22500 Salamo Road
West Linn, Oregon 97068
http://westlinnoregon.gov

WEST LINN
CITY COUNCIL MEETING
MINUTES
July 14, 2025

Pre-Meeting

Call to Order and Pledge of Allegiance [6:00 pm/5 min]

Council Present:
Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Staff Present:
City Attorney Kaylie Klein, City Recorder Kathy Mollusky, Deputy City Manager Elissa Preston, Police Chief Peter Mahuna, Public Works Director Erich Lais, Management Analyst Morgan Lovell, Finance Director Lauren Breithaupt, and Management Analyst Stephanie Hastings.

Approval of Agenda [6:05 pm/5 min]

Council President Mary Baumgardner moved to approve agenda for the July 14, 2025, West Linn City Council Meeting moving items 4 & 5 to the beginning of the agenda before public comment. Councilor Kevin Bonnington seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Nays: None.

The motion carried 5 - 0

National School Resource Officer Jabral Johnson Award of Excellence [6:20/5 min]

Chief Mahuna honored Police Officer Jabral Johnson who earned the National Association of School Resource Officers Award of Excellence for Region 9; only 10 officers receive this award.

Evidence Technician Nicole Hedley and Detective Sergeant Todd Gradwahl Commendation Awards [6:25/5 min]

Police Chief Mahuna recognized Property and Evidence Technician Nicole Hedley and Detective Sergeant Todd Gradwahl who solved a Cold Case from 1978. Detective Sergeant Gradwahl performed a comprehensive review of all available reports and investigative records. Property and Evidence Technical Hedley re-examined case materials including physical evidence and photographs. A critical piece of evidence that had not been previously tested was discovered and submitted to the Oregon State Police Crime Lab. Through DNA, a previously identified person of interest was confirmed to be the suspect in the homicide. The identified suspect died in February 1989.

Public Comment [6:10 pm/10 min]

Shannen Knight and Beau Genot re: Committee for Community Involvement (CCI) letter from March 6. Their intent was to present a plan to market and outreach to grow Neighborhood Association (NA) membership to better utilize NAs in the future.

Kathie Halicki, WNA President, re: Planning Manager decisions. Some changes are state mandated; more items are to be added to the Planning Manager decision.

Dean Suhr re: Oppenlander, tolling, and 9/11.

Mayor and Council Reports [6:30 pm/15 min]

Reports from Community Advisory Groups

Councilor Bryck attended the Water Environmental Services (WES) advisory committee meeting. We received an update on what they are doing to ensure affordability for customers and an update on their capital projects. She attended the West Linn Fair and enjoyed watching the old-time baseball game and participating in the parade. She did trash pickup and weed pulling at Mary S. Young Park.

Council President Baumgardner stated the fair was wonderful as always. She went to the subcommittee meeting for Willamette Falls & Landings Heritage Coalition. There are exciting developments happening and she looks forward to reporting on them.

Councilor Bonnington went to the Parks and Recreation Advisory Board (PRAB) meeting. The commercial use is more nuanced and the code was presented for feedback from them. There were public comments concerning Council opening more pickleball courts, Council has not discussed this nor directed PRAB to discuss it.

Councilor Groner enjoyed Old Time Fair and parade and he served a lot of burgers.

Mayor Bialostosky was out of town at a family reunion; however, made the fair Sunday afternoon. He gave a shout out to Parks and Police staff who are there all weekend.

Consent Agenda [6:45 pm/5 min]

Agenda Bill 2025-07-14-01: Meeting Minutes for June 16 and 23, 2025 Council Meetings
Draft Minutes Information

Agenda Bill 2025-07-14-02: Intergovernmental Agreement with the State of Oregon – Willamette Falls Drive 16th Street to Ostman Rd. Pedestrian/Bike Upgrades
WFD Project Information

Agenda Bill 2025-07-14-03: RESOLUTION 2025-09, EXTENDING THE TERM OF THE CABLE TELEVISION FRANCHISE WITH COMCAST OF OREGON II, INC. TO ENABLE THE METROPOLITAN AREA COMMUNICATIONS COMMISSION TO COMPLETE THE INFORMAL RENEWAL PROCESS
RES 2025-09 MACC-Comcast Information

Agenda Bill 2025-07-14-04: Letter of Support - Housing Planning Assistance Grant Application
Letter of Support Information

