

Chapter 7

BUSINESS

**BUSINESS LICENSES**

**7.000 Definitions.** As used in sections 7.000 to 7.080, the following words and phrases shall have the meanings given to them in this section:

Business. Any trade, profession, occupation or pursuit of every kind conducted in the city for gain, with the exception of garage sales.

Apartment house. A building, portion of a building, or a group of buildings on a parcel of land within the city containing two or more dwelling units that are rented, leased, let or made available for compensation for sleeping or living purposes. The term "apartment house" includes a hotel or motel, automobile or tourist court, rooming or lodging house, and mobile home or trailer park. In the case of mobile homes or trailer parks, the term dwelling units means space or stall.

Dwelling units. Each apartment house dwelling unit occupied or available for occupancy, except that an owner-occupied dwelling unit shall not be included in a business license fee computation.

**7.005 Necessity of License--Exemptions.** In order that business, manufacturing, pursuits, professions, and trade be carried on and conducted in the city in a profitable and peaceful manner, it is necessary that the same be regulated and safeguarded and that the city provide police protection, fire protection, street maintenance, street lighting and other services. It is necessary that license fees be levied and fixed for the purpose of securing revenue to assist in such regulation and in defraying the cost of such police and fire protection and costs of other municipal ser-

vices. No person whose income consists of salary or wage paid to such person by an employer or agent thereof covered and defined by sections 7.000 to 7.080, and no person working as a domestic in a private home shall be deemed to be transacting or carrying on business in the city; provided, however, that if any person, as defined herein, fails to pay the license fee and such person has neither his residence nor place of business in the city, but carries on business in the city, the agents or employees of such person engaged in business in the city shall be liable for the payment of such license fee and delinquency charges and/or penalties imposed for failure to comply with sections 7.000 to 7.080.

**7.010 Exemption of Certain Residential Builders.** Residential builders as defined by ORS 701.055 who have a valid builder's business license and who neither have an office within the city and has not derived gross receipts of \$100,000 or more from business conducted within the city during the calendar year for which the builder's business license is issued shall not be required to pay a business license fee as required by sections 7.000 to 7.080.

**7.015 Disposition of Proceeds.** All money received from licenses issued hereunder shall be deposited in the general fund.

**7.020 Presumption of Engaging in Business.** Any person that advertises or otherwise holds himself out to the public as engaged in any business, profession, trade, or calling for which a license is required, shall be conclusively presumed as holding himself out to

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the public as so engaged, and shall pay such license fee as required by sections 7.000 to 7.080.

**7.025 License Required.** No person shall carry on any business within the city without first obtaining a license therefor and without complying with the provisions of sections 7.000 to 7.080.

**7.030 License Application.**

(1) On or before July 1st, all persons engaging in business within the city shall file an application for annual renewal of the license required by sections 7.000 to 7.080. Any new business that is not in operation on or before July 1st which desires to conduct business within the city shall make application for a license before engaging in any business activity.

(2) Application for a business license shall be made to the city's finance director or city administrator upon forms provided by the city.

(3) The application for a business license shall include advance payment of the appropriate license fee and delinquency charges if any.

**7.035 Examination of Business Premises.**

(1) The city's law enforcement personnel, chief of the fire department, building official, and/or their agents and subordinates are authorized to investigate and examine all places of business licensed or subject to license under the terms of sections 7.000 to 7.080 at any time and all reasonable times for the purpose of determining whether such place of business is safe, sanitary and suitable for the business so licensed or for which application for license is made. However, before entering upon private property, the city official shall obtain the consent of an occupant or a warrant of the municipal court authorizing entry for the purpose of inspection, except when an emergency exists.

(2) No warrant shall be issued under the terms of sections 7.000 to 7.080 until an affidavit has been filed with the municipal court, showing probable cause for the inspection, by stating the purpose and extent of the proposed inspection, citing sections 7.000 to 7.080 as the basis for the inspection, whether it is an inspection instituted by complaint, and other specific or general information concerning the business in question.

(3) No person shall interfere with or attempt to prevent a city official from entering upon private premises and inspecting any business when an emergency exists or the city official exhibits a warrant authorizing entry.

(4) In the event it is determined by the city official that the place of business is dangerous to public health, safety, welfare, or is likely to become or is at that time, a menace or public nuisance, a report of the determination and the reasons therefore shall be made in writing to the city council.

(5) The city council, upon receipt of the written report, shall direct the city administrator to send by registered mail to the concerned business notification of a public hearing to be held before the city council. The purpose of the hearing shall be to determine whether the concerned business shall be permitted to receive a city business license or, if the concerned business has already been issued a city business license, whether the license should be suspended or revoked by the city council. The notification to the concerned business shall set forth the time and place of the public hearing and will cite specific incidents which constitute the basis for the determination by the city official, that the concerned business is dangerous to either public health, safety, welfare, or is likely to become or is at the present time, a public menace or nuisance.

**7.040 Suspension or Issuance--Public Hearings.** Public hearing for the purpose of determining whether a business license

should be issued or, if previously issued, whether it should be suspended or revoked shall be conducted as a quasi-judicial proceeding before the city council. Evidence or testimony shall be received and considered by the city council only when such evidence or testimony is relevant to the cited incidents or offenses contained in the notification to the concerned business. If the city council determines that all or a portion of the incidents or offenses set out in the notification to the concerned business are supported by substantial evidence, the city council may refuse to issue a business license to the concerned business, or if a business license has previously been issued, may suspend or revoke such license.

**7.045 Suspension or Revocation--Effect.**

If a business license is suspended or revoked, the concerned business shall immediately cease conducting any and all businesses within the city. Any business which continues to conduct business within the city subsequent to action by the city council to suspend or revoke the city license for such business shall be subject to the same fine and penalties as if such a business had never obtained a city business license and was carrying on business within the city without such a business license.

**7.050 Rehearing.** Any business which has been denied a city business license or has had a city license suspended or revoked by action of the city council under the provisions of sections 7.000 to 7.080, shall have the right of a rehearing before the city council for the purpose of reconsideration of such action of the city council, if in the opinion of the city council, the concerned business has presented substantial new evidence relevant to the refusal of the city to issue a business license or to the suspension or revocation of a previously issued business license. A request for rehearing shall be presented in writing by the concerned business to the city council and

shall set out the new evidence that the concerned business seeks to bring before the city council. If the city council grants a rehearing, it will be conducted in the same manner as a public hearing to determine whether a business license should be initially issued or whether if one had previously been issued, if it should be suspended or revoked, except that the only evidence or testimony which the city council shall hear in the rehearing, is that which is relevant or material to the new evidence set forth in the request for rehearing by the concerned business.

**7.055 Issuance of Business License.**

Upon application being made, any investigation required by sections 7.000 to 7.080, to be made having been satisfactorily completed without a determination by the city officials set out in section 7.035 that the business is dangerous to public health, safety, welfare, or likely to become or is now a public menace or nuisance, or if such a determination has been so made, and if the city council finds that such determination is not supported by substantial evidence, and if the fee is paid as herein provided, a license shall be issued by the city administrator.

**7.060 Effect of License Issuance.**

The issuing of a license pursuant to sections 7.000 to 7.080 or the collection of a fee shall not permit any person to engage in any unlawful business. The license fee levied and fixed by sections 7.000 to 7.080 shall be in addition to the general ad valorem taxes now or hereafter levied pursuant to law. All ordinances of the city in force on the effective date of the ordinance codified in sections 7.000 to 7.080 pertaining to or covering any business, pursuit or occupation, and providing a license or condition for its operation, shall remain in full force and effect; and in the event of a conflict or duplication of a license fee, then such other ordinance shall have precedence over the provisions of sections 7.000 to 7.080, to the extent that there will be no

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duplication of license fees for the same business, occupation, profession or pursuit.

**7.065 Separate License for Separate Locations.** If any person operates a business in the city in more than one location, each location shall be considered a separate business for the purpose of sections 7.000 to 7.080, except the warehouses used in connection with a business shall not be so separately licensed.

**7.070 Display of Business License.** All licenses issued in accordance with sections 7.000 to 7.080 shall be openly displayed in the place of business or kept on the person or on the vehicle of the person hereby licensed and shall be immediately produced and delivered for inspection to the police officer, chief of the fire department, and their agents or subordinates, when requested by such individuals to do so. Failure to carry such license or produce the same on request shall be deemed a violation of sections 7.000 to 7.080.

**7.075 Business License Year, Fee Schedule, Payments and Delinquency Charges.**

(1) The business license year shall be the city's fiscal year, July 1st through June 30th.

(2) License fees shall be set by resolution of the council.

(3) The business license fee shall be paid annually in advance of the business license year. If a person begins engaging in business within the first six months (July to December) of the fiscal year, the fee shall be the amount charged for a full year; if a person begins engaging in business during the third quarter (January to March) of the fiscal year, one-half of the annual license fee will be charged for the remainder of the fiscal year; and if a person begins engaging in business during the fourth quarter (April to June) of the fiscal year, one-fourth of the annual

license fee will be charged for the remainder of the fiscal year. In situations where a person intentionally engages in business for less than 31 days, one-fourth of the annual fee shall be charged.

(4) The business license fee shall be considered delinquent if not paid by August 1st of the business license year. If a person begins engaging in business after the start of the business license year, the fee shall be considered delinquent if the tax is not paid within 30 days after commencement of the business activity. The date that the business license fee is received by the city or the date of the postmark if remittance is made by mail shall be used in determining when the business license fee is paid.

(5) If the business license fee is not paid on or before the delinquency date, a delinquency charge equal to ten percent of the original business license fee due shall be added for each 30-day period, or fraction thereof, during which the business license fee and any accumulated delinquency charges remain unpaid. The total amount of the delinquency charge for any business license year shall not exceed 100 percent of the business license fee due for the year.

**7.080 Transfer, Assignment or Refund of Business License.**

(1) No transfer or assignment of any business license issued hereunder shall be valid or permitted except that whenever any person sells or transfers in whole a business for which such license has been paid and not refunded and the operation of the business has not materially changed, then the vendee thereof shall not be required to pay any additional license thereon for the balance of the business license year.

(2) In the event that a person discontinues business activity within the city, the person shall not be entitled to a refund of any portion of the business license fee.

## ADULT BUSINESSES

**7.100 Purpose.** The purpose of sections 7.100 to 7.185 is to provide for the regulation of certain types of adult business activities that the council finds present an extraordinary risk of being utilized to facilitate and conceal criminal conduct including offenses involving prostitution, controlled substances, theft, gambling, fraud, obscenity and often involving organized, systematic criminal activities. Therefore, sections 7.100 to 7.185 are intended to minimize such risk by providing for the strict regulation of such business activities and by prohibiting those persons who have previously been involved in such criminal conduct from participating in such business activities. In making this determination, the council has specifically considered the impact that such regulations will have upon the competitive nature of such business activities, and finds that the need for such regulations outweighs such impact.

