

Chapter 6

PARKS AND STREETS

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**Article 6.10**

**PARKS**

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**6.10.010 Picnic Reservations.**

The manager may grant group picnic reservations in city parks on a first come/first served basis upon receipt of a reservation application and payment of the required non-refundable application fee and reservation fee. The city may require security deposits in connection with the reservation application. The city may set different fees for residents and non-residents. The manager may either waive all or part of the application and reservation fees, or discount the application and reservation fees, based on factors identified by council resolution. The amount of the fees shall be set by council resolution.

(Ord. No. 1369, Amended, 09/14/1995; Ord. No. 1331, Amended, 11/03/1994)

**6.10.020 Sports Facility Reservations.**

(1) Subject to the rights of organized athletic groups to reserve sports facilities, the manager may grant reservations for the use of sports facilities in city parks on a first come/first served basis upon receipt of a reservation application and payment of the required non-refundable application fee and tournament fee, if any. The city may require security deposits in connection with the reservation application. The city may set different fees for residents and non-residents. The manager may either waive all or part of the application and tournament fees, or discount the application and tournament fees, based on factors identified by council resolution. The amount of the fees shall be set by council resolution.

(2) Notwithstanding subsection (1), the council may enter into agreement with groups or associations for the use of city sports facilities.

(3) The city may require insurance coverage of a type and amount as required by the city attorney. (Ord. No. 1750, Amended, 05/07/2015; Ord. No. 1543, Amended, 03/19/2002; Ord. No. 1369, Amended, 09/14/1995; Ord. No. 1331, Amended, 11/03/1994)

**6.10.030 Special Event Reservations.**

(1) The manager may grant special event reservations for use of city facilities on a first come/first served basis upon receipt of a reservation application and payment of the required non-refundable application fee and reservation fee. The city may require security deposits in connection with the reservation application. The city may set different fees for residents and non-residents. The manager may either waive all or part of the application and reservation fees, or discount the application and reservation fees, based on factors identified by council resolution. The amount of the fees shall be set by council resolution.

(2) For special events sponsored by organizations, the city may charge a fee for each participant in an amount set by council resolution.

(3) If city support staff services are requested or needed for the special event, the applicant shall pay a fee for city support staff services as set by council resolution.

(4) The city may require insurance coverage of a type and amount as required by the city attorney. (Ord. No. 1750, Amended, 05/07/2015; Ord. No. 1369, Amended, 09/14/1995; Ord. No. 1331, Amended, 11/03/1994)

**6.10.040 Fees for Recreational Services.**

(1) The manager may set fees for providing elective recreational services, including programs and activities.

(2) The council shall set by resolution criteria to be used by the manager to set the fees. (Ord. No. 1543, Amended, 03/19/2002; Ord. No. 1428, Enacted, 07/01/1997)

Article 6.13

VENDING AND CONCESSION BUSINESSES AT CITY FACILITIES, PARKS AND TRAIL HEADS

(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1543, Amended, 03/19/2002; Ord. No. 1426, Enacted, 07/01/1997)

Sections:

- 6.13.010 Definitions.
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6.13.090 Denial or Revocation of Permit.
6.13.100 Enforcement.

6.13.010 Definitions.

In addition to the definitions set forth in GRC 1.05.010, as used in GRC Article 6.13, the following mean:

City Facility. Any public plaza, city parking lot, or city owned building. It also includes Main Street south of Powell Boulevard.

Community Event. Activity specifically approved by the manager granting use of a city facility, park or trail head within a specifically defined area for a specific period of time.

Vendor and concession business. A profit or non-profit business or organization which sells goods or services.

(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1543, Amended, 03/19/2002; Ord. No. 1426, Enacted, 07/01/1997)

6.13.020 Permit required.

(1) No person shall conduct a vending or concession business at any city facility, park or trail head without first obtaining a permit from the manager.

(2) Notwithstanding subsection (1), no person may conduct a vending or concession business at any city trail or open space.

6.13.030 Permit Fee.

The city may, in lieu of a vending/concession permit, grant permission to conduct a vending or concession business in a contract or permit for use of a city facility, park or trail head. Each application for a permit to conduct a vending or concession business at any city facility, park or trail head shall be accompanied by a nonrefundable fee established by council resolution. The council may, by resolution, require security deposits; require payment of fees for electrical or other services provided, including city support staff services, in connection with a community event; and provide for the waiver of fees.

(1) Permits issued under GRC 6.13.020 are not transferable. However, if a person sells or transfers a business for which permit fees have been paid, the purchaser shall not be required to pay an additional permit fee for the remainder of the term of the permit.

(2) Pursuant to GRC 2.92.010(1), a late payment charge shall be charged to all accounts for each 30 days in which the permit fees are not paid after the original bill is mailed.

(Ord. No. 1750, Amended, 05/07/2015; Ord. No. 1543, Amended, 03/19/2002; Ord. No. 1426, Enacted, 07/01/1997)

6.13.040 Application.

Application for a permit to conduct business at any city facility, park, or trail head shall be made by a form approved by the manager. The application must be submitted to the manager at least 30 days prior to the proposed date for commencement of vending or concession operations. The application shall include, but not be limited to, the following information:

- (1) name and address of applicant;
(2) the expiration date of applicant's city business license or for a community event, the proposed start and end dates and times;
(3) type of merchandise or service to be sold;

(4) a valid copy, or proof of request, of all necessary permits, licenses or other documentation required by the city, state or other local authorities and the Oregon Liquor Control Commission;

(5) a signed statement that the permittee shall hold harmless the city, its officers and employees, and shall indemnify the city, its officers and employees for any claims for damage to property or injury to persons occasioned by any activity carried on under the terms of the permit. Permittee shall secure, maintain, and furnish certificates of insurance coverage of a type and amount as required by the city attorney;

(6) a narrative description of the means to be used in conducting business including, but not limited to, a description of any mobile container or device, to be used for transport or to display merchandise;

(7) the location(s) from which business will be conducted.  
(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1426, Enacted, 07/01/1997)

**6.13.050 Fire Permits and Inspections.**

Prior to the issuance of any vending or concession permit, vendor shall be responsible for obtaining all necessary fire permits. The fire marshal shall inspect and approve any mobile device or pushcart to be used for cooking or heating to determine if the cooking or heating apparatus is in conformance with the provisions of the city fire code. Additional permits may be required, depending upon type of structure, occupancy and use.  
(Ord. No. 1426, Enacted, 07/01/1997)

**6.13.060 Application Review.**

(1) Upon receipt of an application for a permit, the manager shall review each location applied for to ensure that the concession operations are located in such a way as to minimize the negative impact on surrounding areas and that the use of such location for vending and concession business is compatible with the public interest. In making the determination, the manager may consider the available space, the size, type or design of the mobile device to be used, and the proximity and

location of existing structures and fixtures, including but not limited to signposts, lamp posts, tables, benches and phone booths as well as the presence of bus stops, truck loading or other zones to determine whether the proposed use would result in pedestrian or street congestion.

(2) A permit shall not be issued unless all required documentation, including but not limited to, proof of insurance and other permits, licenses or certificates have been submitted to the manager.  
(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1590, Amended, 09/16/2004; Ord. No. 1426, Enacted, 07/01/1997)

**6.13.070 Form and Conditions of Permit.**

Permits issued shall be in a form prescribed by the manager and shall contain the following conditions:

(1) Each permit shall be issued for a period to coincide with the term of applicant's city business license and shall expire unless both the business license and permit are renewed. For a community event, the permit shall expire as specified by the manager.

(2) The permit issued shall be personal only and not transferable in any manner.

(3) The permit is valid only when used at the location designated on the permit.

(4) The permit is valid only during the hours designated on the permit. The hours of concession operation shall be set by the manager to be compatible with the event or activity, the park or trail site, and the local neighborhood environment.

(5) Each concession location must be attended at all times by a person over 18 years of age who is responsible for the concession operation.

(6) The permit is subject to the conditions and restrictions of this article.

(7) The permit shall be displayed in a prominent and visible manner and the price of all items sold shall be conspicuously posted.

(8) The City shall have the right to preview and approve the concessionaire's signs or other like advertising features to be located at the city facility, park, or trail head.

(9) The permit, as it applies to a given location, may be temporarily suspended by the manager for a period of time as necessary to allow for a community event that would not be compatible with the permitted operation. The manager may elect to temporarily designate another location for operations.

(Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1543, Amended, 03/19/2002; Ord. No. 1426, Enacted, 07/01/1997)

**6.13.080 Restrictions.**

(1) No person shall conduct a vending or concession business at a city facility or park in any of the following places:

(a) within 10 feet of a sidewalk, trail or path;

(b) within eight feet of the adjacent property line; and

(c) within 10 feet of any building entrance or doorway, or the extension of a line from such building entrance or doorway to the curb line.

(2) No person shall conduct a vending or concession business on any trail location other than a designated trail head.

(3) All persons conducting a vending or concession business at a city facility, park or trail head shall pick up any paper, cardboard, wood or plastic containers, wrappers, or any litter in any form deposited by any person at the city facility, park or trail head within 250 feet of the place of conducting business. Each person conducting a vending or concession business at a city facility, park or trail head under the provisions of this article shall provide a suitable container for the placement of litter by customers or other persons.

(4) All persons conducting a vending or concession business at a city facility, park or trail head shall obey any lawful order of a police officer

to move to a different permitted location to avoid congestion or obstruction of the city facility, park or trail head or to remove their vending cart entirely from the city facility, park or trail head if necessary to avoid such congestion or obstruction.

(5) No person shall conduct business as defined in this article at a location other than that designated on the permit.

(6) No permittee may make any loud or unreasonable noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to the wares or services.

(7) No permitted cart or device shall be left unattended at a city facility, park or trail head, nor remain at the city facility, park or trail head during times other than the permitted hours of operation.

(8) No permittee may conduct business in violation of the temporary permit suspension for a community event.

(9) Degradation or damage to the turf, trees, visual impairment, public safety, or intrusion into the natural habitat of the area will not be permitted. Any repair of the area deemed necessary by the Parks and Recreation Division shall be done at the concession operator's expense.

(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1543, Amended, 03/19/2002; Ord. No. 1426, Enacted, 07/01/1997)

**6.13.090 Denial or Revocation of Permit.**

(1) The manager may deny, revoke or suspend the permit of any person to conduct a vending or concession business at the city facility, park or trail head if the manager finds:

(a) that the person has violated any of the provisions of this article;

(b) any necessary permit or license has been suspended, revoked, or canceled or permittee is in violation of any city, local, state or other law or regulation; or

(c) the permittee does not have a currently effective insurance policy in the minimum amount provided in GRC 6.13.040(5).

(2) Upon denial or revocation, the manager shall give notice of the action to the permit holder in writing stating the action taken and the reasons for it. If the action of the manager is a revocation based on subsections (1) (b) or (c) of this section, the action shall be effective when the notice is delivered to the permittee. A revocation based on subsection (1)(a) shall be effective 10 days from the date of notice unless protested, in which case the revocation, if upheld, will be effective on the date the decision is delivered to the permittee. The manager's decision may be protested to an independent hearings officer pursuant to GRC 7.50.030. The permittee shall vacate the city facility, park or trailhead immediately upon the effective date of the revocation.