Council President Mary Baumgardner moved to the Consent Agenda for the July 14, 2025, West Linn City Council Meeting which includes the June 16 and 23, 2025, meeting minutes; Intergovernmental Agreement with the State of Oregon regarding Willamette Falls Drive, 16th Street to Ostman Road Pedestrian/Bike upgrades; Resolution 2025-09, extending the term of the cable television franchise with Comcast of Oregon II, Inc. to enable the Metropolitan Area Communications Commission to complete the informal renewal process; and Letter of support for the housing planning assistance grant application. Councilor Carol Bryck seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Business Meeting [6:50 pm/60 min]

Agenda Bill 2025-07-14-05: Public Hearing: Sale of Real Surplus Property 6123 Skyline Drive

Surplus Property Information

Mayor Bialostosky opened the public hearing for Skyline Property.

Public Works Director Lais gave the background on the City's purchase of 6123 Skyline Drive due to the Bolton Water Reservoir construction.

Real Estate Agent Elizabeth Henderson explained the offers received and what an escalation clause is.

Public Comment

Harlan Borow and Darren Gusdorf, Icon Contruction, were here to answer any questions Council had regarding their letter.

Mayor Bialostosky stated Council read the letter and did not have any questions. These are two great West Linn companies competing for the same piece of property and the City went through the process.

Mr. Borow stated in regard to escalator, he is not sure how the process would work out if they submitted their offer with an escalator. Icon was the highest, they escalate above Icon, Icon escalates above them - where would it end.

Mr. Gusdorf reminded Council of the history of the property and Icon's involvement. Icon was contracted to purchase the property, went though land use and received land use approvals. They were working on the engineering submittal and it took some time. They were granted two extensions to get through engineering, they weren't comfortable purchasing the property until they were through engineering to make sure what the requirements were to get a true valuation of the property. The request for the third extension was not granted, the property was pulled off the market and the City went and developed it themselves. This warrants a discussion on transparency and how it came to that point. Now, Icon came in with the highest offer; however, with this escalation clause, they are $350 ahead of Icon's offer. Icon is asking Council to allow the property go out to bid again with transparent rules everyone could follow and come out with the best outcome for the City. Two or more developers are willing to compete for this property and they feel they should be given an opportunity to do so.

Council Bonnington asked Icon if they would accept being in a backup position. Icon replied they would if Council doesn't give them an opportunity to rebid.

Council Bonnington asked if they did go out to bid again, how could they assure if Council accepted the higher offer, that is what they would close at or they might just be in the same

position again. Icon replied if Council went out with the final, best offer with no escalation clause, they would receive the best offer.

Public Works Director Lais went through the property's previous sale history with Icon.

Agent Henderson explained the process followed. What is different for this sale from normal sales is it is published. To open again, you have now exposed all the strategy and terms everyone did to get to the original, best offer. In private sales you don't do this. Her recommendation is going with what was submitted publicly and move forward with the highest offer.

Public Works Director Lais recommends the sale of property to Portlock Company.

Mayor Bialostosky closed the public hearing.

Council discussed the offers and process. It would be unfair for Council to put it out again and they need to stick to the process completed or they will make a lot more people unhappy. Council has a fiduciary responsibility to citizens to obtain the best price and to conduct a fair and legal process. They went through process and the outcome is a winning bid. Council should accept the offer and offer a backup position to Icon.

Council President Mary Baumgardner move to approve the sale of the property located at 6123 Skyline Drive to The Portlock Company, LLC and authorize the City Manager to execute all necessary documents to complete the transaction. Seconded by Councilor Carol Bryck.

Councilor Bonnington asked if the motion needs to direct the relator to offer a backup position to Icon. City Attorney Klein agreed it would be nice to have that language in the motion.

Councilor Bryck withdrew her second and Council President Baumgardner withdrew her motion.

Council President Mary Baumgardner moved to approve the sale of the property located at 6123 Skyline Drive to The Portlock Company, LLC with Icon as back up position and authorize the City Manager to execute all necessary documents to complete the transaction. Councilor Carol Bryck seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Nays: None.