**7.105 Definitions.** For the purpose of sections 7.100 to 7.185, the following definitions shall apply:

Adult business. The operation of any establishment(s), regardless of whether alcoholic beverages are served or not, to which the public has access, whether or not by purchase of an admission ticket or membership, and which is (are) utilized to present, as a substantial or significant portion of its entertainment, live performances that involve nudity.

Nudity or nude. Being devoid of a covering for the male or female genitalia consisting of an opaque material which does not simulate the organ covered, and, in the case of a female, exposing to view one or both breasts without a circular covering, centered on the nipple, that is at least three inches in diameter and does not simulate the organ covered.

### 7.110 Permits Required.

(1) It is a violation of this code for any person to engage in, conduct or carry on or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the operation of any adult business unless a permit for such business has first been obtained from the city administrator.

(2) It is a violation of this code for any person to entertain in any adult business or to be employed by any adult business unless a permit for such entertainment or employment has first been obtained from the city administrator.

### 7.115 Fees.

(1) Every applicant for a permit to own, maintain, operate or conduct an adult business shall file an application with the city administrator and pay a fee in an amount set by council resolution.

(2) Every applicant for a permit to entertain or be employed by any adult business shall file an application with the city administrator and pay a fee in an amount set by council resolution.

### 7.120 Application for Adult Business Permit.

(1) An application for such an adult business permit shall set forth the following:

(a) Written proof that the applicant is at least eighteen years of age;

(b) Business occupation, or employment for the three years immediately preceding the date of application;

(c) The business license and permit history of the person in operating a business identical to or similar to those regulated by sections 7.100 to 7.185;

(d) Whether such person, previously operating such business in this or any other city or state under any license or permit, has had such license or permit revoked or suspend-

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ed, the reason(s) therefor, and the business activity or occupation of the person subsequent to such action of suspension or revocation;

(e) The name, address, telephone number, birth date and principal occupation of the applicant and managing agent;

(f) The name, address, and telephone number of business or proposed business and a description of the nature of the business to be operated;

(g) Whether the business or proposed business is the undertaking of a sole proprietorship, partnership or corporation. If a partnership, the application shall set forth the names, birth dates, addresses, telephone numbers, principal occupations and respective ownership shares of each partner, whether general, limited, or silent. If a corporation, the application shall set forth the corporate name, a copy of the articles of incorporation, and the name, addresses, birth dates, telephone numbers and principal occupations of every officer, director and shareholder (having more than five percent of the outstanding shares) and the number of shares held by each;

(h) Any criminal convictions, or arrests relating to theft, controlled substances, gambling, prostitution, obscenity, fraud, tax evasion, or racketeering as defined in ORS chapter 166, of each applicant and natural person enumerated in subparagraphs (a) through (g) of this subsection;

(i) All residence addresses for the past three years of each natural person enumerated in subparagraphs (a) through (g) of this subsection;

(j) A personal financial statement of each natural person enumerated in subparagraphs (a) through (g)

of this subsection, including the location of all of such persons' bank accounts, the amounts respectively deposited therein, and a complete listing of all outstanding debts and loans.

(2) Each applicant and natural person enumerated in subsection (1) of this section shall personally appear before the police officer, or his designee, for fingerprinting and the taking of photographs.

(3) The application form required pursuant to this section, which contains personal and business information, shall remain confidential to the maximum extent permitted by law.

### **7.125 Application to Entertain in or be Employed by an Adult Business.**

(1) An application for a permit to entertain or work in an adult business shall set forth the following:

(a) Written proof that the applicant is at least eighteen years of age;

(b) The name, address, telephone number, birth date and principal occupation of the applicant;

(c) The social security number of the applicant;

(d) The name of the business and the business address of the adult business(es) where the applicant intends to entertain or work, if known;

(e) The business, occupation, or employment history of applicant for the three years immediately preceding date of application;

(f) Any arrests or criminal convictions relating to theft, controlled substances, gambling, obscenity, prostitution, fraud, tax evasion, or racketeering as defined in ORS chapter 166; and, in the case of any person who will carry out any work relating to security or maintaining order in an adult busi-

ness, such as "bouncer", any arrests or convictions relating to harassment, assault, menacing or the use or possession of weapons as defined in state law.

(2) Each applicant shall personally appear before the police officer or his designee for fingerprinting and the taking of photographs.

(3) The application form required by this section, which contains personal information, shall remain confidential to the maximum extent permitted by law.

### **7.130 Issuance and Renewal of Adult Business Permit.**

(1) Upon the filing of an application for and payment of the required fee, the police officer shall conduct an investigation of the applicant and the city administrator shall issue such permit if no cause for denial as noted in sections 7.100 to 7.185 exists.

(2) The application for a business permit shall be denied if:

(a) The applicant, or any other person who will be directly engaged in the management or operation of the business, or any person who owns five percent or more interest in the business, has previously owned or operated a business regulated by sections 7.100 to 7.185 and the license or permit for such business has been revoked for cause which would be grounds for revocation pursuant to sections 7.100 to 7.185, or if such business has been found to constitute a public nuisance and abatement has been ordered; or if such person has been convicted of or evidence exists that supports a finding by the preponderance of the evidence the applicant or such other person has committed any criminal offense noted in section 7.120;

(b) The operation as proposed by the applicant would not

comply with all applicable requirements of this code including but not limited to the building, health, planning, zoning and fire codes of the city;

(c) Any statement in the application is found to be false or any required information is withheld;

(d) Any employee is found to have committed any criminal offense noted in section 7.125 of this code, and such violation either occurred on the premises of the establishment subject to the permit, or was connected in such time and manner with the operation of the establishment, so that the person(s) in charge of the adult business knew, or should reasonably have known, that such violation(s) would occur.

(3) For the purpose of sections 7.100 to 7.185, the offenses listed in this section shall be considered to be defined by the statutes of the state unless otherwise specified. Any arrest or conviction for conduct other than that denoted by the statutes of the state or ordinances of the city specified in sections 7.100 to 7.185 shall be considered to be equivalent to one of such offenses if the elements of such offense for which the person was arrested or convicted would have constituted one of the above offenses under the applicable Oregon statutes or Lafayette ordinance provisions.

(4) Notwithstanding the mandatory direction of subsection (2), the city administrator may grant a permit, with the concurrence of the police officer, despite the presence of one or more of the factors enumerated, if he concludes that the applicant has established to his satisfaction that the behavior evidenced by such factor is not likely to recur, or is remote in time, or occurred under circumstances which diminish the seriousness of the factor as it relates to the purpose of sections 7.100 to 7.185.

(5) The permit shall be for a term of one year, shall be nontransferable, shall

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expire on the first anniversary of its issuance, shall be valid only for a single location, and shall be displayed on such premises so as to be visible to patrons. When the business location is changed, the address of the new location shall be provided in writing to the city administrator for approval at least 10 days prior to such change.

(6) Denial of a permit may be appealed to the city council by filing written notice of an appeal with the city administrator within 10 days of the date of denial.

### **7.135 Issuance and Renewal of Permit to Entertain in or be Employed by an Adult Business.**

(1) Upon receipt of an application to entertain in or be employed by an adult business, the police officer shall conduct an investigation of the applicant and the city administrator shall issue such permit if no cause for denial as noted in sections 7.100 to 7.185 exists.

(2) Application for a permit shall be denied if:

(a) The applicant has been convicted of or evidence exists that supports a finding by the preponderance of the evidence that the applicant has committed any criminal offense noted in section 7.125;

(b) Any statement in the application is found to be false.

(3) For the purpose of sections 7.100 to 7.185, the offenses listed in this section shall be considered to be defined by the statutes of the state unless otherwise specified. Any arrest or conviction for conduct other than that denoted by the statutes of the state or ordinances of the city specified in sections 7.100 to 7.185 shall be considered to be equivalent to one of such offenses if the elements of such offense for which the person was arrested or convicted would have constituted one of the above offenses under the applicable Oregon statutes or Lafayette ordinance provisions.

(4) Notwithstanding the mandatory direction of subsection (2), the city administrator may grant a permit, with the concurrence of the police officer, despite the presence of one or more of the factors enumerated, if he concludes that the applicant has established to his satisfaction that the behavior evidenced by such factor is not likely to recur, or is remote in time, or occurred under circumstances which diminish the seriousness of the factor as it relates to the purpose of sections 7.100 to 7.185.

(5) The permit shall be for a term of one year, shall be nontransferable, shall expire on the first anniversary of its issuance and shall be available for inspection at such premises in which the permittee is entertaining or employed.

(6) Denial of a permit may be appealed to the city council by filing written notice of an appeal with the city administrator within ten days of the date of denial.

### **7.140 Revocation or Suspension of Permit.**

(1) Any permit issued for an adult business pursuant to sections 7.100 to 7.185 may be revoked or suspended by the city administrator, with the concurrence of the police officer, for any cause which would be grounds for denial of a permit or where investigation reveals that any violation of the provisions of sections 7.100 to 7.185 or any offense noted in section 7.125 has been committed by any person who entertains or is employed on the premises and such offense is connected in time and manner with the operation of the establishment so that the person(s) in charge of such establishment knew, or should reasonably have known, that such violations would occur, or that such violations have been permitted to occur on the premises by the permit holder or any employee, or that a lawful inspection has been refused, or that such adult business activities cause significant litter, noise, vandalism, vehicular or pedestrian traffic con-

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gestion, or other locational problems in the area around such premises.

(2) Any permit issued to any person to entertain or work in an adult business may be revoked or suspended by the city administrator for any cause which would be grounds for denial of a permit.

(3) Any permit shall be revoked or suspended if any statement contained in the application therefor is found to have been false.

(4) The city administrator, upon revocation or suspension of any permit issued pursuant to sections 7.100 to 7.185, shall give the permittee written notice of such revocation or suspension by causing notice to be served upon the permit holder at the business or residence address listed on the permit application. Service of such notice shall be accomplished either by mailing the notice by certified mail, return receipt requested, or at the option of the city administrator, by personal service in the same manner as a summons served in an action at law. When notice is sent by certified mail and is returned, receipt unsigned, service of notice shall be accomplished by personal service in the same manner as a summons is served in an action at law. Refusal of the service by the person whose permit is suspended or revoked is prima facie evidence of receipt of the notice. Provided further, that service of notice upon the person in charge of a business during its hours of operation shall constitute prima facie evidence of notice to the person holding the permit to operate the business. Suspension or revocation shall be effective and final ten days after the giving of such notice, unless such suspension or revocation is appealed by filing a written notice of appeal to the city council with the city administrator of the city.

