall provide the city with a schedule of their proposed construction activities in, around or that may affect the public rights of way.
- 2. If requested by the city, each grantee shall meet with the city annually or as determined by the city, to schedule and coordinate construction in the public rights of way. At that time, the city will provide available information on plans for local, state, and/or federal construction projects.
- 3. All construction locations, activities and schedules shall be coordinated, as ordered by the city engineer or designee, to minimize public inconvenience, disruption or damages. (Ord. 165-06, 10-10-2006)

8-7B-5: **TELECOMMUNICATIONS FRANCHISE:**

- A. Franchise Required: A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights of way of the city.
- B. Application: Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file an application with the city which includes the following information:
  - 1. The identity of the applicant.
  - 2. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities.



3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights of way in the city, including the location and route requested for applicant's proposed telecommunications facilities.
  4. The area or areas of the city the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area.
  5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed.
  6. An accurate map showing the location of any existing telecommunications facilities in the city that applicant intends to use or lease.
- C. Application And Review Fee:
1. Subject to applicable state law, applicant shall reimburse the city for such reasonable costs as the city incurs in entering into the franchise agreement.
  2. An application and review fee of two thousand dollars (\$2,000.00) shall be deposited with the city as part of the application filed pursuant to subsection B of this section. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.
- D. Determination By City: The city shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial.
- E. Rights Granted: No franchise granted pursuant to this article shall convey any right, title or interest in the public rights of way, but shall be deemed a grant to use and occupy the public rights of way for the limited purposes and term stated in the franchise agreement.
- F. Term Of Grant: Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be in effect for a term of five (5) years.
- G. Franchise Territory: Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be limited to a specific geographic area of the city to be served by the franchise grantee, and the public rights of way necessary to serve such areas, and may include the entire city.
- H. Franchise Fee: Each franchise granted by the city is subject to the city's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this article shall prohibit the city and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the

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

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

1. A new application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public rights of way of the city which are not included in a franchise previously granted under this article.

2. If ordered by the city to locate or relocate its telecommunications facilities in public rights of way not included in a previously granted franchise, the city shall grant an amendment without further application.

3. A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a franchise previously granted under this article.

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

1. The information required pursuant to subsection B of this section.

2. Any information required pursuant to the franchise agreement between the city and the grantee.

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

1. The financial and technical ability of the applicant.

2. The legal ability of the applicant.

3. The continuing capacity of the public rights of way to accommodate the applicant's existing and proposed facilities.

4. The applicant's compliance with the requirements of this article and the franchise agreement.

5. Applicable federal, state and local telecommunications laws, rules and policies.

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

- L. **Obligation To Cure As Condition Of Renewal:** No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this article, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the city.
- M. **Assignments Or Transfers Of System Or Franchise:** Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.
1. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.
  2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this article.
  3. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the city for all direct and indirect fees, costs, and expenses reasonably incurred by the city in considering a request to transfer or assign a telecommunications franchise.
  4. Any transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the city under this article or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.
- N. **Revocation Or Termination Of Franchise:** A franchise to use or occupy public rights of way of the city may be revoked for the following reasons:
1. Construction or operation in the city or in the public rights of way of the city without a construction permit.
  2. Construction or operation at an unauthorized location.
  3. Failure to comply with subsection M of this section with respect to sale, transfer or assignment of a telecommunications system or franchise.
  4. Misrepresentation by or on behalf of a grantee in any application to the city.
  5. Abandonment of telecommunications facilities in the public rights of way.
  6. Failure to relocate or remove facilities as required in this article.
  7. Failure to pay taxes, compensation, fees or costs when and as due the city under this article.
  8. Insolvency or bankruptcy of the grantee.

9. Violation of material provisions of this article.
  10. Violation of the material terms of a franchise agreement.
- O. Notice And Duty To Cure: In the event that the city believes that grounds exist for revocation of a franchise, the city shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding thirty (30) days, to furnish evidence that:
1. Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
  2. Rebutts the alleged violation or noncompliance; and/or
  3. It would be in the public interest to impose some penalty or sanction less than revocation.
- P. Public Hearing: In the event that a grantee fails to provide evidence reasonably satisfactory to the city as to its performance consistent with this article, the city staff shall refer the apparent violation or noncompliance to the city council. The city council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.
- Q. Standards For Revocation Or Lesser Sanctions: If persuaded that the grantee has violated or failed to comply with material provisions of this article, or of a franchise agreement, the city council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:
1. The misconduct was egregious.
  2. Substantial harm resulted.
  3. The violation was intentional.
  4. There is a history of prior violations of the same or other requirements.
  5. There is a history of overall compliance.
  6. The violation was voluntarily disclosed, admitted or cured.
- R. Other City Costs: All grantees shall, within thirty (30) days after written demand therefor, reimburse the city for all reasonable direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws. (Ord. 165-06, 10-10-2006)