The motion carried 5 - 0

Agenda Bill 2025-07-14-06: Utility License and the use of Right-of-Way
ORD 1759 ROW Information
ORDINANCE 1759, RELATING TO UTILITY LICENSES AND USE OF THE RIGHT-OF-WAY

RESOLUTION 2025-07, REVISING FEES AND CHARGES AS SHOWN IN ATTACHMENT A AND UPDATING THE MASTER FEES AND CHARGES DOCUMENT OF THE CITY OF WEST LINN

Management Analyst Stephanie Hastings gave the staff presentation.
Presentation

In response to Councilors questions, staff responded:

- Right-of-way (ROW) fees are not taxes.
- ROW fees are connected to the use of the ROW, so they are compensation, not taxes. They are revenue based and have been charged in the state of Oregon for decades so they are not new.
- This is not a tax nor are we being stealth, this was out for public comment back in March for a month and had a work session back in April.
- These are fee structures that have been used by municipalities throughout the state of Oregon and have been upheld by the courts in multiple different incidences.
- Wireless companies rely on facilities in our ROW to provide their services and they are receiving valuable benefits from the utilization of the City's ROW.

Nancy Werner, special counsel, stated these fees are imposed on the providers, not the residents. She doesn't know what was meant by the word "stealth" but this is all done in public and the fees are passed on to the providers who may choose to pass them through to their consumers.

City Attorney Klein added staff is recommending exempting wireless providers that don't own facilities in the ROW. That completely negates that whole argument and the articles that Council mentioned. Perhaps the posted information was not read or was not understood if that is the argument that is still being made.

Public Comment
Lelah Vaga, Wireless Policy Group Verizon, supports version 2 of the ordinance.

Troy Galiano, Verizon, supports version 2 of the ordinance.

Ken Lyons, AT&T, supports version 2 of the ordinance.

Skip Newberry, CEO, Technology Association of Oregon, urges Council to adopt version 2 of the ordinance.

Council President Mary Baumgardner moved to approve Repeal and replace existing Chapter 10 with Ordinance 1759, Relating to Utility Licenses and use of the right-of-way Option 2, and set the matter for Second Reading. Councilor Carol Bryck seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Council President Mary Baumgardner moved to approve Repeal existing Chapter 10 and replace with Ordinance 1759, Relating to Utility Licenses and use of the right-of-way Option 2, and adopt the ordinance. Councilor Carol Bryck seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Council President Mary Baumgardner moved to adopt Resolution 2025-07 revising fees and charges as shown in Attachment A and updating the master fees and charges document in the City of West Linn. Councilor Carol Bryck seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Agenda Bill 2025-07-14-07: ORDINANCE 1764, RELATING TO THE COLLECTION OF TRANSIENT LODGING TAXES

ORD 1764 TLT Information

Finance Director Breithaupt stated this simple change we are making tonight is so the Oregon Department of Revenue can do the collection piece. Our code says to collect monthly, and it needs to be changed to collecting quarterly because they collect on a quarterly basis.

Council President Mary Baumgardner moved to approve First Reading for Ordinance 1765, relating to the collection of transient lodging taxes, and set the matter for Second Reading. Councilor Carol Bryck seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Nays: None.

The motion carried 5 - 0

Council President Mary Baumgardner moved to approve Second Reading for Ordinance 1765, relating to the collection of transient lodging taxes, and adopt the ordinance. Councilor Carol Bryck seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Nays: None.

The motion carried 5 - 0

City Manager Report [7:50 pm/5 min]

Deputy City Manager Preston thanked the Parks and Recreation Department on their hard work and collaboration with the police to make the fair a success. Music in the park is starting July 24 for the next five Thursdays at 6:30. For the July 21 meeting, the only thing scheduled is the WES State of District, she received approval from Council to cancel the meeting.

Council discussed the August 4 meeting agenda and adding Urban Renewal Specialist Elaine Howard to discuss urban renewal.

Adjourn [7:55 pm]

Minutes approved 08-04-2025

CITY OF West Linn

22500 Salamo Road
West Linn, Oregon 97068
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CITY COUNCIL AGENDA

Monday, July 14, 2025

5:30 p.m. – Pre-Meeting – Bolton Room & Virtual*

6:00 p.m. – Business Meeting – Council Chambers & Virtual*

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1. Call to Order and Pledge of Allegiance [6:00 pm/5 min]
2. Approval of Agenda [6:05 pm/5 min]
3. Public Comment [6:10 pm/10 min]

> The purpose of Public Comment is to allow the community to present information or raise an issue regarding items that do not include a public hearing. All remarks should be addressed to the Council as a body. This is a time for Council to listen, they will not typically engage in discussion on topics not on the agenda. Time limit for each participant is three minutes, unless the Mayor decides to allocate more or less time. Designated representatives of Neighborhood Associations and Community Advisory Groups are granted five minutes.