**7.145 Appeals.** The filing of an appeal of a revocation or suspension of a permit under sections 7.100 to 7.185 shall stay the effectiveness of such suspension or revocation

until the appeal is determined by the council. Upon receipt of notice of the appeal, the auditor shall give notice of the filing of the appeal to the city administrator, who shall file a report with the council containing the reasons for such denial, revocation or suspension. The notice of appeal filed with the city administrator shall contain an address for the appellant to which all notices required in sections 7.100 to 7.185 may be mailed. The city administrator shall set a date for a council hearing upon the denial, revocation or suspension. At the hearing the city administrator shall report to the council his reasons for denying, revoking or suspending the permit. The person whose application has been denied or whose permit has been revoked or suspended shall have the right to call witnesses and be heard by council and file a written statement in his behalf. At the conclusion of the hearing, the council shall determine the appeal and the decision of the council shall be final. If the council denies the appeal, the revocation or suspension shall be effective immediately.

### **7.150 Duties of Adult Business Permit Holder.**

(1) No person who has been issued a permit to operate a business regulated under sections 7.100 to 7.185 shall permit any person to engage in any conduct for which a permit is required by section 7.110(2) unless:

(a) Such person has a valid permit issued by the city administrator to perform such act; and

(b) Written notice has been given to the city administrator that such person will engage in such activity on the premises; and

(c) The name and current residence address of such person has been placed on file with the city administrator.

(2) Upon termination of the employment of any such person, the business permit holder shall give written notice of such termi-

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nation to the city administrator within ten days of such termination. Further, the adult business permit holder shall, within ten days thereof, inform in writing the city administrator of any change in the information required by section 7.120.

(3) A current, complete copy of all financial records required to be kept by an adult business permit holder for Oregon state and federal tax purposes regarding the operation of such business shall be maintained on such business premises. Such records shall be subject to inspection pursuant to section 7.180.

(4) No nude entertaining shall occur closer than ten feet from any patron.

(5) All nude entertaining shall only occur on a stage which is raised at least two feet from the level of the main floor in the adult business, and shall only be provided by persons who have a valid permit when required by sections 7.100 to 7.185.

(6) No person shall be admitted to an adult business as a patron or customer unless such person is eighteen years of age or older or accompanied by parent or guardian.

(7) No person under the age of eighteen shall entertain in or be employed by an adult business.

(8) No person employed by an adult business shall engage in any activity on any property in the vicinity of any adult business for the purpose of soliciting, beckoning, requesting, or suggesting to any person(s) to enter such premises as a patron.

### **7.155 Prohibited Conduct in Adult Business.**

(1) It is unlawful for any person while engaging in nude entertaining in an adult business to come into physical contact with any patron.

(2) It is unlawful for any person while engaging in nude entertaining in an adult business to directly or indirectly accept any gratuity.

(3) It is unlawful for any person who performs nude entertainment in an adult business, while not entertaining, to come into physical contact with any patrons or to appear in any area to which patrons have access, while in a state of nudity.

**7.160 Advertising Restrictions.** No adult business regulated under sections 7.100 to 7.185 shall cause to be placed or maintained, in such a location as can be viewed by persons in any public street, any sign(s), photographic, pictorial or other graphic representation(s) that depict in whole or in part, or any page, poster or other printed matter bearing a verbal description or narrative account of, the following:

(1) Sadomasochistic abuse, sexual conduct or sexual excitement, as defined in ORS 167.060; or

(2) Nudity.

**7.165 Hours of Operation.** No nude entertainment shall occur in an adult business between the hours of 2:00 a.m. and 8:00 a.m.

**7.170 Exterior Design Restrictions.** No adult business shall have a window or door on the exterior wall which permits an interior view of the premises from the street or sidewalk.

**7.175 Maintenance of Premises in Violation Declared a Nuisance--Abatement.** Any establishment maintained in violation of the provisions of sections 7.100 to 7.185 is declared to be a public nuisance. The city attorney is authorized to bring any action or suit to abate such nuisance by seeking injunctive or any other appropriate relief in any appropriate forum when he or she has reasonable cause to believe a nuisance under this section exists, regardless of whether or not any individual has been convicted of a violation of sections 7.100 to 7.185.

**7.180 Inspection of Premises.** A police officer or other city employee designated by the city administrator may, during the hours the establishment is open for business, upon presentation of proper identification, inspect those portions of any premises in which an adult business regulated under sections 7.100 to 7.185 is conducted that are open to or frequented by patrons and the records kept on the premises as required by section 7.150. Such inspection shall be limited in scope to that necessary to determine compliance with the regulatory provisions of sections 7.100 to 7.185. Except when an emergency exists, the police officer or city employee shall obtain the consent of the person on the premises who is in charge of the establishment before entering the establishment. Failure to permit the inspection shall be grounds for revocation or suspension of the permit required by sections 7.100 to 7.185. If the inspection is not permitted, the police officer or city employee may obtain a warrant of the municipal court authorizing entry for the purpose of inspection.

(2) No warrant shall be issued under the terms of sections 7.100 to 7.185 until an affidavit has been filed with the municipal court, showing probable cause for the inspection, by stating the purpose and extent of the proposed inspection, citing sections 7.100 to 7.185 as the basis for the inspection, whether it is an inspection instituted by complaint, and other specific or general information concerning the business in question.

(3) No person shall interfere with or attempt to prevent a police officer or city employee from entering upon private premises and inspecting any business when an emergency exists or the police officer or city employee exhibits a warrant authorizing entry.

**7.185 Penalty.**

(1) The violation of any provision of sections 7.100 to 7.185 shall subject the

violator to suspension or revocation of the involved permit pursuant to section 7.140 as well as judicial proceedings as noted in section 7.175.

(2) Violation of any provision of section 7.155 is punishable upon conviction by a fine of not more than \$500 or by imprisonment not to exceed six months, or both.

**ALARM SYSTEMS**

**7.200 Purpose and Scope.**

(1) The purpose of sections 7.200 to 7.250 is to protect the emergency services of the city from misuse.

(2) Sections 7.200 to 7.250 govern emergency alarm systems, require permits, establish fees, provide for allocation of revenues and deficits, provide for revocation of permits, provide for punishment of violations and establish a system of administration.

**7.205 Definitions.** As used in sections 7.200 to 7.250, the following words and phrases shall have the meanings given to them in this section:

Alarm business. The business by any individual, partnership, corporation, or other entity of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing any alarm system or causing to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed any alarm system in or on any building, structure or facility.

Alarm center. Any location, other than the communications center where alarms are received from sites within the city and from which emergency response is requested.

Alarm system. Any assembly of equipment, mechanical or electrical, arranged to signal the occurrence of an emergency requiring urgent attention and to which public, fire, or emergency medical personnel are expected to respond.

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Alarm user. The person, firm, partnership, association, corporation, company or organization of any kind in control of any building, structure or facility wherein an alarm system is maintained.

Automatic dialing device. A device which is interconnected to a telephone line and is programmed to select a predetermined telephone number and transmit by voice message or code signal an emergency message indicating a need for emergency response.

Burglary alarm system. An alarm system signaling an entry or attempted entry into the area protected by the system.

Communications center. The city facility used to receive emergency and general information from the public to be dispatched to city emergency services.

Coordinator. The individuals designated by the city administrator to issue permits and enforce the provisions of sections 7.200 to 7.250.

Emergency medical alarm system. A system to indicate a health emergency within an area protected by the system.

False alarm. An alarm signal or request eliciting a response by emergency personnel when a situation requiring a response by emergency personnel does not in fact exist, but does not include an alarm signal caused by violent conditions of nature or other extraordinary events not reasonably subject to control by the alarm business operator or alarm user.

Fire alarm system. An alarm system signaling temperature, humidity, smoke, or other evidences of fire within an area protected by the system.

Interconnect. To connect an alarm system including an automatic dialing device to a telephone line, either directly or through a mechanical device that utilizes a telephone, for the purpose of using the telephone line to transmit a message upon the activation of the alarm system.

Police officer. Director of police services for the city or his designated representative.

Primary trunk line. A telephone line servicing the city communication center that is designated to receive emergency calls.

Robbery alarm system. An alarm system signaling a robbery or attempted robbery.

### **7.210 Alarm User's Permit Required.**

(1) Every alarm user shall obtain an alarm user's permit for each system from the coordinator's office upon the effective date of the ordinance codified in sections 7.200 to 7.250 or prior to use of an alarm system. Users of systems using robbery, burglary, fire, and emergency medical alarm capabilities shall obtain separate permits for each function. Application for each of said alarm user's permit and a fee for each shall be filed with the coordinator's office each year. Each permit shall bear the signature of the police officer and be for a one-year period. The permit shall be physically upon the premises using the alarm system and shall be available for inspection by the police officer or his authorized designee. The fee for an emergency alarm users permit shall be set by resolution of the council.

(2) A revoked user's permit shall be obtained from the coordinator's office by filing an application and paying a fee set by resolution of the council.

(3) Each permit shall bear the signature of the police officer and shall bear the same expiration date as the revoked permit. The permit shall be physically upon the premises using the alarm system and shall be available for inspection by the police officer or his designated representative.

(4) If a residential alarm user is over the age of 65 and is the primary resident of the residence and if no business is conducted in the residence, an initial user's permit may be obtained from the coordinator's office according to subsection (1) of this section

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without the payment of a fee. Revoked user's permits shall require the fee set forth in sections 7.200 to 7.250.

(5) In addition to the fee provided in subsection (1) an additional fee set by council resolution will be imposed on a user who fails to obtain a permit within 60 days after the effective date of the ordinance codified in sections 7.200 to 7.250, or who is more than sixty days delinquent in renewing a permit.

(6) An alarm user required by federal, state, county, or municipal statute, regulation, rule or ordinance to install, maintain and operate an alarm system shall be subject to sections 7.200 to 7.250 and may be issued a special alarm user's permit.

(7) An alarm user which is a governmental political unit shall be subject to sections 7.200 to 7.250, but a permit shall be issued without payment of a fee.

### **7.215 User Instructions.**

(1) Every alarm business selling, leasing or furnishing to any user an alarm system which is installed on premises located in the area subject to sections 7.200 to 7.250 shall furnish the user with instructions that provide information to enable the user to operate the alarm system properly and to obtain service for the alarm system at any time.