(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1590, Amended, 09/16/2004; Ord. No. 1543, Amended, 03/19/2002; Ord. No. 1426, Enacted, 07/01/1997)

**6.13.100 Enforcement.**

(1) The operation of any vending or concession business in violation of the provisions of this article may be subject to a fine or penalty in the maximum amount of \$500. Each day on which a violation occurs or continues is a separate offense.

(2) The operation of any vending or concession business in violation of the provisions of this article is declared to be a nuisance. The manager may cause the removal of the vending or concession business in violation of this article and may store the cart or device until the owner redeems it by paying the removal and storage charges established by the manager. In addition to any other remedies provided herein, violation of any section of this chapter may be enforced as set forth in GRC Article 7.50, or as otherwise authorized by law.

(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1561, Amended, 01/02/2003; Ord. No. 1543, Amended, 03/19/2002; Ord. No. 1426, Enacted, 07/01/1997)

Article 6.30

UTILITY LICENSES

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- 6.30.020 [Purpose.](#)
- 6.30.030 [Definitions.](#)
- 6.30.040 [Applicability.](#)
- 6.30.050 [Regulatory Fees and Compensation Not a Tax.](#)
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- 6.30.190 [Compliance with Laws.](#)
- 6.30.200 [Consent.](#)
- 6.30.220 [Confidentiality.](#)
- 6.30.300 [Regulations for Wireless Communication Facilities in the Public Rights-of-Way.](#)

6.30.010 Short Title.

GRC Article 6.30 shall be known and may be cited as the "Utility License Code" and may be referred to as "this article." If the context requires, "this article" shall also refer to GRC Article 6.35.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

6.30.020 Purpose.

The purpose and intent of GRC Articles 6.30 and 6.35 is to:

(1) assure that the city's current and ongoing costs of granting and regulating access to, and the use of, the public rights-of-way are fully compensated by persons seeking such access and causing such costs;

(2) secure fair and reasonable compensation to the city and its residents for: the installation and use of utility facilities in the public rights-of-way;

(3) assure that all utilities providing facilities and/or services within the city, or passing through the city, comply with the ordinances, rules and regulations of the city;

(4) assure that the city can continue to fairly and responsibly protect the public health, safety and welfare of its citizens, including but not limited to, the public inconvenience and disruption stemming from the installation, maintenance and operation of utility facilities in the public rights-of-way; and the aesthetic impacts resulting from the installation of such facilities;

(5) comply with the provisions of the Communication Act of 1934, as amended, as they apply to local governments, communications service providers and the services they offer; promote competition on a competitively neutral and non-discriminatory basis in the provision of communications services; and encourage the provision of advanced and competitive communications services on the widest possible basis to business, institutions and residents of the city;

(6) permit and manage reasonable access to the public rights-of-way of the city and conserve the limited physical capacity of those public rights-of-way held in trust by the city, and provide access to the public rights-of-way on a competitively neutral and non-discriminatory basis; and

(7) enable the city to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.

(Ord. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.030 Definitions.**

In addition to the definitions set forth in, and to the extent not consistent with, GRC 1.05.010 or this article, words not defined herein shall be given the meaning set forth in the Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, all as amended. If not defined there, the words shall be given their common and ordinary meaning. For the purpose of GRC Articles 6.30 and 6.35 the following terms, phrases, words and their derivations shall have the meaning given herein.

Cable Act. The Cable Communications Policy Act of 1984, 47 USC §521, et seq., as now and hereafter amended.

Cable Service. To be consistent with federal law, 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. The city of Gresham, an Oregon municipal corporation, and individuals authorized to act on the city's behalf.

City Engineer. The Director of the Department of Environmental Services or designee.

City Property. All real or personal property or fixtures owned or controlled by the city, including the public rights-of-way as those are defined herein, and all property held in a proprietary capacity by the city. City property includes, but is not limited to: city streets, roads, alleys and bridges in the public rights-of-way; parks, open spaces, trails, paths, and access ways; parking lots, public buildings, and access easements, driveways, or access ways located upon property held in a proprietary capacity. City-owned traffic signals, traffic signal poles, street lights and street light poles shall be considered city property.

Communications Service. Any service providing the electromagnetic, electronic, or optical transmission of information including, but not

limited to, voice, video or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself, whether or not the transmission is by the owner of the utility facility or on behalf of other communications service utilities, and whether or not the transmission medium is wireline. Communications service includes all forms of voice, video, data or information transport, including but not limited to telecommunications services, cable services, information services, broadband services and internet access. Does not include direct broadcast satellite service, radio and television broadcast service, or communications of a customer which takes place exclusively on the customer side of on-premise equipment.

Communications Service Provider. Any person that provides communications services and which directly or indirectly owns, controls, operates, uses, or manages utility facilities in the public rights-of-way that are used to provide communications service within the city. Communications service provider includes a telecommunications utility.

Conduit. Any structure, or section thereof, containing one or more ducts, conduits, manholes, handholes, bolts, or similar utility facilities used for any utility service, owned or controlled, in whole or in part, by one or more utilities.

Construction. 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.

Control or Controlling Interest. Actual working control in whatever manner exercised.

Duct. A single enclosed raceway for conductors, wire or cable.

FCC or Federal Communications Commission. The federal administrative agency, or lawful successor, authorized to regulate and oversee communications services and providers on a national level.

License. The grant, on a non-exclusive basis, of permission for a person to use public rights-of-way



within the city for a specified and dedicated purpose as provided by GRC Article 6.30.

Overhead or Aboveground Facilities. Utility poles, wires, cable and other utility facilities above the surface of the ground, including the underground supports and foundations for such facilities.

Private Communications Network. A system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service, by a person for the exclusive use of that person and not for resale, directly or indirectly. "Private communications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and ORS 283.140.

Public Rights-Of-Way. See definition in GRC 1.05.010. As used in GRC Articles 6.30 and 6.35, a public right-of-way includes a public utility easement but does not include city property.

Public Utility Easement. An easement conveyed, granted or dedicated to the city or the public and acquired, established, dedicated or devoted to utility purposes, whether designated as a public easement, utility easement, general utility easement, public utility easement or similar term. Easements acquired for use by the city's public stormwater, wastewater, or water systems shall not be considered public utility easements or public rights-of-way.

State. State of Oregon.

Telecommunications Utility. Shall have the same meaning as ORS 759.005(9).

Underground Facilities. Utility facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead facilities."

Utility. Any person, or its lessees or trustees of record, that owns, operates, manages or controls all or a part of any utility facility in the city for the production, transmission, delivery, conveyance, distribution or function of gas, heat, steam, light, wastewater, stormwater, water, power, electricity, or communications service. Includes any affiliate

of a utility, or any other entity controlled or managed by a utility or its affiliate, that uses utility facilities in the city to provide any utility service; utilities owned or operated by a municipality or special district; and electricity service supplier as defined by ORS 757.600; and a Private Communications Network.

Utility Facilities. The plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, wireless communication devices or other plant, equipment and appurtenance located under, on, or above the surface of the ground within the public rights-of-way of the city and used or to be used for the purpose of providing any utility services.

Utility Service. The provision of gas, heat, steam, light, wastewater, stormwater, water, power, electricity or communications service through utility facilities located in the public rights-of-way.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.040 Applicability.**

(1) GRC Articles 6.30 and 6.35 apply to all governmental, public and private utilities operating within the City of Gresham, except as specifically exempted herein.

(2) GRC Article 6.30 shall also apply to a communications service provider that provides any communications service using utility facilities owned or operated by other utilities.

(3) GRC Article 6.30 shall not apply to the provision of cable service by a person who has been granted a cable franchise subject to negotiation and recommendation by the Mt. Hood Cable Regulatory Commission.

(4) The requirements of GRC Articles 6.30 and 6.35 may be varied or waived by the provisions of a negotiated franchise agreement between the city and a utility entered into after the effective date of this ordinance.

(5) For purposes of GRC Articles 6.30 and 6.35, the city may exercise jurisdiction over public roads as defined by ORS Chapter 368 under the jurisdiction of the State of Oregon to the extent allowed by law.

(6) GRC Articles 6.30 and 6.35 shall not apply to utility facilities owned or operated by a governmental entity related to the use of the public rights-of-way for transportation purposes. However, for purposes of the under grounding requirements of GCDC A5.510, transportation facilities shall be considered a utility.

(7) GRC Article 6.30 shall not apply to private utility facilities that are designed and constructed to serve a particular development. Such utility facilities shall not be placed in the public rights-of-way unless a permit is obtained as provided in GRC Article 6.35 and shall be subject to all applicable requirements of the Gresham Community Development Code.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1561, Amended, 01/02/2003; Ord. No. 1541, Amended, 03/21/2002; Ord. No. 1523, Enacted, 06/14/2001)

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

(1) The city council, by resolution, may set such fees as are necessary to implement the provisions of GRC Articles 6.30 and 6.35 and to compensate the city for the use of the public rights-of-way.

(2) The license fees and cost recovery fees provided for in GRC Articles 6.30 and 6.35 are compensation charged and paid for the use of public rights-of-way, and are separate from, and in addition to, any and all federal, state, local and city fees, taxes and costs as may be levied, imposed or due from a utility or its customers or subscribers, for purposes other than compensation for the use of public rights-of-way.

(3) The city has determined that any fee imposed by or pursuant to this article is not subject to the property tax limitations of Article XI, Sections 11 and 11(b) of the Oregon Constitution. The fees required by GRC Article 6.30 are imposed

upon the specific request of the utility to be licensed to use public rights-of-way within the city and as compensation for that utility's use of the public rights-of-way. The fees required by GRC Article 6.35 are imposed on the owner of the facilities being installed in the public rights-of-way or the owner of property required to construct public improvements in the public rights-of-way pursuant to the owner's specific request to work in the public rights-of-way.

(4) The fees and costs provided for in this ordinance are subject to applicable federal and state laws.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.060 Reserved.**

**6.30.070 License.**

(1) License. A license shall be required of any utility that occupies public rights-of-way whether such use is by placing utility facilities in the public rights-of-way, by using utility facilities owned or operated by other utilities, or by attaching or locating utility facilities to, on, upon, or within the utility facilities of another.

(a) A license shall also be required to operate a Private Communications Network or a portion thereof in the public rights-of-way. No person shall operate a utility or Private Communications Network that occupies a public rights-of-way without a license. A utility with a utility license is not required to obtain a separate utility license to operate its own Private Communication Network necessary to provide the utility services authorized by the utility license.

(2) Type of Utility Service. A license may authorize a utility to place one or more types of utility facilities on, over or under the public rights-of-way. A licensee shall not place on, over or under the public rights-of-way any type of utility facilities not authorized by the license.

(3) Application. Any person that desires a license must file an application with the manager which includes the following information:

(a) The identity of the applicant.

(b) A general description of the type of utility facilities that will be located by the applicant in the public rights-of-way.