**8-7B-6: GENERAL FRANCHISE TERMS:**

- A. **Facilities:** Upon request, each grantee shall provide the city with an accurate map or maps certifying the location of all telecommunications facilities within the public rights of way. Each grantee shall provide updated maps annually.
- B. **Damage To Grantee's Facilities:** Unless directly and proximately caused by wilful, intentional, or malicious acts by the city, the city shall not be liable for any damage to or loss of any telecommunications facility within the public rights of way of the city as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights of way by or on behalf of the city, or for any consequential losses resulting directly or indirectly therefrom.
- C. **Duty To Provide Information:** Within ten (10) business days of a written request from the city, each grantee shall furnish the city with information sufficient to demonstrate:
1. That grantee has complied with all requirements of this article.
  2. All books, records, maps, and other documents, maintained by the grantee with respect to its facilities within the public rights of way shall be made available for inspection by the city at reasonable times and intervals.
- D. **Compensation For City Property:** If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the city.
- E. **Cable Franchise:** Telecommunications carriers providing cable service shall be subject to the separate cable franchise requirements of the city and other applicable authority.
- F. **Leased Capacity:** A grantee shall have the right, without prior city approval, to offer or provide capacity or bandwidth to its customers; provided, that the grantee shall notify the city that such lease or agreement has been granted to a customer or lessee.
- G. **Grantee Insurance:** Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents, and employees as coinsured:
1. Comprehensive general liability insurance with limits not less than:
    - a. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;
    - b. Three million dollars (\$3,000,000.00) for property damage resulting from any one accident; and
    - c. Three million dollars (\$3,000,000.00) for all other types of liability.

2. Automobile liability for owned, nonowned and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and three million dollars (\$3,000,000.00) for each accident.
3. Workers' compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00).
4. Comprehensive for premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000.00).
5. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

*It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) 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.*

6. Within sixty (60) days after receipt by the city of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the city evidence that the grantee meets requirements of this section.
  7. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the city.
- H. General Indemnification: Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the city and its officers, employees, agents, and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors, or subcontractors in the construction, operation, maintenance, repair, or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this article or by a franchise agreement made or entered into pursuant to this article.
- I. Performance Surety: Before a franchise granted pursuant to this article is effective, and as necessary thereafter, the grantee shall provide a performance bond, letter of credit or other form of security in a form and substance acceptable to the city, as security for the full and complete performance of a franchise granted under this article, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the

city. This obligation is in addition to the performance surety required for construction of facilities. (Ord. 165-06, 10-10-2006)

8-7B-7: **GENERAL PROVISIONS:**

- A. **Governing Law:** Any franchise granted under this article is subject to the provisions of the constitution and laws of the United States, and the state of Oregon and the ordinances and charter of the city.
- B. **Written Agreement:** No franchise shall be granted hereunder unless the agreement is in writing.
- C. **Nonexclusive Grant:** No franchise granted under this article shall confer any exclusive right, privilege, license, or franchise to occupy or use the public rights of way of the city for delivery of telecommunications services or any other purposes.
- D. **Severability And Preemption:** If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this article is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations, or decision, the remainder of the article shall not be affected thereby but shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant, and portion of this article shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this article, then the provision shall be read to be preempted to the extent and/or the time required by law. In the event such federal or state law, rules or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the city.
- E. **Captions:** The captions to sections throughout this article are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this article.
- F. **Compliance With Laws:** Any grantee under this article shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules, and regulations of the city heretofore or hereafter adopted or established during the entire term of any franchise granted under this article, which are relevant and relate to the construction, maintenance, and operation of a telecommunications system.
- G. **Consent:** Wherever the consent of either the city or of the grantee is specifically required by this article or in a franchise granted, such consent will not be unreasonably withheld.
- H. **Application To Existing Ordinance And Agreements:** To the extent that this article is not in conflict with and can be implemented with existing ordinances and franchise

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agreements, this article shall apply to all existing ordinance and franchise agreements for use of the public right of way for telecommunications.

- I. Confidentiality: The city agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon public records law. (Ord. 165-06, 10-10-2006)

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**PENALTIES; OTHER REMEDIES:**

- A. Penalty Imposed: Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this article shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. The enforcement of this provision shall be consistent with the provisions of applicable city ordinances or other regulations concerning enforcement.
- B. Other Remedies: Nothing in this article shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this article. (Ord. 165-06, 10-10-2006)