(2) Standard form instructions shall be submitted by every alarm business to the police officer within 60 days after the effective date of the ordinance codified in sections 7.200 to 7.250. If he reasonably finds such instructions to be incomplete, unclear or inadequate, he may require the alarm business to revise the instructions to comply with this section and then to distribute the revised instructions to its alarm users.

### **7.220 Automatic Dialing Device--Certain Interconnections Prohibited.**

(1) It is unlawful for any person to program an automatic dialing device to select a primary trunk line; and it is unlawful for an

alarm user to fail to disconnect or reprogram an automatic dialing device which is programmed to select a primary trunk line within twelve hours of receipt of written notice from the coordinator that it is so programmed.

(2) Within 60 days after the effective date of the ordinance codified in sections 7.200 to 7.250, all existing automatic dialing devices programmed to select a primary trunk line shall be reprogrammed or disconnected.

(3) It is unlawful for any person to program an automatic dialing device to select any telephone line assigned to the city; and it is unlawful for an alarm user to fail to disconnect or reprogram such device within twelve hours of receipt of written notice from the coordinator that an automatic dialing device is so programmed.

### **7.225 False Alarms--Permit Revocation.**

(1) Any alarm system which has ten or more false alarms within a permit year shall be subject to permit revocation as provided herein.

(2) If the communications center records ten or more false alarms within a permit year for any alarm system:

(a) The police or fire chief shall notify the alarm user and the alarm business providing service or inspection to the user by certified mail of such fact and direct that the user submit a report to the police officer within ten days of receipt of the notice describing actions taken or to be taken to discover and eliminate the cause of the false alarms.

(b) If the alarm user submits a report as directed, the police or fire chief shall determine if the actions taken or to be taken will prevent the occurrence of false alarms; if he determines that the action will prevent the occurrence of false alarms, he shall notify the alarm user and the

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relevant alarm business in writing that the permit will not be revoked at that time and that if one more false alarm occurs within the permit year, the permit will be summarily revoked.

(c) If no report is submitted, or if the police or fire chief determines that the actions taken or to be taken will not prevent the occurrence of false alarms, the police or fire chief shall give notice by certified mail to the user that the permit will be revoked without further notice on the tenth day after the date of the notice if the user does not file within that period a written request for a hearing.

(d) If a hearing is requested, written notice of the time and place of the hearing shall be served on the user by the police officer by certified mail at least ten days prior to the date set for the hearing, which date shall not be more than 21 nor less than ten days after the filing of the request for hearing.

(e) The hearing shall be before the city council, and the police or fire chief and the alarm user shall have the right to present written and oral evidence, subject to the right of cross-examination. If the council determines that ten or more false alarms have occurred in a permit year, and that the user has not taken actions which will prevent the occurrence of false alarms, the council shall issue written findings to that effect and may issue an order revoking the user's permit.

(f) An alarm user whose permit has been revoked may apply for a revoked user's permit as provided in section 7.210(2). The police officer shall not be required to issue a revoked user's permit, unless he is satisfied that the user's system has been properly serviced and its

deficiencies corrected. The police or fire chief may impose reasonable restrictions and conditions upon the user, before issuing a revoked user's permit, which restrictions and conditions shall be written on the permit and shall provide for summary revocation on the occurrence of ten false alarms in the permit year.

(g) In situations permitting summary revocation under subsections (b) and (f) of this section, revocations shall be effective on the fifth day following the mailing by certified mail by the police or fire chief of a notice of revocation. There shall be no appeal of a summary revocation.

### 7.230 False Alarm--Fee.

(1) The special alarm user permit shall be as defined in section 7.210(6), and shall be subject to the following regulations:

(a) Special alarm permits shall not be subject to revocation due to false alarms.

(b) For each false alarm over five in a permit year, upon written demand thereof by the police or fire chief, the holder of a special user's permit shall pay a fee in an amount set by council resolution.

(2) The governmental political unit shall be as defined in section 7.210(7), and shall be subject to the following regulations:

(a) Shall not be subject to revocation due to false alarms.

(b) For each false alarm over five in a permit year, for each location, and upon written demand thereof by the police or fire chief, the holder of the alarm user's permit shall pay a fee in an amount set by council resolution.

(3) All other alarm permits shall, for each false alarm over five in a permit year, for each location, and upon written

demand by the police officer, pay a fee in an amount set by council resolution.

(4) The payment of any fee provided for in this section shall not be deemed to extend the term alarms of the permit.

(5) Nonpermit user's false alarms shall be subject to the following regulations:

(a) Alarm requests from alarm centers, as defined in section 7.205, shall be subject to false alarm fees.

(b) For each false alarm request over five in a calendar year, for each location, and upon written demand thereof by the police officer, the resident, tenant, or owner shall pay a fee in an amount set by council resolution.

**7.235 Confidentiality Statistics.**

(1) All information submitted in compliance with sections 7.200 to 7.250 shall be held in the strictest confidence and shall be deemed a public record exempt from disclosure pursuant to state statute; and any violation of confidentiality shall be deemed a violation of sections 7.200 to 7.250. The coordinator shall be charged with the sole responsibility for the maintenance of all records of any kind whatsoever under sections 7.200 to 7.250.

(2) Subject to the requirements of confidentiality, the coordinator shall develop and maintain statistics having the purpose of assisting alarm system evaluation for use by members of the public.

**7.240 Allocation of Revenues and Expenses.** All fees, fines and forfeitures of bail collected pursuant to sections 7.200 to 7.250 shall be general fund revenue of the city.

**7.245 City Liability.** The city shall incur no liability or costs as a result of personnel or system malfunctions of private alarm systems or the installation or maintenance of said systems.

**7.250 Enforcement.**

(1) Enforcement of sections 7.200 to 7.250 may be by civil action as provided in ORS 30.315.

(2) Violation of sections 7.200 to 7.250 shall be punished upon a conviction as set out in sections 1.205 to 1.260 of this code.

(3) The failure or omission to comply with provision of sections 7.200 to 7.250, shall be deemed a violation and may be so prosecuted, subject to the penalty provided in subsection (2) of this section.

**REGULATING DOOR-TO-DOOR SOLICITATIONS**

**7.300 Purpose.** The city council finds it necessary and desirable to regulate solicitation in order to provide an effective opportunity for the occupants of residential property to protect themselves from the unwanted disruption of the peaceful and quiet enjoyment of their property and right to privacy caused by solicitors, and to provide a means by which those solicitors who choose to intrude upon and disrupt that quiet enjoyment of property can be held accountable for such violations. The city council has also been advised that, based upon actual experiences in Lafayette and in the opinion of crime prevention specialists nationwide, there is a direct connection between residential burglaries and unscrupulous solicitors. The creation of a registration requirement will enable city officials and citizens of the city to become informed concerning the individuals and organizations who choose to solicit in the city. Sections 7.300 to 7.340 also provide a mechanism for discouraging, through the civil infraction process, those solicitors who avoid registration and provide a mechanism to identify and discourage those who would use solicitation as a front for criminal activity.

**7.305 Definition.** For the purposes of sections 7.300 to 7.340, the terms "solicit" and "solicitation" shall mean the entry onto real property used for residential purposes by a person for the purpose of communicating with an occupant of the property, whether the communication is verbal, visual or in writing.

**7.310 Prohibited Acts, Penalties.**

(1) It is unlawful for any person to:

(a) Solicit before 9:00 a.m. or after 9:00 p.m., local time, without the consent of the occupant to do so;

(b) Solicit without first having obtained a registration certificate pursuant to section 7.315 if required by that section;

(c) Violate the terms of a registration certificate issued pursuant to section 7.325;

(d) Solicit after a registration certificate has been revoked, pursuant to section 7.325;

(e) Allow, suffer or permit any person soliciting on their behalf or under their direction to commit any act prohibited by this section;

(f) Provide false or fraudulent information on a registration statement;

(g) Leave written materials upon real property where a sign conforming to the requirements of section 7.330 is posted;

(h) Solicit upon real property where a sign conforming to the requirements of section 7.335 is posted;

(i) Allow, suffer or permit any person to solicit, on their behalf after a registration certificate has been revoked, pursuant to section 7.325.

(2) Violation of this section is punishable as a Class A civil infraction.

**7.315 Consent to Enter Onto Real Property, Exemption.**

(1) It shall be an affirmative defense to an alleged violation of section 7.310 that the person charged with the violation or crime had received actual or constructive consent of the occupant prior to entering the real property. Constructive consent to enter real property may be implied from the circumstances of each instance, the relationship of the parties and actual or implied contractual relationships.

(2) The occupant of real property shall be considered to have given constructive consent to enter real property for the purpose of solicitation between the hours of 9:00 a.m. and 9:00 p.m., local time, if they have not posted a "No Solicitation" sign, pursuant to section 7.335.

(3) Nothing in this section shall be construed to authorize the entry into a structure located on real property. The right to enter any structure must be otherwise provided for by law.

(4) Officers, employees or agents of a governmental entity while performing activities within the scope of their office, employment or agency are exempt from the requirements of sections 7.300 to 7.340.

**7.320 Registration Statement.**

(1) All persons desiring to solicit at five or more dwelling units in the city during any eight-hour period shall file with the city administrator a registration statement, on forms provided by the city administrator, containing the following information:

(a) The name of the person registering and desiring to solicit;

(b) Whether the person registering is a natural person, partnership, corporation or association; and

i. If a natural person, the business or residence address and telephone number of the person,

ii. If a partnership, the names of all partners and the principal business

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address and telephone number of each partner,

iii. If a corporation, the person registering must state whether it is organized under the laws of Oregon or is a foreign corporation, and must show the mailing address, business location, telephone number, name of the individual in charge of the Portland area office of such corporation and the registered agent of the corporation, and the names of all officers and directors or trustees of said corporation, and, if a foreign corporation, the place of incorporation,

iv. If an association, the registration statement shall show the association's principal business address and telephone number, if any, and shall show names and principal business or residence addresses and telephone numbers of all members of the association, unless they exceed ten in number, in which case the application shall so state and the person registering may alternatively list the names and principal business or residence addresses and telephone numbers of the officers and directors or trustees of the association. If the association is part of a multistate organization or association, the mailing address and business location of its central office shall be given, in addition to the mailing address and business location of its Portland area office;

(c) A brief description of the nature of the organization if the person registering is a partnership, association or corporation and an explanation from all persons of the intended purpose of the solicitation;

(d) The names, mailing address and telephone number of all individuals who will be in direct charge or control of the solicitation and the number of persons who will be actually involved in the solicitation activity. One of the named individuals shall be designated to receive any notice or communication from the city or the public concerning the solicitation activities;

(e) The time period within which the solicitation is to be made, giving the date of the beginning of solicitation and its projected conclusion;

(f) A description of the methods and means by which the solicitation is to be accomplished and the approximate locations and dates on which those locations will be visited;

(g) The names of any other cities in which the person registering has solicited within the past five years, but in the event that the person registering has solicited in more than five other cities, the person registering may list the five cities located closest to Lafayette;

(h) A statement that if a certificate of registration is granted, such certificate will not be used as or represented to be an endorsement by the city or any of its officers or employees;

(i) The names of any officer, director, trustee, partner, corporation, or any current agent or employee engaging in the solicitation who has signed a consent decree or order in the last five years or who has been

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convicted of a felony or a misdemeanor involving moral turpitude with the past five years, and the nature of the offense, or consent decree or order, the state where the conviction, or consent decree or order occurred, and the year of such conviction, or consent decree or order;

(j) An explanation of the reasons, if the person registering is unable to provide any of the foregoing information, why such information is not available.