(c) The area or areas of the city the applicant desires to place utility facilities in the public rights-of-way, which may include the entire city or a part of the city, and, if the applicant has not previously served the city, a preliminary construction schedule for build-out of the utility facilities it will locate in the public rights-of-way.

(d) Information to establish that the applicant has obtained all other governmental approvals, authorizations and permits necessary to provide utility services using utility facilities in the public rights-of-way.

(4) Application Fee. An application fee in an amount set by council resolution to recoup the city's costs in processing the application shall be submitted to the city when an application is filed with the city.

(5) Determination by the City. The manager 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. The application shall be evaluated based on the demonstrated ability of the applicant to comply with the terms of this ordinance and if denied, the applicant may appeal to the council pursuant to GRC 1.05.025. Factors to be considered include:

(a) The continuing capacity of the public rights-of-way to accommodate the applicant's proposed utility facilities.

(b) The applicant's compliance with the requirements of this article.

(c) Applicable federal, state and local laws, rules and policies.

(6) Rights Granted. No license granted pursuant to this article shall convey any right, title or interest in the public rights-of-way, but shall be

deemed a grant to use and occupy the public rights-of-way for the limited purposes and term, and upon the conditions stated in the license. The person granted the license shall have no property interest or other right in the license except as provided by this article. A license granted pursuant to this article is not a contract.

(7) Term of Grant. Unless otherwise specified in a license, a license granted hereunder shall be in effect until June 30th of the year which is 10 years from the year of issuance of the license.

(8) License Territory. Unless otherwise specified in a license, a license shall be for the entire city and the public rights-of-way necessary to serve the entire city.

(9) Additional Terms and Conditions. The manager and applicant may negotiate additional terms and conditions to clarify, enhance, expand, waive or vary the provisions of this article. The additional terms and conditions may conflict with the terms of GRC Articles 6.30 and 6.35, but only with the review and approval of council. Such additional terms and conditions shall be in writing and signed by both the city and applicant. (04/2016; Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1590, Amended, 09/16/2004; Ord. No. 1561, Amended, 01/02/2003; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.080 Amendment, Renewal, Transfer of License.**

(1) Amendment of Grant. Conditions for amending a license:

(a) In the event the license area does not include the entire city, an application shall be required of any licensee that desires to extend or locate utility facilities in public rights-of-way which are not included in a license previously granted under this article. Issuance of an amended license shall be subject to the provisions of this article.

(b) If ordered by the city to locate or relocate its utility facilities in public rights-of-way not included in a previously granted license, the city shall grant an amendment without further application.

(c) An application shall be required of any licensee that desires to occupy public rights-of-way to provide a type of utility service that was not included in a franchise or license previously issued by the city. Issuance of a license to occupy public rights-of-way for the new type of utility service shall be subject to the provisions of this article. A license shall be issued only if the licensee is in compliance with its existing franchise or license.

(2) Renewal Determinations. An application shall be required of any licensee that desires to renew its existing license. 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. If the renewal application is denied, the written determination shall include the reasons for non-renewal. Renewal shall be based on the same factors as provided by GRC 6.30.070(5).

(3) Obligation to Cure as a Condition of Renewal. No license shall be amended or renewed until any on-going violations or defaults in the grantee's performance of any license or agreement, or of the requirements of this article, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the city.

(4) Transfers of License. A license may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the licensee, by operation of law or otherwise, nor shall control of a licensee be assigned or transferred to another person, without notice to the city at the time of transfer.

(a) The proposed assignee or transferee of the license shall agree, in writing, to assume and abide by all of the provisions of the license, shall assume all liabilities or obligations of its predecessor under the license, whether known or unknown, occurring prior to such transfer, and shall obtain and file with the city the bonding and insurance requirements of this article.

(b) Any transfer of a license without notice to the city and written acceptance of the license as required under this section shall be cause for revocation of the license.

(5) Unless otherwise provided in the license or consent or by applicable law, the grantee shall reimburse the city for all direct and indirect fees, costs, and expenses reasonably incurred by the city in considering an amended or renewal license. Any application required by this section shall include an application fee in an amount set by council resolution.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.090 Revocation or Termination of License.**

(1) A license to use or occupy public rights-of-way of the city may be revoked for the following reasons:

(a) Construction in the public rights-of-way without a permit required by GRC 6.35.040.

(b) Construction or operation at an unauthorized location.

(c) Failure to comply with GRC 6.30.080 herein with respect to amendment, renewal or transfer of a license.

(d) Misrepresentation by or on behalf of a licensee in any application to the city.

(e) Abandonment of utility facilities in the public rights-of-way unless authorized by the city.

(f) Failure to relocate or remove utility facilities as required.

(g) Failure to pay taxes, compensation, fees or costs when and as due the city under this article, unless there is a bona fide dispute as to the amount to be paid, and then only to the extent of the dispute.

(h) Violation of a material provision of this article.

(i) Violation of a material term of a license.

(2) Notice and Duty to Cure. In the event that the manager believes that grounds exist for revocation of a license, the manager shall give the licensee 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 licensee a reasonable period of time not exceeding 30 days to furnish evidence that:

- (a) corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
- (b) rebuts the alleged violation or noncompliance; and/or
- (c) it would be in the public interest to impose some penalty or sanction less than revocation.

(3) In the event that a licensee fails to provide evidence reasonably satisfactory to the manager as provided in subsection (2), the manager shall determine if the license should be revoked or establish some lesser sanction.

(4) Standards for Revocation or Lesser Sanctions. If the licensee has violated or failed to comply with one or more of the reasons in subsection (1), the manager shall determine whether to revoke the license, 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:

- (a) The misconduct was egregious.
- (b) Substantial harm resulted.
- (c) The violation was intentional.
- (d) There is a history of prior violations of the same or other requirements.
- (e) There is a history of overall non-compliance.
- (f) The violation was voluntarily disclosed, admitted or cured.

(5) The manager's decision may be appealed to council on the record pursuant to GRC 1.05.025. (Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1590, Amended, 09/16/2004; Ord. No. 1534, Amended, 11/01/2001; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.100 General License Terms.**

(1) Licensee shall include any person that operates a utility and locates any utility facilities in the public rights-of-way, including a person that operates without a currently valid and unexpired license.

(2) Maps. Upon request, and in a generally recognized format acceptable to the city, each licensee shall provide the city with an accurate map(s) certifying the horizontal and vertical location, size and type of material of all of licensee's underground utility facilities within the public rights-of-way or a portion thereof. The map(s) need not include details of the nature of the utility facilities. The map(s) shall show the horizontal and vertical location of the utility facilities to the extent such information is available. A Licensee shall not be required to 'pot hole' or conduct 'vertical locates' to satisfy a mapping request unless reasonably required for the design of a city public improvement project.

(3) Damage to Licensee's Utility Facilities. Unless directly and proximately caused by willful, intentional or malicious acts or negligence by the city, the city shall not be liable for any damage to or loss of any utility facility within the public rights-of-way 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 pursuant to a permit issued by the city, or for any consequential losses resulting directly or indirectly therefrom.

(4) Duty to Provide Information. Within 60 business days of a written request from the city, each licensee shall:

- (a) furnish the city with information sufficient to demonstrate that licensee has complied with all requirements of this article.

(b) Make available for inspection by the city at reasonable times and intervals all maps, diagrams, plans and other documents, maintained by the licensee that describe or locate utility facilities within the public right-of-way.

(5) Licensee Insurance. Unless otherwise provided in a license, each licensee shall, as a condition of the grant, secure, maintain and furnish certificates of insurance coverage of a type and amount as required by the city attorney. Licensee may provide proof of self-insurance, satisfactory to the attorney, as an alternative means of meeting this requirement.

(6) General Indemnification. Each license includes, to the extent permitted by law, licensee'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 licensee or its affiliates, officers, employees, agents, contractors, or subcontractors in the construction, operation, maintenance, repair or removal of its utility facilities, and in providing or offering utility services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this article or by a license issued pursuant to this article.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1541, Amended, 03/21/2002; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.110 License Fee and Privilege Tax.**

(1) License Fee.

(a) Each license granted pursuant to this article shall be subject to the condition that the licensee pays a license fee in an amount or by a method or methods established from time to time by council resolution which may include payment of a minimum license fee. The city may elect in the resolution establishing the license fee to dedicate all or a portion of the license fee to specific funds, projects or programs of the city.

(b) If a licensee only owns or operates within the city one or more transmission lines that use public rights-of-way and such line or lines' primary purpose is to serve customers outside the city, then the licensee shall not pay a license fee under (1)(a) herein, but shall instead pay a transmission line license fee in an amount or calculated by a method determined by council resolution.

(2) Gas, Electric, Municipal, People's Utility District, Cooperative, Joint Operating Agency, or Special District Utility.

(a) The license fee for gas, electric, municipal, People's Utility District, Cooperative, Joint Operating Agency, or Special District utilities may be a percentage of the gross revenue collected by the licensee for utility operations within the city, or such other method as determined by the council. The gross revenues shall be reduced by net uncollectibles and sales of gas, electricity, or water at wholesale by the licensee to any public utility or public agency where the public utility or public agency purchasing such gas, electricity, or water is not the ultimate consumer. Gross revenue shall include revenue from the use, rental or lease of utility facilities.

(b) Unless the city adopts a volumetric rate, gross revenues for an electric utility shall include electricity provided by the electric utility and an electricity service supplier(s) if bills are consolidated as provided by ORS Chapter 757 related to Direct Access Regulation. If bills are not consolidated, then each electricity service supplier and the distribution utility shall pay their respective license fee directly to the city.

(c) The city may elect to establish a volumetric rate as provided by state law for electric distribution utilities.

(3) Communications Service Providers.

(a) The license fee for a communications service provider may be a percentage of the gross revenue collected by the licensee currently earned within the boundaries of the City of

Gresham or such other method as determined by the council. Gross revenues means all amounts in whatever form and from all sources, less net uncollectibles, earned from the provision of communications service originating or terminating in the city, utilizing the public rights-of-way, and charged to a customer location in the city regardless of where the service is billed or paid. Gross revenues shall also include any and all revenue from leases, licenses, permits, rental agreements, IRU's or any other use of any part of the Grantee's utility facilities in the public rights-of-way.

(b) Notwithstanding subsection (a), a telecommunication utility shall pay a privilege tax on "gross revenues" as provided by ORS 221.515. To the extent that separate fees are charged for use of the public rights-of-way including, but not limited to, license applications, street opening, construction, inspection or maintenance of fixtures or utility facilities, pursuant to ORS 221.515(3), such fees shall be paid by a telecommunication utility but may be deducted from the privilege tax. In lieu of requiring payment of fees by telecommunication utilities, the city may waive or establish a system of internal transfers of revenues for such fees.

(c) The gross revenues of a communications service provider that provides communications services using utility facilities owned or operated by other utilities may be reduced by the amount paid for the use of such utility facilities if the utility that owns or operates the utility facilities reports the amount paid to them for such use as gross revenue as required by this section.