4. National School Resource Officer Jabral Johnson Award of Excellence [6:20/5 min]
5. Evidence Technician Nicole Hedley and Detective Sergeant Todd Gradwahl Commendation Awards [6:25/5 min]
6. Mayor and Council Reports [6:30 pm/15 min]
    a. Reports from Community Advisory Groups
7. Consent Agenda [6:45 pm/5 min]

> The Consent Agenda allows Council to consider routine items that do not require a discussion. An item may only be discussed if it is removed from the Consent Agenda. Council makes one motion covering all items included on the Consent Agenda.

    a. Agenda Bill 2025-07-14-01: Meeting Minutes for June 16 and 23, 2025 Council Meetings
    b. Agenda Bill 2025-07-14-02: Intergovernmental Agreement with the State of Oregon – Willamette Falls Drive 16th Street to Ostman Rd. Pedestrian/Bike Upgrades
    c. Agenda Bill 2025-07-14-03: RESOLUTION 2025-09, EXTENDING THE TERM OF THE CABLE TELEVISION FRANCHISE WITH COMCAST OF OREGON II, INC. TO ENABLE THE

METROPOLITAN AREA COMMUNICATIONS COMMISSION TO COMPLETE THE INFORMAL RENEWAL PROCESS

d. Agenda Bill 2025-07-14-04: Letter of Support - Housing Planning Assistance Grant Application

8. Business Meeting [6:50 pm/60 min]

Persons wishing to speak on agenda items shall complete the form provided in the foyer and hand them to staff prior to the item being called for discussion. A separate slip must be turned in for each item. The time limit for each participant is three minutes, unless the Mayor decides to allocate more or less time. Designated representatives of Neighborhood Associations and Community Advisory Groups are granted five minutes.

a. Agenda Bill 2025-07-14-05: ***Public Hearing***: Sale of Real Surplus Property 6123 Skyline Drive

b. Agenda Bill 2025-07-14-06: Utility License and the use of Right-of-Way

i. ORDINANCE 1759, RELATING TO UTILITY LICENSES AND USE OF THE RIGHT-OF-WAY

ii. RESOLUTION 2025-07, REVISING FEES AND CHARGES AS SHOWN IN ATTACHMENT A AND UPDATING THE MASTER FEES AND CHARGES DOCUMENT OF THE CITY OF WEST LINN

c. Agenda Bill 2025-07-14-07**:** ORDINANCE 1764, RELATING TO THE COLLECTION OF TRANSIENT LODGING TAXES

9. City Manager Report [7:50 pm/5 min]

10. Adjourn [7:55 pm]

Agenda Bill 2025-07-14-01

Date: June 25, 2025

To: Rory Bialostosky, Mayor
Members, West Linn City Council

From: Kathy Mollusky, City Recorder *KM*

Through: John Williams, City Manager *JRW*

Subject: Draft Meeting Minutes

Purpose: Approval of City Council Meeting Minutes.

Question(s) for Council:
Does Council wish to approve the attached City Council Meeting Minutes?

Public Hearing Required: None required.

Background & Discussion:
The attached City Council Meeting Minutes are ready for Council approval.

Budget Impact: N/A

Sustainability Impact:
Council continues to present its meeting minutes online, reducing paper waste.

Council Options:
1. Approve the Council Meeting Minutes.
2. Revise and approve the Council Meeting Minutes.

Staff Recommendation:
Approve Council Meeting Minutes.

Potential Motions:
Approving the Consent Agenda will approve these minutes.

Attachments:
1. June 16, 2025, Council Meeting Minutes
2. June 23, 2025, Council Meeting Minutes

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WEST LINN
CITY COUNCIL MEETING
NOTES
June 16, 2025

Call to Order [6:00 pm/5 min]

Council Present:
Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Staff Present:
City Manager John Williams, City Recorder Kathy Mollusky, Police Chief Peter Mahuna, Public Works Director Erich Lais, Assistant to the City Manager Dylan Digby, and Special Counsel Chad Jacobs.

Approval of Agenda [6:05 pm/5 min]

Council President Mary Baumgardner moved to approve the agenda for the June 16, 2025, West Linn City Council Meeting moving Item 6 to Item 3 so we can get our police out and available for calls. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Lifesaving Award - Officer Charles Lincoln [6:40 pm/5 min]

Police Chief Mahuna presented Officer Charles Lincoln with the West Linn Lifesaving Award.