(k) The registration statement must be signed by the applicant, if the person registering is an individual, if the person registering is a partnership, by a partner; if a person registering is a corporation or an association, by an officer. The individual signing the registration statement shall sign the statement and swear before an Oregon notary that he has carefully read the registration statement and that all the information contained therein is true and correct.

(2) Registration statement and information submitted with the registration statement are public records available for public inspection during normal city business hours.

### **7.325 Issuance of Certificate of Registration, Revocation.**

(1) After a review of the registration statement to determine its compliance with section 7.320, and, within five working days of the receipt of the registration statement, the city administrator shall either issue a certificate of registration, in the form provided by section 7.330, or notify the person registering that the registration statement does not comply with the requirements of section 7.320, and specifically point out what information or explanation has not been furnished that is required before a certificate of registration can be issued. If the person registering is engaged in an activity for which a business

license is required by sections 7.300 to 7.340, proof of a valid business license shall be furnished prior to the issuance of the certificate.

(2) A certificate of registration shall be revoked by the city administrator if a registered person, or one or more solicitors engaged on behalf of that person, are convicted or plead guilty or no contest to a cumulative minimum of three violations of sections 7.300 to 7.340 occurring within any six-month period in connection with or on behalf of the solicitation of the registered person. A certified copy of the municipal court record of plea or conviction is conclusive proof that a violation has occurred. The period of revocation shall be for 60 calendar days, during which the person may not receive a certificate of registration. Within five working days of receipt of notification that a registered person has been convicted, plead guilty or no contest to the third violation, the city administrator shall notify the person designated in the registration statement to receive notice of the action to revoke in writing five days prior to the effective date of the revocation. The person may appeal the city administrator's decision to the city council by filing a notice of appeal with the city administrator within ten days of the effective date of the revocation. During the pendency of the appeal the order to revoke is stayed.

### **7.330 Form of Certificate of Registration, Term.**

(1) The city administrator shall prescribe the form of the certificate of registration. Each certificate shall have the following printed prominently thereon: "The issuance of this certificate of registration is not an endorsement by the city of Lafayette or any of its officers or employees." Each certificate of registration shall bear a registration number which is the same as the file containing the registration statement filed by the registrant.

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(2) Every certificate of registration issued by the city administrator shall contain a termination date upon which the certificate shall expire, which date shall be the termination of the solicitation period specified in the registration statement or one year from the date of issuance, whichever is less.

(3) The certificate of registration shall contain a list of the acts prohibited by sections 7.300 to 7.340.

### **7.335 No Solicitation Sign.**

(1) If an occupant real property chooses to not invite solicitors onto their property, the occupant may post a "No Solicitation" sign pursuant to this section. The effect of the posting of such a sign is to express the refusal of the occupant to grant consent to any person to enter their real property to solicit, except to those persons exempt from these provisions by subsection (4) of section 7.315.

(2) Signs posted pursuant to this section shall be posted on or near the boundaries of the property at the normal points of entry, and

(a) Signs must be no smaller than six inches in height by eight inches in width; and

(b) Signs must contain the words "No Solicitation" and the reference "sections 7.300 to 7.340 Lafayette Municipal Code" in characters no less than one-half inches in height.

(3) For real property possessing no apparent barriers to entry at the boundaries of the property which limit access to the primary entrance of a structure located on the property, placement of the sign at the primary entrance to the structure constitutes compliance with this section.

### **7.340 Evidentiary Matters.**

(1) It shall be prima facie evidence of a violation of paragraph (c) of subsection (1) of section 7.310 if written material is found on real property upon which a sign conform-

ing to the requirements of section 7.335 has been posted. The person responsible for such written material shall be the person identified in the written material as its proponent, sponsor, distributor or potential beneficiary of the communication conveyed.

(2) For the purposes of paragraphs (e) and (i) of subsection (1) of section 7.310, if a person solicits on behalf of a person registered pursuant to section 7.320, it is presumed that the person registered allowed, suffered or permitted the solicitation.

## **SOCIAL GAMING**

**7.375 Prohibited Gaming.** Except as provided in section 7.380, no person shall engage in social games or gambling within the city.

### **7.380 Exceptions.**

(1) Charitable, fraternal, nonprofit civic associations and religious organizations may engage in social games where no house player, house bank or house odds exist and there is no house income from the operation of the social games.

(2) Charitable, fraternal and religious organizations may operate bingo, lotto or raffles in compliance with ORS 167.118 and when licensed to operate such games pursuant to ORS 167.118, 464.250 to 464.380, 464.420 and 464.450 to 464.530.

**7.385 Definitions.** The definitions in ORS 167.117 are applicable to sections 7.375 and 7.380.

## **BUSINESS PRIVILEGE TAX—NATURAL GAS SUPPLIERS**

**7.400 Definitions.** As used in sections 7.400 to 7.445, the following mean:

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Bridge. Includes a structure erected within the city to facilitate the crossing of a river, stream, ditch, ravine or other place, but does not include a culvert.

Gas mains. Includes all gas transmission and distribution facilities located on or under any street, bridge or public place within the city.

Natural gas supplier. Any person who makes natural gas available for use within the city or who operates a natural gas distribution system within the city.

Public place. Includes any dedicated or city-owned park, place or grounds within the city that is open to the public but does not include a street or bridge.

Street. Includes a street, alley, avenue, road, boulevard, thoroughfare or public highway within the city, but does not include a bridge.

**7.405 Tax Imposed.** A business privilege tax is hereby imposed upon natural gas suppliers engaged in or carrying on business within the corporate limits of the city during part or all of a calendar year. The business privilege tax shall be in an amount equal to two percent of the gross revenue collected by the natural gas supplier from its customers for gas used within the city. "Gross revenue" as used in sections 7.400 to 7.445 shall be deemed to include any revenue earned within the city from the sale of natural gas after deducting from the total billings of the natural gas supplier the total net write-off of uncollectible accounts. Gross revenue shall include revenues from the use, rental or lease of operating facilities of the utility other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale to a public utility when the utility purchasing the service is not the ultimate consumer, or revenue paid directly by the United States of America or any of its agencies.

### **7.410 Tax Collection.**

(1) The tax imposed by sections 7.400 to 7.445 shall be due semiannually for the preceding six-month period. The tax shall be due as follows:

(a) On or before April 1, the tax for part or all of the six-month period extending from July 1 through December 31, inclusive of both dates, of the preceding calendar year; and

(b) On or before October 1, the tax for part or all of the six month period extending from January 1 through June 30, inclusive of both dates, of the same calendar year.

(2) Taxes are due within 60 days after the natural gas supplier ceases to engage in or carry on business within the city.

(3) The natural gas supplier shall furnish to the city Finance Director with each tax payment required by sections 7.400 to 7.445 a report verified under oath by the chief financial officer or other responsible designee of the natural gas supplier showing the amount of gross revenue earned within the city for the period covered by the payment. The tax for the period covered by the statement shall be calculated on the basis of the gross revenue so reported. If controversy arises as to the amount of gross revenue within the meaning of sections 7.400 to 7.445, the amount of such gross revenue as determined by the Public Utilities Commission of Oregon after examination of the natural gas supplier's records shall be deemed the correct amount.

(4) In the event that a determination by the Public Utilities Commission or an audit results in additional payment due to the city, such additional payment shall be subject to interest at the rate of eight percent per year from the date the original tax payment was due.

(5) In the event that a determination by the Public Utilities Commission or an audit results in additional payment due to the

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city which the city council finds to have been the result of intentional acts seeking to avoid payment of the full amount due the city, the natural gas supplier shall be subject to an additional penalty of ten percent of the total amount of the additional tax payments due.

(6) Any overpayment to the city through error or otherwise offset against the net tax due from the natural gas supplier.

(7) Acceptance by the city of any tax payment due under sections 7.400 to 7.445 shall not be deemed to be a waiver by the city of any violation of sections 7.400 to 7.445 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 any balance due to the city.

(8) The amount of the tax to be paid under sections 7.400 to 7.445 which is in excess of the operating expenses provided for under state law may be shown as separate item, computation or addition to the customer's bill.

**7.415 Records.** The natural gas supplier shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the city under section 7.405. The city may inspect the books of account at any time during business hours and may audit the books from time to time. The city council may require periodic reports from the natural gas supplier relating to its operations and revenues within the city.

**7.420 Rights and Privileges.** Subject to payment of the business privilege tax imposed by sections 7.400 to 7.445, the city hereby grants to natural gas suppliers the nonexclusive right and privilege to construct, maintain and operate a natural gas distribution system within the city, to install, maintain and operate on and under the streets and bridges and public places of the city, facilities for the transmission and distribution of gas to the city and its inhabitants and to other cus-

tomers and territory beyond the limits of the city, and to transmit, distribute and sell natural gas.

**7.425 Other Obligations Not Affected by Tax.** Any amount due the city as a tax under sections 7.400 to 7.445 is in addition to any other payment required by law, and shall not be considered as payment in lieu of or as credit toward:

(1) Any franchise fee paid to the city for the use of the streets, bridges and public places of the city;

(2) The payment of any general ad valorem taxes levied or imposed upon the properties of the natural gas supplier;

(3) Any local improvement assessment imposed upon the natural gas supplier;

(4) Any permit fees or inspection fees required by the construction codes or other ordinances of the city; or

(5) Any similar fee or charge imposed by law.

**7.430 Indemnification.** The natural gas supplier shall indemnify and save harmless the city and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to or death of persons due to any wrongful or negligent act or omission of the natural gas supplier, its agents or employees in exercising the rights and privileges hereby granted.

**7.435 Enforcement.** Any amount due the city as a tax, interest or penalty under sections 7.400 to 7.445 shall constitute a debt of the person from whom the amount is due. The city may bring action in court to enforce payment of the debt.