(d) The license fee for a wireless communication facility in the right-of-way shall be established by council resolution. All license fees shall be due and payable in advance on November 1 of each year; provided that the first year's fee shall be prorated based on the date of issuance of the wireless communication facility right-of-way permit.

(4) A licensee that provides more than one type of utility service shall pay a license fee on each

type of utility service as described in an agreement negotiated pursuant to GRC 6.30.070(9).

(5) If a utility is not specifically listed herein, the manager shall determine the most appropriate category and the utility shall pay that license fee.

(6) Privilege Tax.

(a) Any utility that operates without a license for a period of 30 days or more within the city and uses public rights-of-way in the city for other than travel, shall pay a privilege tax in the amount set by council resolution for the use of those public rights-of-way.

(b) Such utility shall include an electricity service supplier(s) using the facilities of an electric utility and that does not consolidate bills with the electric utility and license fees are not paid pursuant to subsection (2)(b) or 2(c).

(7) Payment Schedule:

(a) The license fee or privilege tax shall be paid quarterly, in arrears, continuing for each quarter during the term of the license or use of the public rights-of-way on the following schedule:

(i) on or before November 15 for the period extending from July 1 through September 30, inclusive, of the same calendar year;

(ii) on or before February 15 for the period extending from October 1 through December 31, inclusive, of the preceding calendar year;

(iii) on or before May 15 for the period extending from January 1 through March 31, inclusive, of the same calendar year; and

(iv) on or before August 15 for the period extending from April 1 through June 30, inclusive, of the same calendar year.

(b) A licensee or a utility operating without a license that commences operations

during a quarter shall make the initial payment on or before the payment date following the quarter during which operations are commenced.

(c) In the event of a termination of a utility's operations in the city, the final payment shall be made on or before the 45th day following the date of such termination.

(d) If the license fee or privilege tax is not paid to the city on or before the date due, a late payment charge shall be owed from the due date to the date on which the city receives payment, compounded monthly. The late payment charge shall be due at the same time that the utility makes the delinquent payment to the city.

(8) Reports and Audits.

(a) Pursuant to the schedule in subsection (7), each utility shall file with the city a report of the gross revenues or other basis on which the fee or tax is determined, setting forth the revenues collected and certified as being true and accurate.

(b) The city may, at any time, investigate and audit any report or fee payment submitted and determine the accuracy of the amount reported or paid. The utility shall make available for city investigation and audit all records, including historical records and books of the utility necessary for verification of the report or payment. Such investigation and audit may be done by the city or any person selected by the city. Neither the city's acceptance of payment nor the city's failure to make an investigation shall be deemed to prevent subsequent investigation by the city, or to estop the city from collecting any amount due.

(c) If, upon investigation, audit or otherwise, the fee or tax paid is determined to be excessive, a refund of the excess will be paid. If the fee paid is found to be insufficient, the manager shall notify the utility of the amount of the deficiency and demand payment of the amount.

(d) If a utility fails to properly report or pay the true amount of gross revenue or other basis from all accounts within the city as determined by the city after investigation or audit, a late payment charge will be owed on the under reported gross revenue calculated from the first day of the calendar quarter in which the error occurred to the date on which the city receives payment, compounded monthly. The late payment charge shall be due at the same time that the utility is required to make payment of any insufficiency of the license fee or privilege tax. If the manager determines that the insufficiency is due to fraud, intent to evade the fee or tax, or is greater than 10 percent of the total amount due, a penalty of 25 percent of the amount of the total fee or tax shall be paid in addition to the amount due and the late payment charge.

(e) Within 10 days from the date of any notice by the manager that the license fee or privilege tax paid is insufficient and demands payment, the utility may protest to a hearings officer pursuant to GRC 7.50.030. If no such protest is taken, if the hearings officer decides adversely to the utility, or if the hearings officer decides that any other amount is due, the manager shall proceed to collect the amount determined to be due and unpaid.

(f) In addition to any other penalties prescribed by law, if a licensee fails to make payment of any deficiency determined to be due and unpaid in accordance with the provisions of this subsection within 10 days of such final determination, the manager may suspend the license issued to the licensee.

(g) If any person operates without a license as required by this article, operates during a period of suspension after licensee has exhausted all due process rights, or materially under reports the license fee or privilege tax which is due, such person shall be liable for an additional penalty, computed at two percent of the gross revenues received by that person for providing utility service in the city during the applicable period, which shall be paid in addition to the applicable license fee or privilege tax.



(9) Refunds. In the event that a utility is ordered to refund any revenues by a governmental entity or agency with jurisdiction to make such an order and such refund will affect the license fee or privilege tax paid pursuant to this section, the calculation of the license fee or privilege tax shall not include the refund except pursuant to a mutually agreed upon schedule. If there is a substantial budgetary impact, such schedule may include spreading the impact of the refund on the future license fee or privilege tax to be paid to the city over a period of time commencing the first full fiscal year following the ordering of the refund. Such schedule shall minimize the administrative impact to the licensee and may include interest on the unpaid refund.

(10) Other City Costs. All licensees shall, within 30 days after written demand, reimburse the city for all reasonable costs and expenses incurred by the city in connection with processing or acting on any modification, amendment, renewal, transfer, termination, or revocation or lesser sanction of the license consistent with applicable state and federal laws. The written demand shall include a detailed statement of such costs and expenses.

(11) Compensation for City Property. If any right is granted by lease, or other manner, to use city property for the installation and operation of utility facilities, the compensation to be paid for such right and use shall be fixed by the city. Such compensation for the use of city property shall be in addition to the license fee or privilege tax as compensation for use of the public rights-of-way unless the use of city property by the utility is, in whole or in substantial part, in order to provide service to city facilities.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1750, Amended, 05/07/2015; Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1590, Amended, 09/16/2004; Ord. No. 1561, Amended, 01/02/2003; Ord. No. 1534, Amended, 11/01/2001; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.120 Location of Utility Facilities.**

(1) Location of Utility Facilities. All utility facilities located within the public rights-of-way shall be installed at the expense of the utility and in

accordance with the following terms and conditions, unless otherwise specified:

(a) Whenever all existing utility facilities are located underground within a public right-of-way, a person with permission to occupy the same public right-of-way must also locate its new utility facilities underground.

(b) To minimize disruption of the public rights-of-way when new or existing utility facilities are located or relocated underground within a public right-of-way, a person that currently occupies the same public right-of-way shall relocate its utility facilities underground concurrently with other affected utilities absent circumstances or hardship as determined by the city and consistent with applicable state and federal law.

(c) The city may require undergrounding of existing utility facilities as provided by state law.

(2) Interference with the Public Rights-of-Way. No person shall locate or maintain utility facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, 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, public works standards and regulations.

(3) Relocation or Removal of Utility Facilities. Except in the case of an emergency as determined by the city, or as otherwise agreed to by the city, within 30 days following written notice from the city, a person shall temporarily or permanently remove, relocate, change or alter the position of utility facilities installed by that person or that person's predecessor in interest within the public rights-of-way. The person may request additional time to complete the removal or relocation which shall not be unreasonably denied. The city may issue such notices when the city has determined that such removal, relocation, change or alteration is reasonably necessary for:

(a) the construction, repair, maintenance or installation of any city or other public

improvement in or upon the public rights-of-way, whether a public work by the city or its contractor, or the construction, repair, maintenance or installation of a public improvement by a person pursuant to the requirements of the city's development code;

(b) the operations of the city or other governmental entity in or upon the public rights-of-way; or

(c) the public interest as determined by the manager.

(4) Removal of Unauthorized Utility Facilities. Except in the case of an emergency, or as otherwise agreed to by the city, within 30 days following written notice from the city, any person that owns, controls or maintains any unauthorized utility facility within the public rights-of-way shall remove such utility facilities from the public rights-of-way of the city. A person may request that the city permit such utility facilities to be abandoned in place subject to such terms and conditions the city may prescribe. A utility facility is unauthorized and subject to removal in the following circumstances:

(a) One year after the expiration or termination of the person's utility license, franchise or permit. The one year period shall be stayed if an application for renewal has been submitted or during litigation regarding termination.

(b) Upon abandonment of a utility facility within the public rights-of-way of the city. A utility 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 90 days or longer unless a longer period is approved by the city, such approval not to be unreasonably withheld. Excess capacity intended for future use shall not be considered abandoned. A utility facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the utility facility is being replaced.

(c) If the utility facility was constructed or installed without the appropriate prior authority at the time of installation and such authority has not subsequently been granted.

(d) If the utility facility was constructed or installed at a location not permitted by license, franchise or other legally sufficient permit and has not subsequently been authorized.

(e) If the utility facility is not removed or relocated as required by subsection (3).

(5) The change, alteration, relocation or removal of utility facilities pursuant to subsections (3) and (4) shall be at no expense to the city. Subject to Oregon law and applicable tariffs approved by the OPUC, the relocation or removal shall be at the expense of the person required to relocate or remove the facility.

(6) If utility facilities are not relocated or removed pursuant to subsection (3) or (4), the manager may declare the utility facility a nuisance. In addition to any other remedies provided herein, violation of any section of this article may be enforced as set forth in GRC Article 7.50, or as otherwise authorized by law.

(7) Before commencing removal or relocation, a person shall obtain a permit as required by GRC 6.35.040(3).

(8) If removal or relocation is necessary due to a public improvement under a contract entered into between the city and an independent contractor and the failure to remove or relocate within the time specified results in payment by the city to the contractor of any claim for extra compensation for any work or delay under said contract, the utility shall be liable for payment of the amount paid by the city to the contractor as a direct result of the utility's failure to comply with the time requirements of the city unless the utility's failure is caused by circumstances beyond the utility's control or the action or inaction by the contractor.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1647, Amended, 09/20/2007; Ord. No. 1561, Amended, 01/02/2003; Ord. No. 1534, Amended, 11/01/2001; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.130 Coordination of Construction Activities.**

All utilities are required to make a good faith effort to cooperate with the city.

(1) By March 1 of each year, each licensee shall provide the city with a schedule of their proposed construction activities for the coming year in, around or that may affect the public rights-of-way. Each licensee shall provide the city with updates as available.

(2) When requested by the city, each licensee shall meet with 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.

(Ord. No. 1523, Enacted, 06/14/2001)

**6.30.140 General Provisions.**

(1) Governing Law. Any license or permit granted under GRC Articles 6.30 or 6.35 is subject to the provisions of the constitution, laws, and regulations of the United States, and the State of Oregon, and to the charter, ordinances, and resolutions of the city.

(2) Written License or Permit. No license or permit shall be granted under GRC Articles 6.30 or 6.35 unless the license or permit is in writing.

(3) Nonexclusive Grant. No license or permit granted under this ordinance shall confer any exclusive right, privilege, or permission to occupy or use the public rights-of-way of the city for delivery of services or any other purposes.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.150 Severability and Preemption.**

If any section, subsection, clause, phrase, term, provision, condition, covenant or portion of this ordinance 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 ordinance 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 ordinance 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 ordinance, then the provision shall be read to be preempted only to the extent required by law. In the event such federal or state law, rules or regulation is subsequently repealed, rescinded, amended, re-construed 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.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.160 Enforcement.**

A violation of a provision of GRC Article 6.30 may be subject to a fine or penalty in the maximum amount of \$1,000. Each day on which a violation occurs or continues is a separate offense.