Public Comment [6:10 pm/10 min]

There were none.

Mayor and Council Reports [6:20 pm/15 min]

Reports from Community Advisory Groups

As South Fork Water Board (SFWB) representatives, Councilor Bryck, Council President Baumgardner, and Mayor Bialostosky went to the America Water Works Association (AWWA) conference. SFWB is the water district that is owned by West Linn and Oregon City. They provide all our clean drinking water. It was a good conference and they learned things that are beneficial to the City and SFWB. Mayor Bialostosky added he also enjoyed the conference and they are going to share what they learned with staff.

In addition to the AWWA conference, Council President Baumgardner had a trip to the Yakima Nations for a treaty celebration. She participated in the parade as a member of the Willamette Falls Trust Board and previewed a lamprey costume that she will also be wearing at lamprey festival in Clackamette Park. Both the Willamette Falls & Landings Heritage Area Coalition and Willamette Falls Trust are awaiting potential funding to move forward with public access to the falls.

Councilor Groner is looking forward to seeing the costume at the lamprey festival.

Councilor Bonnington went to the League of Oregon Cities (LOC) Mastering Media training. At the Parks and Recreation Board (PRAB) meeting, they spoke about events coming up like the Old Time Fair. The technology they are using to track park usage is interesting.

Appoint Community Advisory Group Members

Mayor Bialostosky placed before Council appointing:
o Christi Lanz to the Economic Development Committee
o Lynne Chicoine to the Utility Advisory Board

Council President Mary Baumgardner moved to approve the Mayor's appointments. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Council President Baumgardner recognized the excellent quality of volunteers Council continues to get for appointments. It is gratifying to have members of the community serve. She thanked everyone who applied.

LGBTQ+ Pride Month Proclamation [6:35 pm/5 min]

Proclamation

Councilor Groner read the LGBTQ+ Pride Month proclamation declaring June Pride Month.

Consent Agenda [6:40 pm/5 min]

Agenda Bill 2025-06-16-01: Meeting Minutes for May 12, 2025 Council Meeting

Draft Minutes Information

Council President Mary Baumgardner moved to approve the Consent Agenda for the June 16, 2025, West Linn City Council Meeting which includes May 12, 2025, meeting minutes. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Nays: None.

The motion carried 5 - 0

Business Meeting [6:45 pm/90 min]

Agenda Bill 2025-06-16-02: Proposal to Amend Three Sections of West Linn Municipal Code Chapter 6

ORD Information

ORDINANCE 1760, AMENDING WEST LINN MUNICIPAL CODE CHAPTER 6 RELATING TO PAINTED CURB PARKING PROHIBITION

ORDINANCE 1761, AMENDING WEST LINN MUNICIPAL CODE CHAPTER 6 RELATING TO PORTABLE STORAGE CONTAINER/MOVING/STORAGE CONTAINERS AND VEHICLES IN RESIDENTIAL PARKING ZONES

ORDINANCE 1762, AMENDING WEST LINN MUNICIPAL CODE CHAPTER 6 RELATING TO FINES FOR PARKING VIOLATIONS

City Manager Williams reminded Council these were discussed at the May 19 Work Session and staff implemented council direction. Many of these changes were requested by members of the community after identifying problems out there.

Police Chief Mahuna stated the three ordinances are all regarding Municipal Code, Section 6. ORD 1760 is stating clear authority to cite where the parking curbs are painted throughout the City. ORD 1761 is to establish rules and regulations regarding portable storage containers on the streets and in the right-of-way. ORD 1762 is to ensure transparency of parking violation fines by referring to the Master Fees and Charges document.

In response to Council questions, Police Chief Mahuna responded:

- the City has a schedule of where all the painted curbs are. They re-paint them every few years; if one is degrading, they can address it sooner.
- if someone has a portable storage unit without a permit, the police contact the person and explain the requirements. West Linn police believe in education before enforcement. If they do not comply, then the police will cite.
- the Community Service Officer (CSO) is called every day the high school is in session regarding students parked in the parking district without permits. She either issues a warning or citation depending on the situation.
- the police have discussed the impacts of raising fines. The residents impacted by the students are vocal. The police are open to ideas to solve the problem.
- the Student Resource Officer (SRO) makes students aware of the parking district during orientation and information is sent to all the parents every year.
- it would be hard to paint and enforce no parking in front of every mailbox throughout the City. The police would be available to discuss this if Council wants to implement this.