**7.440 Effective Date of Tax.** Sections 7.400 to 7.445 shall apply to all gross revenues collected by natural gas suppliers on or after August 1, 1998.

**7.445 Classification of Tax.** The city council determines that the tax imposed by sections 7.400 to 7.445 is not a tax subject to the property tax limitations of Article XI, Section II(b) of the Oregon Constitution.

## **PUBLIC UTILITIES PRIVILEGE TAX**

**7.500 Authority.** The privilege tax for use and occupancy of city streets covered by sections 7.500 to 7.525 is enacted pursuant to the authority of the city under Oregon law, including the authority to impose privilege taxes on public utilities.

**7.505 Tax Imposed.** A tax for the privilege of occupying and using streets and other facilities within the city of one and one-half percent is imposed on the gross revenue received by Portland General Electric Company, an Oregon corporation, hereinafter sometimes referred to as the "Company," within the city.

**7.510 Methodology for Calculation.** The term "gross revenue" in sections 7.500 to 7.525 shall have the same meaning as set forth in Ordinance No. 437, "Portland General Electric Franchise." The methodology for calculating the tax for the privilege of occupying and using streets and other facilities shall be identical to the methodology for calculating the Company's franchise fee, set forth in Ordinance No. 437. Payment procedures, including calculation of interest on late remittances by the Company, shall be identical to the methodology set forth in Ordinance No. 437.

**7.515 Tax Collection.** The tax imposed by sections 7.500 to 7.525 shall be due semi-annually for the preceding six-month period. The tax shall be due as follows:

(1) On or before April 1, the tax for part or all of the six-month period extending from July 1 through December 31, inclusive of both dates, of the preceding calendar year; and

(2) On or before October 1, the tax for part or all of the six-month period extending from January 1, through June 30, inclusive of both dates, of the same calendar year.

**7.520 Effective Date.** The tax for the privilege of occupying and using streets and other facilities shall become effective as of August 1, 1998, for gross revenues from energy consumption within the city on and after that date.

**7.525 Classification of Tax.** The city council determines that the tax imposed by sections 7.500 to 7.525 is not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

## **CABLE TELEVISION -- FRANCHISE REGULATIONS**

**7.600 Definitions.** For purposes of sections 7.600 to 7.635, unless the context requires otherwise, the following mean:

Access. The availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the city and its designees, of the cable communications system to acquire, create, and distribute programming not under the franchisee's editorial control, including, but not limited to public, educational and government programming.

Cable service. Programming, in any combination, provided on the cable communications system to subscribers.

Cable Communications System. A system of plant, facilities, equipment, and closed signal transmission paths, including,

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without limitation, antennas, cables, amplifiers, towers, microwave links, studios, real and personal property, and any and all other conductors, home terminals, converters, remote control units, and all associated equipment or facilities designed and constructed for the purposes of distributing cable service to subscribers and of producing, receiving, amplifying, storing, processing or distributing audio, video, voice, digital, analog or other forms of electronic or optical signals, whether processed by or owned, rented, leased, leased-purchased or otherwise controlled by or within the responsibility of the franchisee.

Franchise. The privilege conferred upon a person, firm or organization by the city to operate a cable communications system under the terms and provisions of sections 7.600 to 7.635.

Franchisee. The person, firm or organization to which a franchise is granted to operate a cable communications system pursuant to the authority of sections 7.600 to 7.635.

Leased Access Channel. Any channel or portion of a channel commercially available for programming for persons other than the franchisee for a fee or charge, or other considerations to be paid by those persons to the franchisee.

Programming. The process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the cable communications system, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the cable communications system.

Public Right-of-Way. The surface of, and the space above and below, any public street, road, alley, highway, dedicated way, local access road or road easement used or intended to be used by the general public for motor vehicles, and any utility easement within the city, to the extent the city has the right to allow the franchisee to use them.

**7.605 Authority.** The city council of the city of Lafayette recognizes, declares and establishes the authority to regulate the construction, operation and maintenance of cable communications systems (hereinafter "systems") for the area located with the city limits and to exercise all powers necessary for that purpose, including, but not limited to, the following:

(1) To grant by resolution, nonexclusive franchises for the development and operation of a system or systems.

(2) To impose different franchise requirements based on reasonable classifications.

(3) To contract, jointly agree or otherwise provide with other local or regional governments, counties or special districts for the development, operation, and/or regulation of systems, or franchises therefor, notwithstanding the fact that the systems extend beyond the jurisdiction of the city.

(4) To purchase, hire, construct, own, maintain, operate or lease a system and to acquire property necessary for any such purpose.

(5) To regulate and supervise all facets of a system, including but not limited to:

(a) Consumer service, consumer protection and privacy standards.

(b) Disputes among the city, franchisees, and subscribers.

(c) Franchisee fair employment practices.

(d) The development, management and control of access channels.

(e) Programming, channel capacity and system interconnections.

(f) Rates and review of finances for rate adjustments.

(g) Construction timetables, standards, and service extension policies.

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- (h) Modernization and upgrade of technical aspects.
- (i) Leased access channels.
- (j) Ensuring adherence to federal, state and local regulations.
- (k) Franchise transfer and transfer of control of ownership.
- (l) Franchise renewal.
- (m) Franchise revocation.
- (n) Enforcement of buy-back, lease-back or option-to-purchase provisions.
- (o) Receivership and foreclosure procedures.
- (p) Compliance with city standards for public rights-of-way.
- (q) Regulate telecommunications utilities which operate a cable communications system.

(6) Reserve the power to exercise this grant of authority to the fullest extent allowed by law, and in a manner that is consistent with superior law.

**7.610 Grant of Franchise, Renewal.**

(1) In the event that the council finds it in the best interests of the city to consider granting a franchise for a system, the procedures set forth in sections 7.600 to 7.635 shall be followed.

(2) By resolution of the council, the city administrator shall be directed to prepare a request for proposal (hereafter referred to as an "RFP") containing at least the following:

- (a) Information and instructions relating to the preparation and filing of bid proposals.
- (b) Requirements regarding the development, operation and regulation of a system, including but not limited to the following:
  - i. The length, renewal and transfer or assignment of the franchise, including foreclosure and receivership provisions,

- ii. A description of the franchise territory and the extension of service,
- iii. Access requirements,
- iv. The system design,
- v. Technical performance standards,
- vi. Fees, records and reporting,
- vii. Indemnification, insurance, and liability for damages, and
- viii. Provision of an option for the city to acquire the system upon revocation or expiration of the franchise.

(c) Criteria to be used in evaluating applicant proposals.

(3) When a person is operating an existing system without a franchise, by resolution of the council, the city administrator shall be directed to prepare a proposed franchise, containing at least the requirements listed in (2)(b) above, for presentation to the operator.

(4) The council, by resolution, may:

- (a) Approve the RFP, or proposed franchise, as proposed, or modify or otherwise make amendments thereto as it deems necessary;
- (b) Authorize the city administrator to seek bids for a system pursuant to the RFP, or enter discussions with a current operator on the award of a franchise.

(5) The council may award a franchise only after a public hearing on the proposed franchise, notice of which shall be published in a local newspaper of general circulation in the city at least ten days prior to the date of the hearing. The potential franchisee shall be notified by mail of the public hearing; provided, however, that no defect in the notice or failure to notify shall invalidate the franchise awarded. The council may award the franchise, modify the

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proposed franchise and award or take no action.

(6) No franchise or award thereof shall be deemed final until adoption of a resolution containing the terms and conditions thereof. The franchisee shall bear the costs of all publications and notices given in connection with the award of the franchise, and the costs incurred by the city in evaluating the proposed franchise.

(7) A request for renewal of a franchise will be considered and processed in conformance with federal law. The council may, by resolution, adopt procedures to be followed in the consideration of a renewal request.

**7.615 Administration of Cable Communications Provisions and Franchise.** The council shall have the power to carry out any or all of the following functions:

(1) Employ the service of a technical consultant, to assist in the analysis of any matter related to any franchise, RFP or proposed franchise under sections 7.600 to 7.635;

(2) Act on applications for franchises;

(3) Act on matters which might constitute grounds for revocation or termination of a franchise pursuant to its terms;

(4) Resolve disagreements among franchisees and public and private users of the system;

(5) Consider requests for rate settings or adjustments;

(6) Coordinate and facilitate the use of access channels;

(7) Act in intergovernmental matters relating to systems, cooperate with regulators and operators of other systems, and supervise interconnection of systems;

(8) Review all franchisee records required by the franchise and, in the council's discretion, require the preparation and filing of information additional to that required by the franchise;

(9) Conduct evaluations of the system and the franchisee's compliance with franchise requirements at least every three years;

(10) Adopt and amend regulations and procedures necessary to enforce franchises and to clarify terms thereof;

(11) Appoint in advisory committee to assist the council in exercising its authority pursuant to sections 7.600 to 7.635;

(12) Any other actions the council deems necessary to carry out the purpose of sections 7.600 to 7.635.

**7.620 Intergovernmental Agreements.** The council may enter into intergovernmental agreements as authorized by Oregon law, with any other jurisdiction to provide for the cooperative regulation and control of any aspect of a cable communications system. Such agreements may provide for the delegation of any and all powers of the council to an entity provided for in the intergovernmental agreement, except for the powers to enter into or revoke a franchise agreement.

**7.625 Violation and Penalties.**

(1) Any person, firm or corporation, other than the city, whether as principal, agent, employee or otherwise, violating or causing the violation of any provision of sections 7.600 to 7.635 or performing any of the acts or functions itemized under section 7.600, which defines a cable communications system, without having been awarded a franchise to perform said acts or functions pursuant to the terms of sections 7.600 to 7.635 shall be deemed to have committed an infraction.

(2) Violation by a franchisee of any provision of a franchise granted pursuant to sections 7.600 to 7.635 is an infraction.

(3) Each violation occurring on a separate day is considered a separate violation of sections 7.600 to 7.635.

**7.630 Cumulative Remedies.** The rights, remedies and penalties provided in this section are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the city under any other chapter or law.

**7.635 Injunctive Relief.** Upon authorization by the council, the city attorney may commence an action in the circuit court or other appropriate court to enjoin the continued violation of any provision of sections 7.600 to 7.635.

## LIQUOR LICENSE REVIEW

**7.700 Purpose.** The purpose of sections 7.700 to 7.740 is to provide review criteria and administrative procedures for the review of liquor licenses. The city council is required by ORS 471.210(3) to make a recommendation to the Oregon Liquor Control Commission concerning the granting, denying, modifying or renewing of all liquor license applications within the city.