(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.170 Other Remedies.**

Nothing in GRC Articles 6.30 or 6.35 shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this article.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.180 Captions.**

The captions to sections throughout GRC Articles 6.30 or 6.35 are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this article.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.190 Compliance with Laws.**

(1) All persons shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term of any license or permit granted under GRC Articles 6.30 or 6.35, which are relevant and relate to the construction, maintenance and operation of a utility facility in a public right-of-way.

(2) It is the sole responsibility of the person authorized to construct, install, operate and maintain a utility facility in the public right-of-way to comply with all applicable laws, regulations and conditions. It is not the responsibility of the city to guarantee compliance with the applicable laws, regulations and conditions during the application for, or the construction, installation, operation or maintenance of, the utility facility. The city is not liable in any way for any failure of the authorized person to carry out its responsibility to comply with all applicable laws, regulations and conditions. Should the authorized person fail to comply with the applicable laws, regulations, and conditions, regardless of cause, the city does not waive its ability to enforce such laws, regulations, and conditions. The city is in no way prevented or otherwise estopped from enforcing such laws, regulations, and conditions, regardless of when noncompliance is discovered.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.200 Consent.**

Wherever the consent of either the city or of the licensee is specifically required by GRC Articles 6.30 or 6.35 or in a license or permit granted, such consent will not be unreasonably withheld.

(Ord. No. 1523, Enacted, 06/14/2001)

**6.30.220 Confidentiality.**

Confidential information submitted to the city is exempt from public disclosure to the extent permitted by the Oregon Public Records Law. The

city shall use its best efforts to preserve the confidentiality of information submitted to the city, if requested by, and at the cost of, the person claiming the confidentiality of such information.

(Ord. No. 1766, Amended, 08/04/2016; Ord. No. 1523, Enacted, 06/14/2001)

**6.30.300 Regulations for Wireless Communication Facilities in the Public Rights-of-Way.**

Utility License Required. No person shall construct, install, operate, or maintain a wireless communication facility in the public right-of-way without first obtaining a utility license as provided by GRC Article 6.30. A person shall also obtain a separate right-of-way permit pursuant to GRC 6.35.042 for each wireless communication facility. (Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1720, Enacted, 11/15/2012)

Article 6.35

JURISDICTION AND MANAGEMENT OF PUBLIC RIGHTS-OF-WAY

Sections:

- 6.35.010 Short Title.
6.35.020 Definitions.
6.35.030 Jurisdiction and Management of Public Rights-Of-Way.
6.35.040 Permits.
6.35.042 Wireless Communication Facility Right-of-Way Permit.
6.35.045 Qualification Required.
6.35.050 Standards for Work in the Public Right-Of-Way.
6.35.060 Enforcement.

6.35.010 Short Title.

GRC Article 6.35 shall be known and may be cited as the "Public Rights-of-Way Ordinance" and may also be referred to as "this ordinance." (Ord. No. 1524, Enacted, 06/14/2001)

6.35.020 Definitions.

(1) The definitions of GRC 6.30.030 shall apply to GRC Article 6.35.

(2) As used in GRC Article 6.35, facilities also means non-utility facilities and public or private improvements located, constructed, or installed in the public rights-of-way by any person.

(3) As used in GRC Article 6.35, and when the context requires "applicant" shall mean the person granted or should have obtained a permit pursuant to this article. (Ord. No. 1524, Enacted, 06/14/2001)

6.35.030 Jurisdiction and Management of Public Rights-Of-Way.

(1) The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city and authority of the city charter, ordinances, and state law.

(2) The city has jurisdiction and exercises regulatory management over public rights-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.

(3) No person shall occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use public rights-of-way by licenses and permits

(4) 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.

(5) The city retains the right and privilege to immediately require the person responsible to move or otherwise adjust its facilities located within the public rights-of-way, or, upon consultation with the utility, with its own forces the city may move or otherwise adjust such facilities, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency. (Ord. No. 1709, Amended, 12/01/2011; Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1524, Enacted, 06/14/2001)

6.35.040 Permits.

(1) General. No person shall do work of any type, store materials, or construct or install any facility under, on or above the surface of the ground within a public right-of-way except as provided in GRC Article 6.35 and, for utilities, GRC Article 6.30.

(2) Construction Codes. 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.

(3) Permits Required. No person shall do work of any type, store materials, or construct or

install any facility under, on or above the surface of the ground within the public right-of-way of the city without first obtaining a permit except as provided in GRC 6.35.040(5).

(4) Types of Right-of-Way Permits and Licenses.

(a) A sidewalk and approach permit will be required for work solely involving a sidewalk or driveway in the public right-of-way. Applicable work includes making, installing, and providing maintenance, removing, replacing, or repairing a sidewalk or a vehicular connection to a public right-of-way.

(i) A sidewalk and approach permit is specific to the property and precise frontage location for which it is issued and is not transferable to other property.

(b) An encroachment permit will be required for placing temporary facilities and storing materials in the public right-of-way.

(c) A license to encroach will be required for permanent and semi-permanent facilities such as building overhangs, footings, and irrigation lines placed in the public right-of-way.

(d) A street opening permit will be required for work conducted within the traveled portion of the public right-of-way, including shoulders, and areas intended for parking; for work in the public right-of-way for which subsections (a), (b) or (c) are not applicable; and for work on city utilities in public easements.

(5) Exception to Permit Requirements.

(a) No permit is required for work solely in a public utility easement unless such work will impact traffic by closing or blocking a lane of travel or if lane width is reduced to a width of less than 10 feet.

(b) For work above the surface of the ground, a permit is required only for the installation of new facilities and the maintenance or repair of existing facilities,

when the installation, maintenance or repair will impact traffic by closing or blocking a lane of travel or by reducing lane width to less than ten feet.

(c) The manager may establish a system allowing a permit to be applicable to multiple projects.

(d) In case of an emergency, a person may commence work without first obtaining a permit if the person immediately notifies the city of such work and obtains a permit as soon as reasonably practical.

(6) Permit Applications. Applications for permits shall be submitted upon forms provided by the city and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(a) The facilities will be constructed in accordance with all applicable codes, rules and regulations.

(b) That the facilities will be constructed in accordance with any license issued pursuant to GRC Article 6.30.

(c) The location and route of all facilities to be installed aboveground or on existing utility poles.

(d) To the extent such information is available, the location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public right-of-way along the underground route proposed by the applicant.

(e) The horizontal and vertical location, size, type of materials and route of all new facilities on or in the public rights-of-way to be located by the applicant under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights-of-way. Existing facilities shall be differentiated on the plans from new construction.

(f) 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.

(g) Traffic control in conformance with the Manual on Uniform Traffic Control Devices with Oregon Supplements, as amended.

(7) 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.

(8) Construction Schedule. All permit applications shall be accompanied by a written construction schedule which shall include a proposed deadline for completion of construction. The construction schedule is subject to approval by the manager. The city may coordinate construction with other permits to minimize public inconvenience, disruption or damage.

(9) Permit Processing Fee and Administration/Plan Review/Inspection Deposit.

(a) The application for a permit shall be accompanied by a permit processing fee and administration/plan review/inspection deposit in an amount set by council resolution. The applicant shall be charged the actual cost incurred by the city for administration, plan review and construction inspection. Such fees and charges shall be designed to defray the costs of city administration of requirements of this ordinance. The city may establish a separate fee and deposits for permits obtained by utilities licensed pursuant to GRC Article 6.30.

(b) Additional deposits may be required if the city determines expenses will exceed the deposit. Expenses exceeding the deposits will be billed to the applicant and paid before acceptance of the work pursuant to subsection (13). The unused portion of the deposit will be

returned to the applicant following acceptance of the work. The manager may establish a system allowing waiver of deposits and billing for permit processing fees and administration/plan review/inspection costs for applicants with multiple projects.

(10) Issuance of Permit.

(a) If satisfied that the application, plans and documents submitted comply with all requirements of this ordinance, 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 the city may deem necessary or appropriate.

(b) The permit shall be issued within 10 business days of receipt of application, unless additional information is required by the city to issue the permit.

(c) If the applicant is in material violation of a permit previously issued pursuant to GRC Article 6.35; with grading or erosion control requirements as provided by GCDC Section 9.0500; with the erosion control requirements of GRC Article 3.28; or with the standards of GRC 6.35.050, the city may elect to withhold the issuance of additional permits pursuant to GRC Article 6.35 until such time as the previous violations are resolved to the satisfaction of the city.

(d) No permit shall be issued for the construction or installation of utility facilities within a public right-of-way unless the utility has first applied for and received a license pursuant to GRC Article 6.30.

(e) No permit shall be issued if the facility will conflict with existing or previously planned facilities in the public right-of-way.

(f) No permit shall be issued to locate private water, stormwater, or wastewater facilities in the public right-of-way unless the applicant establishes it is in the public interest to do so.

(11) Display of Permit. The permit, or a legible copy thereof, issued pursuant to this section shall be kept at the construction site and made available for inspection at the request of the city. Failure to present the permit when requested shall be reason to issue a stop work order for work in the public right-of-way.

(12) Permit Term. A permit shall be valid for 90 days from the date issued. A permit may be revoked by mutual consent, by the manager for failure of the applicant to abide by the terms and conditions of the permit or this ordinance, by operation of the law, or in the case of a utility, at the time the utility to which the permit is issued ceases operation. If a person fails to complete installation of the facility covered by a permit, including restoration, within the period specified in the permit, said permit shall be deemed null and void and all privileges and fees thereunder forfeited, unless a written extension of time is obtained from the manager.

(13) Acceptance. Upon completion of the work and before expiration of the permit, all work must be accepted by the city. The city will inspect the work within 10 business days of when the city is notified in writing that the work is complete. Unless otherwise provided in the special conditions, the permit shall authorize the facility to remain in the right-of-way for an indefinite period of time from the acceptance date.

(14) Violation. Failure of the applicant to comply with any of the terms and conditions of a permit or the standards of GRC 6.35.050 shall be sufficient cause for not accepting the work or for cancellation of the permit and may result in removal of the facility by the city at the applicant's expense. In addition to any other remedies provided herein, violation of any section of this article may be enforced as set forth in GRC Article 7.50, or as otherwise authorized by law. Any stop work order issued pursuant to this section may apply to the right-of-way work, erosion control work, and/or work pursuant to a building permit to the extent authorized by the building official. In addition, any violation of a term or condition of a permit or the standards of GRC 6.35.050 shall be a violation as provided by GRC 6.35.060.

(15) A permit, the privileges granted therein and the obligations of the applicant created thereby shall be binding upon the successors and assigns of the applicant.

(16) Notwithstanding GRC 6.35.030(3), the permission of the city is not required to use a public street for driving or parking. Notwithstanding GRC 6.35.030(3) and subject to GRC 8.30.030, a person may:

(a) place a drop box or storage container in the public right-of-way abutting property generating the waste for not more than seven consecutive days and not more than 28 days annually.

(b) place a storage container being utilized exclusively for the temporary storage of personal household items in connection with a residential relocation in the public right-of-way abutting property for no more than 14 consecutive days and not more than 28 days annually.

The owner of the drop box or storage container shall make every effort to place the drop box or storage container on the abutting property prior to placement in the public right-of-way. The uses authorized by this subsection shall be subject to all other applicable laws and regulations.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1750, Amended, 05/07/2015; Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1624, Amended, 04/20/2006; Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1561, Amended, 01/02/2003; Ord. No. 1541, Amended, 03/21/2002; Ord. No. 1534, Amended, 11/01/2001; Ord. No. 1524, Enacted, 06/14/2001)

**6.35.042 Wireless Communication Facility Right-of-Way Permit.**

(1) Definitions. For purposes of GRC 6.35.042, the following mean:

Small Wireless Facility. As provided by the Code of Federal Regulations, Title 47, Part 1, Subpart U, Section 1.60002(1), a Small Wireless Facility is a wireless communication facility in the right-of-way that that meet each of the following conditions:



- (1) The facility
  - (i) is mounted on a structure 50 feet or less in height including their antennas as defined in section 47 CFR 1.1320(d), or
  - (ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or
  - (iii) does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR 1.1320(d)), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

Streetlight Pole. A pole or structure owned by the City of Gresham located in the public right-of-way used for the mounting of streetlights.

Traffic Signal Pole. A pole or structure owned by the City of Gresham located in the public right-of-way used for the mounting of electric traffic control devices.

Utility Pole. A pole or structure in the public right-of-way that carries transmission or distribution lines of a utility that is subject to either a license issued pursuant to GRC Article 6.30 or a franchise agreement. A Utility Pole includes a Streetlight Pole.

Wireless Communication Facility (“WCF”). An unmanned facility, a portion of which is located on a utility pole for the transmission of radio frequency signals for wireless communication, including but not limited to wireless service and broadband service, usually consisting of an antenna, radio transceivers, cabinet or other

enclosed structure containing electronic equipment, cables, wires, conduits, or other transmission and reception devices.

(2) Wireless Communication Facility Right-of-Way Permit Required. No person shall construct, install, operate, or maintain a wireless communication facility in the public right-of-way without first obtaining a permit as provided by GRC 6.35.042. A person shall obtain a separate wireless communication facility right-of-way permit for each wireless communication facility. Application may include more than one wireless communication facility.

(3) Application.

(a) The application for a wireless communication facility right-of-way permit shall include the following:

(i) An application fee in the amount set by council resolution. An application shall not be deemed complete until the fee is received by the city.

(ii) A narrative, plans, a photo of the proposed location, a photo rendering of the location and the proposed facility, and specifications demonstrating the wireless communication facility and equipment meets the criteria of GRC 6.35.042(4), (5), (6), (7), and (9). Photos shall meet the standards specified by the manager.

(iii) The plan set shall provide the exterior dimensions of each separate piece of equipment, with the exception of conduit, cable, extension arms, and any equipment wholly included inside another piece of equipment. The plan set shall indicate how the equipment is proposed to be installed, such as orientation, mounting height, offset distance from pole, and method of attachment. Equipment required by the pole owner must be identified as such.

(iv) Written consent of the utility that owns or controls the utility pole to use the utility pole for a wireless communication facility as required by GRC 6.35.042(4)(b).

(v) If the application includes a request for the manager to modify or waive any of the requirements or prohibitions of GRC 6.35.042 pursuant to GRC 6.35.042(11), the application shall demonstrate that the waiver or modification is necessary to address a regulation that materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.

(vi) If the application seeks to modify an existing and eligible wireless communication facility pursuant to 47 U.S.C. 1455(a) and the rules adopted by the Federal Communications Commission to implement 47 U.S.C. 1455(a), including 47 C.F.R. §1.40001, the application shall demonstrate that the modified wireless communication facility meets the applicable provisions of federal law.

(b) The application shall be reviewed for compliance with GRC 6.35.042(3)(a). If the city determines the application is incomplete, the city shall provide the applicant a notice which shall list what information is missing and allow the applicant to submit the missing information.

(c) When the city deems the application is complete, the city shall review the application for compliance with GRC 6.35.042. The applicant shall bear the burden of proof that the application meets the criteria of GRC 6.35.042.

(d) Once deemed complete, an application that includes a request to waive or modify a requirement of GRC 6.35.042 may be amended, with the consent of the city, to reduce the impact of the proposed wireless communication facility.

(4) Utility Poles.

(a) A wireless communication facility in the public right-of-way shall only be installed on a utility pole. except that a wireless communication facility shall not be placed on a utility pole designed or used for traffic signals.

(b) A wireless communication facility shall not be installed on a utility pole except with the written consent of the utility that owns or controls the utility pole. Such written consent shall include a statement from the utility that owns or controls the utility pole that the utility pole or replacement utility pole is structurally adequate and will safely accommodate the proposed wireless communication facility.

(5) Replacement Utility Poles. A wireless communication facility may be installed on a replacement utility pole that meets the following criteria.

(a) The height of a replacement utility pole shall not exceed the height of the utility pole being replaced; except that to the extent necessary to provide clearance required by applicable electrical codes:

(i) the height of the replacement utility pole may be increased up to 15 feet for the installation of antennas on the side of the replacement utility pole, or

(ii) the height of the replacement utility pole plus a unicell-style top cylinder installed on top of the replacement utility pole may exceed the height of the utility pole being replaced by no more than a total of 15 feet.

(b) A non-wood replacement utility pole shall have a finish of non-reflective grey, brown, weathered steel or other finish approved by the manager that best matches the nearest five utility poles along the same pole line.

(c) The replacement utility pole shall be located to allow the maximum available width for a pedestrian access route, which in no case shall be less than a five-foot clearance or the sidewalk width as defined in the Public Works Standards in effect at the time of the application, whichever is greater.

(d) The replacement utility pole must be located as to physically support the same span of utility lines as the utility pole being replaced.

Upon installation of the replacement utility pole, the utility pole being replaced shall be completely removed from the public right-of-way.

(6) Antennas and Equipment General Requirements. Equipment may be located under, on, or above the ground as follows:

(a) In a single cabinet located on the road side of the utility pole and at right angles to the street. The cabinet shall not exceed 30 inches in height, 30 inches parallel to the street and 24 inches perpendicular to the street.

(b) In a single enclosed shelter, at right angles to the street, located on the ground on property abutting the public right-of-way but only with the permission of the abutting property owner and subject to the applicable requirements of the Gresham Community Development Code.

(c) In a single cabinet, at right angles to the street, on the ground in the public right-of-way if located to allow the maximum available width for pedestrians, which in no case shall have less than a four-foot clearance. The cabinet shall not exceed 42 inches in height except in a clear vision area in which case the height shall not exceed 36 inches, 42 inches parallel to the street and 30 inches perpendicular to the street.

(d) Equipment may be located underground whenever practicable.

(7) Antennas and Equipment Construction Requirements.

(a) Mounting hardware, conduit, cabling, and other equipment installed on the side of the utility pole shall have no more than six inches of space between the utility pole and equipment.

(b) A unicell-style top cylinder may be installed on the top of the utility pole but shall not extend more than 10 feet higher than the utility pole.

(c) An antenna installed on the side of the utility pole shall not extend higher than the top of the utility pole.

(d) Antenna, mounting hardware, conduit, cabling, and other equipment installed on the utility pole shall have a non-reflective surface treatment to match the color of the utility pole.

(e) Antenna and equipment on a utility pole shall have at least a 12-foot vertical clearance from the ground.

(f) Antenna on a utility pole shall not extend horizontally more than three feet from the utility pole.

(8) Relocation and Undergrounding.

(a) If any utility pole upon which a wireless communication facility is installed is removed or relocated for any reason, the wireless communication facility and all appurtenances shall also be removed or relocated at no expense to the city.

(b) If any utility pole upon which a wireless communication facility is removed because the facilities of all other utilities using the utility pole are relocated underground for any reason, the wireless communication facility utility license for that utility pole shall be terminated and the wireless communication facility shall be removed at no expense to the city.

(9) Other Requirements.

(a) No lighting of a wireless communication facility is allowed except as required by the Federal Aviation Administration. Required lighting shall be shielded from the ground to the extent practicable.

(b) Noise generating equipment will meet the requirements of Gresham Revised Code (GRC) Article 7.20, Gresham Noise Control Code.

(c) No audible or visible alarms are allowed.

(d) The name and contact telephone number of the person owning the wireless communication facility shall be affixed to the utility pole.

(e) A wireless communication facility shall be removed from the public right-of-way within six months of the date it ceases operation. Failure to remove the wireless communication facility is declared to be a public nuisance and subject to enforcement, including but not limited to abatement, pursuant to GRC Article 7.50.

(10) Issuance of Wireless Communication Facility Right-of-Way Permit. After the city deems the application is complete, or as provided by GRC 6.30.042(11)(d), the manager shall issue a wireless communication facility right-of-way permit for a wireless communication facility in the public right-of-way if the application, plans and documents submitted comply with all requirements of GRC Article 6.30, GRC Article 6.35, GRC 6.35.042, and other applicable city codes.

(11) Modification or Waiver of Requirements.

(a) The manager may modify or waive any requirement or prohibition of GRC 6.35.042 to the extent the applicant demonstrates that the waiver or modification is necessary to address a regulation that materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment

(b) After an application that includes a request to modify or waive the requirements of GRC 6.35.042 is deemed complete, the manager shall mail written notice of the application to:

- (i) the applicant and/or authorized representative;
- (ii) any city-recognized neighborhood association whose boundaries include, or are within 300 feet of, the proposed location;
- (iii) owners of record within 300 feet of the proposed location; and
- (iv) tenants of property within 300 feet of the proposed location as shown in the utility billing records of the City of Gresham.

(c) Any person may submit written comments concerning the application within 14 days of the date of the notice.

(d) The manager's decision shall be issued following the close of the 14-day comment deadline. The applicant and any person submitting written comments prior to the decision shall receive notice of and may protest the manager's decision. GRC 7.50.030 (1) to (7) and (10) shall apply to any protest except as follows:

(i) Notice of the protest hearing and of the decision shall be given to persons who submitted comments to the manager and to any city-recognized neighborhood association whose boundaries include or are within 300 feet of the proposed location.

(ii) Notwithstanding GRC 7.50.030(5), any person entitled to receive notice of the hearing may participate in the protest hearing.

(iii) The protest hearing shall be de novo, which means new evidence and argument can be introduced in writing, orally, or both, by persons participating in the protest hearing.

(iv) The hearing is not limited to the issue(s) raised in the protest.

(v) Cross examination is limited to expert witnesses.

(vi) The applicant shall bear the burden of proof that the application meets the criteria of GRC 6.35.042(11)(a).

(vii) To allow the applicant and protester the opportunity to respond to new issues or evidence submitted at the hearing, the hearings officer may continue the hearing or hold the record open, for the submittal of additional evidence and/or argument.