**7.705 Scope of Provisions.** Sections 7.700 to 7.740 shall govern the procedures and criteria for consideration of liquor license applications and city council recommendation to the Oregon Liquor Control Commission.

**7.710 Definitions.** For the purpose of sections 7.700 to 7.740 the following mean:

Application. The written request to the city to grant, modify or renew a liquor license.

Commission. The Oregon Liquor Control Commission.

### **7.715 License Application.**

(1) Any person or business requesting a city council recommendation to the commission on a liquor license application shall make application upon suitable forms

furnished by the Oregon Liquor Control Commission. The application shall contain:

(a) The type of license applied for and a description of the nature of the business for which the application is made;

(b) The name of the applicant, with address; if a partnership, the names and addresses of all partners; if the business is a corporation, the name and address of the home office, and the name and address of the designated agent in the state; if a foreign corporation, the name and address of the local agent or representative who will be in charge of the business in the city;

(c) The address of the location where the business will be located in the city;

(d) The date of application;

(e) Any other relevant information the city administrator deems necessary for review;

(f) The signature of the applicant or agent making the application.

(2) At the time of submission of the application, the applicant may be required to pay a fee in an amount set by council resolution.

**7.720 City Administrator's Duties.** The city manager shall provide application forms and shall maintain a record of all applications. The city administrator shall review all applications for the purpose of making a recommendation to the city council. The review may include those subjects contained in sections 7.700 to 7.740 and the city administrator may require the applicant to supply any relevant additional information to determine the qualifications of the applicant. Upon completion of the review, the city administrator shall make a recommendation to the city council.

### **7.725 Hearing Procedure.**

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(1) If the city administrator recommends approval of the application, the application will be scheduled as a council agenda item. Upon adverse recommendation by the city administrator, a public hearing will be scheduled and notice given pursuant to section 7.730.

(2) The hearing will be presided over by the mayor or, in his or her absence, the president of the council.

(3) The city and the applicant shall have the right to present evidence and witnesses and shall have the right to cross examine witnesses presenting opposing testimony. The city administrator shall present the evidence and witnesses for the city.

(4) The applicant may be represented by legal counsel, but legal counsel shall not be provided at public expense.

(5) The hearing shall be limited to production of evidence as alleged in the city administrator's recommendation, unless the city council waives the rule.

(6) Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of their serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

(7) Irrelevant and unduly repetitious evidence shall be excluded.

(8) After due consideration of all pertinent information and testimony, the city council shall make its recommendation. The recommendation shall be based on substantial evidence relative to the criteria in sections 7.700 to 7.740 and shall be final. In the case of an adverse recommendation, the specific reasons for the recommendation shall be announced at the meeting and set out in the city council's minutes. A copy of the minutes shall be provided to the commission.

**7.730 Applicant Notice.** Before the city council recommends denial of a liquor license application to the commission, notice of the public hearing must be given either personally or by registered or certified mail postmarked not later than ten days prior to the hearing. The notice shall contain:

(1) A statement of the time and place of hearing;

(2) A statement from the city administrator of the matter(s) asserted or charged supporting the adverse recommendation or stating why the hearing was requested;

(3) A statement that the applicant may be represented by legal counsel at the hearing, but legal counsel shall not be provided at public expense;

(4) A statement that if the applicant desires to participate in the hearing, the manager must receive notice in writing, no later than five working days prior to the hearing; and

(5) A statement that if participation is requested by the applicant, that a copy of sections 7.700 to 7.740 may be obtained at the city administrator's office.

**7.735 Public Notice.** In the event that a public hearing is scheduled, the city, in addition to any regular city council notice provisions, shall cause to be published in a newspaper of general circulation in the city a notice specifying a time, date and location of the hearing and business name and address of the applicant. The notice shall inform the public that testimony may be given for or against the application.

**7.740 Standards and Criteria.** The city council shall make its recommendation for approval, denial or modification of the liquor license application based on the city council's evaluation of the relevant standards and criteria. The applicant shall be held strictly accountable for the conditions of the

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premises. The city council may recommend against the applicant if:

(1) The application is incomplete;  
(2) The applicant neglects or refuses to provide in a timely manner any information reasonably requested by the city administrator or city council;

(3) The applicant provides false or misleading information to the city administrator, city council or any city employee;

(4) Public opinion weighs against the application. Public opinion may be received by written or oral comment. Persons who comment on a pending application must provide their names in order to have the opinion considered. Public opinion will be evaluated in light of the reasons expressed and the extent to which the persons expressing it are likely to be affected by the issuance of the license. Greater weight will be given to opinions of persons residing, working or owning a business within a one-half-mile radius of the premises. The number of persons expressing support of the opposition will not, in and of itself, be controlling;

(5) The applicant's premises and the area nearby are heavily frequented by persons under 21 years of age unaccompanied by adults;

(6) The applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted of any felony or any misdemeanor involving moral turpitude;

(7) The applicant uses controlled substances or alcoholic beverages to excess;

(8) The applicant is not of good repute or moral character;

(9) The applicant has maintained, or allowed to exist a noisy, lewd, or disorderly establishment, or an establishment which creates or is a public nuisance under the ordinances of the city or laws of the state;

(10) The applicant's premises are not maintained in good repair, both interior and

exterior, and kept clean and free of litter, rubbish or dirt;

(11) The applicant's premises are unsanitary;

(12) The applicant or applicant's premises fail to conform to, abide by, or comply with, city ordinances or regulations, or state laws and regulations;

(13) The applicant's premises place unreasonable, excessive demand on city services, including law enforcement.

## PUBLIC TELEPHONE BOOTHS

**7.750 Permit Grant.** A revocable permit is granted to the Pacific Northwest Bell Telephone Company, its successors and assigns to install, maintain and operate public telephone booths at various locations on city property and city streets on the following terms:

(1) Location of Booths. Sites for the location or relocation of telephone booths shall be selected by the permittee, subject to approval of the city.

(2) Installation and Maintenance. The permittee shall bear the entire cost of installation, maintenance, relocation and removal of every telephone booth installed under this permit.

(3) Commissions. The permittee shall pay to the city a commission equal to fifteen percent of the net contents of the coin box of each public telephone installed hereunder, after deduction for applicable excise taxes. After this permit becomes effective, such commissions shall be paid to the city semiannually.

(4) Electricity. With approval of the city, the permittee, where feasible, may interconnect with electric service furnished to the city.

(5) Removal of Booths. Upon 30 days' notice, the city, for cause, may require the permittee to remove or relocate any telephone booth installed hereunder. The permittee on its own initiative may remove

any telephone booth at any time but shall restore the surface to good condition, and safe for public use, considering the nature and location of the property.

(6) Termination of Permit. This permit may be discontinued voluntarily by the permittee, only after 30 days' notice. In event of such termination, the permittee shall remove all installations hereunder within 90 days and in compliance with provisions of subsection (5) of this section.

**7.755 Indemnification of City.** The permit granted by sections 7.750 to 7.760 is subject to the condition that permittee, its successors and assigns, forever will indemnify, and save the city, its officers, agents and employees harmless from and against any and all liability, loss, cost, damage and expense, and any and all claims for injury or death to persons and damage to property, directly or indirectly arising from the installation, maintenance, or operation of telephone booths under this permit. The city shall promptly notify the permittee upon receipt of any claim or demand against which it is, or may be held harmless by the permittee under this indemnification. As evidenced by its written acceptance of the terms and conditions as provided in section 7.760, the permittee understands and agrees that the permit is granted only upon, and constitutes consideration for, this indemnification.

**7.760 Filing of Acceptance.** Sections 7.750 to 7.760 are not operative until the permittee has filed with the city administrator a written acceptance of all terms and conditions contained herein, signed by an authorized official of said corporation and approved as to form by the city attorney.

**TELECOMMUNICATIONS  
FACILITIES REGULATIONS**

*(Sections 7.800 to 7.840 Added by Ord 512 on June 10, 1999 and amended by Ord 529 on August 24, 2000)*

**7.800. Jurisdiction and Management of the Public Rights of Way**

- A. The City has jurisdiction and exercises regulatory management over all public rights of way within the City under authority of the City charter and state law.
- B. Public rights of way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas.
- C. The City has jurisdiction and exercises regulatory management over each public right of way whether the City has a fee, easement, or other legal interest in the right of way. The City has jurisdiction and regulatory management of each right of way whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- D. No person may occupy or encroach on a public right of way without the permission of the City. The City grants permission to use rights of way by franchises and permits.
- E. The exercise of jurisdiction and regulatory management of a public right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.
- F. The City retains the right and privilege to cut or move any telecommunications facilities located within the public rights of way of the

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City, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency.

**7.805. Regulatory Fees and Compensation Not a Tax**

- A. The fees and costs provided for in this Chapter, and any compensation charged and paid for use of the public rights of way provided for in this Chapter, are separate from, and in addition to, any and all federal, state, local, and City charges as may be levied, imposed, or due from a telecommunications carrier, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of telecommunications services.
- B. The City has determined that any fee provided for by this Chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or increased fees.
- C. The fees and costs provided for in this Chapter are subject to applicable federal and state laws.

**7.810 DEFINITIONS**

For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall

be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

**Aboveground Facilities** - see "Overhead Facilities."

**Affiliated Interest** - shall have the same meaning as ORS 759.010.

**Cable Act** - shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq., as now and hereafter amended.

**Cable Service** – is to be defined consistent with federal laws and means the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**City** - means the City of Lafayette, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.

**City Council** - means the elected governing body of the City of Lafayette, Oregon.

**Control or Controlling Interest** - means actual working control in whatever manner exercised.

**City Property** - means and includes all real property owned by the City, other than public rights of way and utility easements as those are defined herein, and all property held in a proprietary capacity by the City, which are

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not subject to right of way franchising as provided in this Chapter.

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

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

**Days** - means calendar days unless otherwise specified.

**Duct** - means a single enclosed raceway for conductors or cable.

**Emergency** – has the meaning provided for in ORS 401.025.

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

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

**Grantee** - means the person to which a franchise is granted by the City.

**Oregon Public Utilities Commission or OPUC** - means the statutorily created state agency in the State of Oregon responsible for

licensing, regulation and administration of certain telecommunications carriers as set forth in Oregon Law, or its lawful successor.

**Overhead or Aboveground Facilities** - means utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

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

**Private Telecommunications Network** - means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

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

**State** - means the State of Oregon.

**Telecommunications** - means the transmission between and among points specified by the user, of information of the user's choosing, without change in the form

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or content of the information as sent and received.