(viii) A copy of the decision shall be sent to any person who participated orally or in writing at the hearing.

(Ord. No. 1796, Amended, 01/15/2019; Ord. No. 1787, Renumbered and Amended, formerly GRC 6.30.300, 11/01/2018)

**6.35.045 Qualification Required.**

No permit shall be issued pursuant to GRC 6.35.040 unless the person or contractor performing construction under or on the public right-of-way has met the standards of responsibility as provided by ORS 279C.375(3)(b). The manager may waive the requirement if in the best interest of the city. If a person is found not to meet the requirement, the person may appeal as provided in ORS 279C.450.

(Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1534, Enacted, 11/01/2001)

**6.35.050 Standards for Work in the Public Right-of-Way.**

(1) Compliance with Standards. All construction practices and activities shall be in accordance with this article, any permit and the approved final plans and specifications for the facilities. All construction practices and activities relating to public infrastructure systems (streets, water, wastewater, stormwater) of the city shall also be in accordance with the Public Works Standards. The city and its representatives shall be provided access to the work site and such further information as may be required to ensure compliance with such requirements.

(2) Non-complying Work. Subject to the notice requirements in subsection (6)(c), all work which does not comply with the Public Works Standards, this article, any permit relating to the work being conducted in the public right-of-way or the approved final plans and specifications, shall be removed and replaced at no expense to the city.

(3) Completion of Construction. All construction activities shall be promptly completed so as to minimize disruption of the public rights-of-way and other public and private property. All construction within public rights-of-way, including restoration, must be completed within the permit

term unless an extension or an alternate schedule has been approved by the city.

(4) No Work During Holiday Season. Except for emergencies, or as otherwise approved by the city, no work shall be conducted in a public right-of-way designated by the manager from 6:00 p.m. the Friday preceding Thanksgiving to 8:00 a.m. on the first business day on the following New Year.

(5) Other Requirements.

(a) Street Surface. Care shall be taken to see that the street surface and improvements beyond the work areas are not damaged. Any damage resulting from the applicant's operation shall be repaired or replaced by the applicant. Protective measures and devices shall be used on all equipment.

(b) Existing Utilities. Applicant shall not interfere in any manner with the existence or operation of existing utilities. All existing utilities shall be protected and kept in operation, by the applicant, so far as possible. If it becomes necessary to interrupt service of any utility, the applicant will be responsible to notify the proper authorities of the utilities involved, making known to them the applicant's plan of operation so as to avoid all unnecessary inconvenience. Damage to utilities caused by the applicant is the responsibility of the applicant.

(c) Traffic Signal Detector Loops. It shall be the responsibility of the applicant to verify the existence and location of "Signal Detector Loops" before excavating in signalized intersections.

(d) Protection of Survey Monuments. It shall be the responsibility of the applicant to determine the location of and to protect all survey monuments in the vicinity of said installation during construction. If it becomes necessary to disturb a monument or if a monument is inadvertently disturbed or destroyed during the course of the applicant's operation, the applicant shall immediately notify the Multnomah County Office of Survey

Records. The applicant shall be responsible for all costs incurred in the restoration or perpetuation of the monuments that may be disturbed due to the applicant's operations.

(e) Drainage. All drainage facilities disturbed as a result of the applicant's construction shall be restored or replaced immediately after the applicant's facility has been placed and shall be subject to inspection by the city.

(f) Signs and Mailboxes. All existing street signs and mailboxes in the way of the work shall be removed and immediately reset temporarily in a position where they will be noticeable and serve their purpose. After the work is completed, the signs and mail boxes shall be permanently reset at their original location and elevation.

(g) Vegetation. It is strictly forbidden to spray within a public right-of-way with selective herbicides unless written permission is first obtained from the manager

(h) An applicant shall use suitable barricades, flags, flaggers, 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.

(i) The applicant shall be responsible for relocating or adjusting any utility facilities located on the public right-of-way as required to accommodate the facility applied for by the applicant. Construction of the facility by the applicant, its agent or contractor may commence only after the applicant has furnished the manager with evidence that satisfactory arrangements for said relocation or adjustment have been made with the owner of the affected utility facility.

(j) The manager may impose such additional terms and conditions as necessary to protect the public right-of-way.

(6) Restoration of Public Rights-of-Way.

(a) When an applicant does any work in or affecting any public right-of-way the applicant shall, at no expense to the city, promptly remove any obstructions and restore such rights-of-way to an equal condition unless otherwise directed by the city. The city shall determine in its sole discretion whether the right-of-way has been restored as required.

(b) If weather or other conditions do not permit the complete restoration required by this subsection, the applicant shall temporarily restore the rights-of-way. Such temporary restoration shall be at no expense to the city and the applicant shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any modification to the construction schedule is subject to approval by the city.

(c) If the applicant fails to restore rights-of-way, the city shall give the applicant written notice and provide the applicant a reasonable period of time, not exceeding 30 days, to restore the rights-of-way. If applicant fails to restore the rights-of-way the city shall cause such restoration to be made at the expense of the applicant.

(7) As-Built Drawings. If requested by the city, the applicant shall furnish the city with two complete sets of plans drawn to scale and certified as accurately depicting the horizontal and vertical location, size and type of material of all facilities constructed. The plans need not include details of the nature of the facilities. These plans shall be submitted to the city within 60 days after completion of construction, in a generally recognized format acceptable to the city.

(8) Moratorium After Major Street Work. The surface of any street shall not be cut or dug up for a specific period of time after acceptance by the city of a street improvement, capital improvement, or major maintenance work as specific in the Public Works Standards.

(9) Allocation of Costs.

(a) The entire cost of installing, maintaining, repairing, operating or using the sidewalk, pole line, buried cable, pipe line, sign, or other facility installed; and of any other expense whatsoever incidental to the facilities or operations shall be paid by the applicant.

(b) The applicant shall reimburse the city before the city shall accept the work under GRC 6.30.040(13) for any reasonable and necessary expense that the city may incur in connection with the facilities or operations. The applicant shall make the reimbursement to the city within 10 days after receiving an invoice from the manager. These charges may include, but are not limited to, the following:

1) Emergency repair by persons other than the applicant when authorized by the manager pursuant to subsection (10)(f).

2) Emergency traffic control by persons other than the applicant when authorized by the manager.

3) Quality testing as required under the terms of a permit, or when ordered by the manager to establish compliance with applicable standards.

4) Repair of non-conforming installation (non-emergency) 30 days after notification by the manager of a non-conforming installation.

(c) In the event reconstruction or widening of any public right-of-way requires the removal, alteration or reconstruction of an approach lawfully constructed the cost of such removal or replacement to a like width and condition will be borne by the city. Any widening or other improvement of the approach at the applicant's request shall be done only under authority of a new permit and at the expense of the applicant.

(d) The entire cost of maintaining an approach and facilities within the public right-of-way from the outside edge of the shoulder or the back of the curb to the property line,

shall be the responsibility of the benefiting property owner. The city will maintain the shoulder area of the street, providing the approach was constructed in accordance with applicable standards.

(10) Maintenance:

(a) The applicant shall repair all impacts to or deterioration of public facilities for the life span of such facilities caused by the activities of the applicant and shall conduct such repairs upon notice from the city.

(b) The applicant shall at all times keep facilities authorized by the permit in a good state of repair both structurally and in the case of non-commercial signs, from the standpoint of appearance.

(c) Prior to performing any maintenance work on a facility that will interfere with or interrupt traffic upon or along the street, applicant shall obtain prior approval of the manager. Applicant may perform minor maintenance work that does not interfere with traffic upon a street without obtaining prior approval.

(d) An approach shall be removed whenever it no longer provides access for vehicles. Upon the removal of an approach, that portion of the street previously occupied by the approach shall be restored as nearly as practicable to a condition comparable to adjacent areas and curbing and sidewalk shall be replaced at the applicant's expense.

(e) In the event the operating pressure of an existing pressure pipeline is to be raised above the "maximum operating pressure" shown in a permit, a new permit or an amendment to the existing permit is required.

(f) Emergency Work. If, in the opinion of the manager, a public right-of-way hazard that poses an imminent danger to public health and safety or a public facility is created by lack of maintenance or need for emergency repair, the manager may:

(i) Order the work to be started by the city and notify the person responsible for the hazard. The city will utilize employees or a contractor qualified for the work being done. If the person responds, their crew may take over from the city or assist as the person decides.

(ii) Notify the person to perform the work. If the person cannot or will not do the work within the timeframe set by the manager, the manager may order the work done by the city. The city will utilize employees or a contractor qualified for the work being done.

In both of the above instances the person responsible for the hazard shall bear the full cost of the work. This cost includes all city costs and shall be paid to the city within 30 days after receipt of written notice of costs incurred by the city and request for payment.

(g) Public Nuisance. If in the opinion of the manager a public nuisance is created by lack of maintenance, the manager may notify the owner to repair this nuisance within five working days or such other time period as determined by the manager. If the repair is not made within this timeframe the city may declare the unmaintained area a public nuisance. Such nuisance may be abated pursuant to GRC Article 7.50.

(11) Removal or Relocation.

(a) Except in the case of an emergency or as otherwise agreed to by the city, within 30 days following written notice from the city, a person shall, temporarily or permanently remove, relocate, change or alter the position of facilities installed by that person or that person's predecessor in interest within the public rights-of-way. The person may request additional time to complete the removal or relocation, which shall not be unreasonably denied. The city may issue such notice when the city has determined that such removal, relocation, change or alteration is reasonably necessary for:

1) The construction, repair, maintenance or installation of any city or other public improvement in or upon the public rights-of-way, whether a public work by the city or its contractor or the construction, repair, maintenance or installation of a public improvement pursuant to the requirements of the city's development code.

2) The operations of the city or other governmental entity in or upon the public rights-of-way for governmental purposes; or

3) The public interest as determined by the manager.

(b) Before commencing removal or relocation, the applicant shall obtain a permit as required by GRC 6.35.040(3).

(c) The relocation or removal of facilities pursuant to this section shall be at no expense to the city. Subject to Oregon law and applicable tariffs approved by the OPUC, the relocation or removal shall be at the expense of the person required to relocate or remove the facility.

(d) Should the applicant fail to remove or relocate the facility, the manager may declare the facility a nuisance. In addition to any other remedies provided herein, violation of any section of this article may be enforced as set forth in GRC Article 7.50, or as otherwise authorized by law. If it becomes necessary for the city to commence an action or proceeding in a court of competent jurisdiction for removal or relocation or to recover removal or relocation costs, the prevailing party shall be entitled to recover statutory costs and disbursements and such additional sum as the court may deem reasonable for attorney's fees.

(e) If removal or relocation is necessary due to a public improvement under a contract entered into between the city and an independent contractor and the failure to remove or relocate within the time specified



results in payment to the contractor of any claim for extra compensation for any work or delay under said contract, the applicant shall be liable for payment of the amount paid to the contractor as a direct result of the failure to comply with the time requirements of the city.

(12) Liability and Control.

(a) The applicant shall be responsible and liable for all accidents, environmental clean-up, damages or injuries to any person or property resulting from the construction, maintenance, repair, operation, or use of a facility for which the applicant may be legally liable. The applicant shall indemnify and hold harmless City of Gresham, its City Councilors, and all officers, employees, or agents against any and all damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which they or any of them may sustain by reasons of the acts, conduct or operation of the applicant, his agents or employees in connection with the construction, maintenance, repair, operation or use of said facility.

(b) Except for the negligence of the city, the city and its council, manager, officers or employees shall not be held responsible or liable for injury or damage that may occur to facilities or any connection or connections thereto resulting from motorists or otherwise.

(c) The applicant shall employ any and all methods in performing the operations that the manager may require in order to properly protect the public from injury and the public right-of-way from damage.

(d) During the initial installation or construction of a facility, during any future repair, removal, or relocation thereof, or during operations, the applicant shall at all times maintain such flaggers, signs, lights, flares, barricades and other safety devices as required or recommended by the *Manual of Uniform Traffic Control Devices* with Oregon Supplements, as amended. A traffic control plan or additional traffic control measures may be required if deemed to be reasonably

necessary to properly protect traffic upon the street, and to warn and safeguard the public against injury or damage. The applicant may be required to maintain a watchman as required to maintain said signs, lights, flares, barricades and other safety devices during non-work hours, and, if required, shall provide the telephone number and/or address of such watchman.

(e) In the event of an emergency repair the applicant shall so conduct his operations that there will be a minimum of interference with or interruption of the traffic upon and along the street until the manager has approved a plan for the satisfactory handling of traffic. In emergencies, the applicant shall notify the manager as soon as practicable.

(f) All traffic control and safety devices used for protection of the work areas shall conform to the current provisions of the *Manual of Uniform Traffic Control Devices*, with Oregon Supplements, as amended.

(g) To ensure compliance with applicable standards, the manager reserves the right to inspect the job during such periods as the manager deems necessary, to check compliance by the applicant and to require the applicant to correct all deviations from those standards.

(h) Any supervision and/or control exercised by the manager shall in no way relieve the applicant of any duty or responsibility to the general public nor shall such supervision and/or control relieve the applicant from any liability for loss, damage or injury to persons or property.

(13) Performance and Completion Bond; Warranty Bond.

(a) Unless otherwise provided in a permit, a financial assurance acceptable to the manager equal to at least 110 percent of the estimated cost of reconstructing the impacted public facilities within the public rights-of-way shall be deposited before construction is commenced.

(b) The financial assurance shall remain in force until 60 days after substantial completion of the work including restoration of public rights-of-way and other property affected by the construction or for the period stated in the special conditions on a permit.

(c) The financial assurance shall guarantee, to the satisfaction of the manager:

- 1) timely completion of construction;
- 2) construction in compliance with applicable plans, permits, technical codes, Public Works Standards and other applicable standards;
- 3) proper location of the facilities as specified by the manager;
- 4) restoration of the public rights-of-way and other property affected by the construction; and
- 5) timely payment and satisfaction of all fees and charges due to the city.

(d) Financial assurance acceptable to the manager for the greater of \$500 or 10 percent of the estimated cost of reconstructing the impacted public facilities within the public rights-of-way shall be required prior to acceptance of the work. The financial assurance shall be in effect for a period of two years from the date of acceptance. Repairs required within the warranty period shall be warranted for two years from the date of completion of such repair. The manager may require an additional financial assurance for any repairs done pursuant to the warranty obligation. Such additional financial assurance shall be a period of two years from the date of completion of such repairs.

(e) The financial assurance may be applicable to multiple projects in an amount and form satisfactory to the manager.

(f) The manager may waive the financial assurance required if the applicant

has demonstrated a history of quality restoration of the public right-of-way.

(14) Applicant Insurance. Unless otherwise provided in a permit, each applicant shall, while working in the public right-of-way, secure, maintain and furnish certificates of insurance coverage of a type and amount as required by the city attorney. The applicant may provide proof of self-insurance, satisfactory to the attorney, as an alternative means of meeting the insurance requirement.

(15) Retroactivity. The provisions of GRC 6.35.050(2), (6), (8), (9), (10), (11) and (12)(a), (b) and (c) shall apply to all facilities in the public right-of-way without regard to when those facilities were constructed.

(Ord. No. 1790, Amended, 01/01/2019; Ord. No. 1750, Amended, 05/07/2015; Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1669, Amended, 04/16/2009; Ord. No. 1615, Amended, 01/01/2006; Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1590, Amended, 09/16/2004; Ord. No. 1574, Amended, 8/14/2003; Ord. No. 1561, Amended, 01/02/2003; Ord. No. 1541, Amended, 03/21/2002; Ord. No. 1534, Amended, 11/01/2001; Ord. No. 1524, Amended, 06/14/2001)

**6.35.060 Enforcement.**

A violation of a provision of GRC Article 6.35 may be subject to a fine or penalty in the maximum amount of \$1,000. Each day on which a violation occurs or continues is a separate offense.

(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1524, Enacted, 06/14/2001)

**Article 6.40**

**TRANSPORTATION MAINTENANCE  
FEE**

**Sections:**

- 6.40.010** [Purpose.](#)
- 6.40.020** [Definitions.](#)
- 6.40.030** [Establishment.](#)
- 6.40.040** [Dedicated.](#)
- 6.40.050** [Billing.](#)
- 6.40.060** [Payment Due Date.](#)
- 6.40.070** [Adjustment of Accounts.](#)
- 6.40.080** [Delinquency.](#)

**6.40.010 Purpose.**

The purpose of the Transportation Maintenance Fee is to provide stable and adequate funding to:

- (1) Maintain, preserve and improve existing elements of the city’s transportation system; and
- (2) Reduce the backlog of needed street repairs as measured by the city’s annual pavement condition survey; and
- (3) Acquire, replace, maintain and operate streetlights and streetlight infrastructure.

Transportation Maintenance Fee revenue shall only be used to maintain, preserve and improve the existing street system in the most cost effective manner.

(Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1569, Enacted, 05/01/2003)

**6.40.020 Definitions.**

In addition to the definitions set forth in GRC 1.05.010, as used in GRC Article 6.40, the following mean:

Premise. Means a parcel or portion of any parcel of land within the corporate limits of the City the use of which generates usage of the transportation system, including publicly owned property.

(Ord. No. 1700, Amended, 03/03/2011; Ord. No. 1569, Enacted, 05/01/2003)

**6.40.030 Establishment.**

(1) The person having possession or control of a Premise shall pay a Transportation Maintenance Fee adopted by Council. The fee shall be calculated by multiplying the per trip rate by the estimated trips generated by the Premise.

(2) Council shall establish by resolution the methodology to calculate the estimated trips generated by each Premise. The methodology shall be based on the relative usage of the city’s transportation system as determined by the estimated trips generated by categories of developed use.

(3) Council shall establish a rate for each trip in such an amount to provide sufficient funds to properly maintain, preserve and improve local streets throughout the City.

(4) Council, from time to time by resolution, may change the rate or methodology based upon revised estimates of the cost of properly maintaining local streets, revised categories of developed use, revised traffic generation factors, and other factors.

(Ord. No. 1569, Enacted, 05/01/2003)

**6.40.040 Dedicated.**

(1) There shall be a Transportation Maintenance Fund and a Streetlight Fund. All Transportation Maintenance Fee revenues imposed and collected under this article shall be deposited in the Transportation Maintenance Fund and the Streetlight Fund in accordance with the methodology established by council resolution.

(2) Money in the Transportation Maintenance Fund shall be used for the purposes of maintenance, preservation and improvement of the local transportation network of the City, including the administration of maintenance, preservation and improvement projects, and the administration, billing and collection of the Transportation Maintenance Fee. Money in the Transportation Maintenance Fund shall not be used for any operational costs or for the maintenance,

preservation and improvement of County Roads or State Highways.

(3) Money in the Streetlight Fund shall be used for the purposes of acquisition, replacement, maintenance and operation of streetlights and streetlight infrastructure, including the administration of the streetlight program and the administration, billing and collection of the Transportation Maintenance Fee.

(Ord. No. 1602, Amended, 04/01/2005; Ord. No. 1569, Enacted, 05/01/2003)

**6.40.050 Billing.**

(1) The utility account customer for a Premise shall be deemed to be the person having possession or control of the Premise.

(2) The city shall collect the Transportation Maintenance Fee by adding the Transportation Maintenance Fee to the utility bill of each Premise. The city will bill the Transportation Maintenance Fee charge on a schedule approved by the manager.

(3) If a Premise is not served by a utility account, or if the utility account customer is not the person having possession or control of the parcel and makes other arrangements for payment, the Transportation Maintenance Fee charge shall be billed separately to the person having possession or control of the Premise.

(4) If a Premise has more than one utility account, the city may bill each account separately for the Transportation Maintenance Fee or combine one or more accounts.

(5) Water use charges, sanitary sewer user charges, sanitary sewer billing service charges, stormwater user charges and the Transportation Maintenance Fee may be billed on the same bill.

(Ord. No. 1569, Enacted, 05/01/2003)

**6.40.060 Payment Due Date.**

Transportation Maintenance Fee charge shall be paid within 26 days from the service period ending date on the regular bill.

(Ord. No. 1569, Enacted, 05/01/2003)

**6.40.070 Adjustment of Accounts.**

(1) The city may write off closed accounts with a balance amount determined by the manager, and the city may write off refunds with a balance amount determined by the manager, with approval from the manager, unless the customer requests otherwise.

(2) Customers who believe their Transportation Maintenance Fee charge, as applied to their premises, are not within the intent of this article may request, in writing, a review of their Transportation Maintenance Fee charge. The manager may initiate the review of a customer's Transportation Maintenance Fee charge.

(a) If a customer's charge is reduced as a result of this review, the corrected Transportation Maintenance Fee charge shall begin with the next billing and a credit or refund shall be made retroactively, not to exceed one year from the last billing.

(b) If a customer's charge is increased as a result of this review, the corrected Transportation Maintenance Fee charge shall begin with the next billing and the customer shall be billed for the increase retroactively, not to exceed one year from the last billing.

(3) If an existing customer has not been billed the Transportation Maintenance Fee, the Transportation Maintenance Fee charge shall begin with the next billing and the customer shall be billed retroactively, not to exceed one year.

(Ord. No. 1569, Enacted, 05/01/2003)

**6.40.080 Delinquency.**

(1) A Transportation Maintenance Fee charge is delinquent if payment in full is not received by the city within 26 days from the service period ending date on the regular bill.

(2) If a customer's utility account for Transportation Maintenance Fee charges is delinquent, the city may discontinue all water services billed on that account.

(3) The city may discontinue all of a customer's current water services at any time the city discovers that the customer has a delinquent Transportation Maintenance Fee charge at any other property in the city.

(4) The council may set by resolution fees for extra services required in collecting delinquent customer accounts for Transportation Maintenance Fee charges.

(Ord. No. 1569, Enacted, 05/01/2003)