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

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

**Telecommunications Facilities** - means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier. *[Amended by Ord 529]*

**Telecommunications Service** - means two-way switched access and transport of voice communications but does not include: a) services provided by radio common carrier; b) one-way transmission of television signals; c) surveying; d) private telecommunications networks; or e) communications of the customer which take place on the customer side of on-premises equipment.

**Telecommunications System** - see "Telecommunications Facilities" above.

**Telecommunications Utility** - has the same meaning as ORS 759.005(1).

**Underground Facilities** - means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead facilities."

**Usable Space** - means all the space on a pole, except the portion below ground level, the 20 feet 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 of a pole is buried below ground level.

**Utility Easement** - means any easement granted to or owned by the City and acquired, established, dedicated or devoted for public utility purposes.

**Utility Facilities** - means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the public right of way of the City and used or to be used for the purpose of providing utility or telecommunications services.

**7.815 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.

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- (3) To assist the City in the enforcement of this Code 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 hereof, 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: a) the Oregon Public Utility Commission (PUC); or b) the Federal Communications Commission (FCC) qualify 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 \$35.00, or as otherwise established by resolution of the City Council.

**D. Exceptions to Registration:** The following telecommunications carriers are excepted from registration:

- (1) Telecommunications facilities that are owned and operated exclusively for its own use by the State or a political subdivision of this State. *[Amended by Ord 529].*
- (2) A private telecommunications network, provided that such network does not occupy any public rights of way of the City.

**7.820 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 Code and in compliance 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.

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**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 pursuant to Section 3.300 of this Code. 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 7.815.B of this Code; and if applicable,
- (2) Unless the telecommunications carrier has first applied for and been granted a franchise pursuant to Section 7.830 of this Code.

**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. Applicant's facilities shall be differentiated on the plans from new construction. *[Amended by Ord 529]*.

- (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,

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prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount consistent with this Code 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 Chapter.

**H. Issuance of Permit:** If satisfied that the applications, plans and documents submitted comply with all requirements of this Code 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 this Chapter, all work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Chapter, shall be removed at the sole expense of the permittee.

**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 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 above.

**M. As-Built Drawings:** If requested by the City for a necessary public purpose as determined 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 Public Works Director or designee within sixty (60) days after completion of construction, in a format mutually acceptable to the permittee and the City. *[Amended by Ord 529]*

**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 Public Works Director 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

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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 100% of the estimated cost of constructing permittee's telecommunications facilities within the public rights of way of the City, shall be provided before construction is commenced.

- (1) The surety shall remain in force until sixty (60) days after substantial completion of the work, as

determined in writing by the City, including restoration of public rights of way and other property affected by the construction.

- (2) The surety shall guarantee, to the satisfaction of the City:
  - a. Timely completion of construction;
  - b. Construction 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.

**7.825 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

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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 the 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. The city shall make a reasonable attempt to contact the telecommunications carrier before concluding that a facility is abandoned. A facility may be abandoned in place and not removed if there is no apparent risk to the public safety, health or welfare. *[Amended by Ord 529]*

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- (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 known proposed construction activities in, around or that may affect the public rights of way. *[Amended by Ord 529]*
- (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, 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.

**7.830 TELECOMMUNICATIONS FRANCHISE**

**A. Telecommunications Franchise:** 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 telecommunication 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

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incurs in entering into the franchise agreement.

- (2) An application and review fee of \$2,000 shall be deposited with the City as part of the application filed pursuant to Subsection B above. 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 the 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 Chapter shall convey any right, title or interest in the public rights of way, but shall be deemed a grant to use and occupy the public rights of way for the limited purposes and term 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 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 Code 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 Chapter.

- (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 Chapter.

**J. Renewal Applications:** A grantee that desires to renew its franchise under this Chapter shall, not less than 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 Section 7.815 of this Code.

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- (2) Any information required pursuant to the franchise agreement between the City and the grantee.

**K. Renewal Determinations:** Within 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 non-renewal.

- (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 Code 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 a Condition of Renewal:** No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this Code, 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 Code.
- (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 Code 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

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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 above 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 Code.
- (7) Failure to pay taxes, compensation, fees or costs when and as due the City under this Code.
- (8) Insolvency or bankruptcy of the grantee.
- (9) Violation of material provisions of this Code.
- (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 of its compliance with the franchise or with this Code, the City staff shall refer the apparent violation or non-compliance to the City Council. The 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 Code, 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.

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(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.

**7.835 GENERAL FRANCHISE TERMS**

**A. Facilities:** Unless already provided by grantee, 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. If necessary for a public purpose and upon request, each grantee shall provide updated maps . *[Amended by Ord 529]*

**B. Damage to Grantee's Facilities:** Unless directly and proximately caused by negligent, careless, wrongful or willful, intentional or malicious acts by the City, and consistent with Oregon law, 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. *[Amended by Ord 529]*

**C. Duty to Provide Information:** Except in emergencies, within sixty (60) 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 Code.

(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.  
*[Amended by Ord 529]*

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

**E. Compensation for City Property:** If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the City.

**F. Cable Franchise:** Telecommunication carriers providing cable service shall be subject to the separate cable franchise requirements of the City and other applicable authority.

**G. 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.

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**H. 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) for bodily injury or death to each person;
  - b. Three Million Dollars (\$3,000,000) for property damage resulting from any one accident; and,
  - c. Three Million Dollars (\$3,000,000) for all other types of liability.
- (2) Automobile liability for owned, non-owned and hired vehicles with a limit of One Million Dollars (\$1,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.
- (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).
- (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).
- (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 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 otherwise meets the requirements of this Section.
- (7) As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the City.

**I. General Indemnification:** Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications

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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 Code or by a franchise agreement made or entered into pursuant to this Code.

**J. Performance Surety:** Before a franchise granted pursuant to this Code is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the City, as security for the full and complete performance of a franchise granted under this Code, 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.

### **7.840 GENERAL PROVISIONS**

**A. Governing Law:** Any franchise granted under this Code 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 Code 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 Code 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 Code 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 Code 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 Code, 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, and any amendments hereto.

**E. Penalties:** Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter 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 this Code regulating code enforcement.

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

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**G. Captions:** The captions to sections throughout this Code 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 Code.

**H. Compliance with Laws:** Any grantee under this Code 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 any franchise granted under this Code, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

**I. Consent:** Wherever the consent of either the City or of the grantee is specifically required by this Code or in a franchise granted, such consent will not be unreasonably withheld.

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

**K. Confidentiality:** The City agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law.

### **GARAGE SALES**

**7.900 Definitions.** For the purpose of sections 7.900 to 7.995, the following definitions shall apply:

**Garage Sale.** General sales open to the public conducted from or on a residential

premises, or from a temporarily arranged site elsewhere within the City with the permission of the property owner, for the purpose of disposing of personal property including, but not limited to, all sales entitled "garage, moving, lawn, yard, attic, porch, rummage, backyard, patio, basement," or other similarly intended nature.

**Personal Property.** Property which is utilized, owned and maintained by an individual or by members of a residence and acquired in the normal course of living in or maintaining of a residence. It does not include merchandise which was purchased for resale or obtained from close-outs, fire sales, or other quantity liquidations, or commercial consignments.

**7.905 Number of Garage Sales.** No person or household shall hold more than four (4) garage sales in a calendar year. A calendar year begins January 1, and ends December 31. If members of more than one residence join in holding a garage sale, then such sale shall be considered as having been held for each and all such residences.

**7.910 Hours of Operation.** Garage sales may only be held between the hours of 8:00 a.m. and 7:00 p.m.

**7.915 Number of Days.** Garage sales may be held for no more than three (3) consecutive days.

**7.920 Display of Sales Merchandise.** Personal property offered for sale may be displayed within the residence, in a garage, carport, and/or in the yard of the residence; and only in such areas. No property offered for sale shall be displayed in any public right-of-way, sidewalk, alley, or street. All personal property relating to the garage sale must be removed from view of the public by the end of the third day.

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**7.925 Permits on Premise.** Persons wishing to conduct a garage sale must first obtain a free permit from City Hall, which shall be posted on the premises for the duration of the sale. The purpose of the permit is to identify the responsible person(s) conducting the sale and to provide important information regarding this ordinance and other applicable laws.

**7.930 Delinquent Permits.** If the person(s) conducting a garage sale fail to obtain a permit to the sale, a police officer or city staff will advise the responsible person(s) to immediately obtain a delinquent permit at City Hall; if it is after City Hall business hours, a weekend, or a holiday, they must obtain the delinquent permit on the first business day following the sale. Issuance of a delinquent permit constitutes a first violation warning and prevents a citation from being issued.

**7.935 Advertising Signs.** Only the following specified signs may be displayed in relation to a pending garage sale:

- (1) Two signs of not more than six square feet each shall be permitted to be displayed on the property of the residence or location where the garage sale is being conducted;
- (2) Two signs of not more than three square feet each are permitted, provided written permission to erect the signs is received from the property owners upon whose property such signs are to be placed;
- (3) None of these signs shall be placed in the public right-of-way.
- (4) No sign or other form of advertising shall be displayed for

more than two days prior to the day such sale is to commence;

- (5) All signs must be removed within 24 hours of the termination of the garage sale.

**7.940 Illegal Signs, Disposition.** Signs found within the City which are unlawfully posted upon utility poles, regulatory signs or posts, or are placed on sidewalks, in the right-of-way, or any other area not allowed by this ordinance, are hereby declared a nuisance to public safety, as they detract from the driving public's attention to traffic signals as well as other vehicular and pedestrian traffic. Police officers or city staff may summarily remove posted signs. If no request is received for the return of the sign within two working days, the signs shall be destroyed.

**7.945 Owner Presumption.** In the enforcement of this ordinance, it shall be a presumption that an address or telephone number listed on any garage sale sign shall be that of the individual(s) responsible for posting the sign. In addition, any signs directing the public by way of arrows or other directional symbols or phrases to a particular residence shall be presumed to have been erected by the owner(s) or occupant(s) of said residence.

**7.950 Responsibility of Operator and/or Owner.** The individual or individuals operating a garage sale and the owner or tenant of the premises upon which the sale or activity is conducted shall be jointly and severally held responsible for compliance with these regulations as well as the maintenance of order and decorum on the premises during all hours of such sale or activity. No such individual shall permit any loud or boisterous conduct on the premises, nor permit vehicles

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to impede the passage of traffic on any road or street in the area of such premises.

**7.955 Penalties.** Any person violating any of the provisions of this ordinance shall be deemed guilty of a violation and, upon conviction, shall be fined not less than \$25.00, nor more than \$100.00 for each day that a violation exists, excluding court costs and assessments. The amount of the fine will be dependent upon prior violations.

[Sections 7.900-7.955 added by Ordinance 593 on Nov. 8, 2007]