Mayor Bialostosky may want to discuss this at a future work session. The one CSO the City has does a great job and Council really appreciates her.

Council President Mary Baumgardner moved to approve First Reading for Ordinance 1760, amending West Linn Municipal Code Chapter 6 relating to painted curb parking prohibition, and set the matter for Second Reading. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Council President Mary Baumgardner moved to approve Second Reading for Ordinance 1760, amending West Linn Municipal Code Chapter 6 relating to painted curb parking prohibition, and adopt the ordinance. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.

The motion carried 5 - 0

Council President Mary Baumgardner moved to approve First Reading for Ordinance 1761, amending West Linn Municipal Code Chapter 6 relating to portable storage/moving containers and vehicles in residential parking zones, and set the matter for Second Reading. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Council President Mary Baumgardner moved to approve Second Reading for Ordinance 1761, amending West Linn Municipal Code Chapter 6 relating to portable storage/moving containers and vehicles in residential parking zones, and adopt the ordinance. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Council President Mary Baumgardner moved to approve First Reading for Ordinance 1762, amending West Linn Municipal Code Chapter 6 relating to fines for parking violations, and set the matter for Second Reading. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Council President Mary Baumgardner moved to approve Second Reading for Ordinance 1762, amending West Linn Municipal Code Chapter 6 relating to fines for parking violations, and adopt the ordinance. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Agenda Bill 2025-06-16-03: Construction Manager/General Contractor Services for Operations Complex, Phase 1, Preconstruction Services

CMGC Information

City Manager Williams stated this next item is a major milestone in replacing the City's outdated Public Works operations center on Norfolk Street.

Public Works Director Lais summarized the background of the project that is detailed in the agenda packet.

In response to Council questions, staff replied:

- the attached contract template is from the American Institute of Architects (AIA) that has been reviewed by legal. it is a final draft, unless there are changes from this meeting. Some items are to be determined due to construction schedules. This template is used for complex projects that combine design, architecture, engineering, and construction. Once the contract is done, AIA creates the final contract for signature. It costs money to have them update it, that is why we want to have the final draft. Some to be determined spaces will be amended when we have the construction schedule. Currently, all we have is the rates.
- this is a CMGC contract where everyone is working together. When we receive the guaranteed maximum price, we will come back with an amendment that will fill in all blanks.
- the maximum is everything that the contractor will take care of, the final delivered project. They do a cost estimate as a builder and tell us what they can build for what price; that becomes the guaranteed price. This moves the risk to them, they cannot increase the price so it incentivizes them to build on time and within budget. This allows them to lever resources early and get items that could impact the timeline.
- this is different than the design build contracts that you see on road projects. Sometimes there are unknowns because the builder is not there, and it can create change orders.
- the estimate is between $25 to $35 million.
- part of the bid process involves giving preliminary drawings and the estimate. The majority of the firms said it was doable, that the estimate is on target. They have such a wealth of knowledge and can say this feature can be done in this way and it will save money. It's about building things in a cost-effective way; they are good work partners.

Council President Mary Baumgardner moved to approve the contract as the Standard Form of Agreement Between Owner and Construction Manager as Constructor and authorize the City Manager to execute the agreement in the amount of $98,000, awarded to Skanska USA Buildings, Inc. for the preconstruction phase of the City's Operations Complex Construction project. Councilor Leo Groner seconded the motion.

Mayor Bialostosky has been to the operations center, it is not a good place for folks to be working. Staff need a place so they can respond to winter weather and other things. He said there should be more information or a video to highlight the need.

Council President Baumgardner recognized Management Analyst Lovell for all the work she has done. Hearing all the detail and learning about the project is helpful to make these important decisions. She appreciated having a tour of the site to understand the need for this project.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

- Staff confirmed that no construction will move forward until it is brought to Council, they will bring it to a work session first.
- the land use application will be submitted within a week or so. There will be a lot of opportunity for public comment and feedback.
- last week staff held a Neighborhood Association (NA) meeting. We did a presentation to provide updates to make sure the NAs are informed about what is happening in the community and that council would be approving it tonight. It did not have good turnout.
- we have to get through land use before we will have a timeline so it will be a few months. The Request for Proposals (RFP) laid out a construction schedule - some contractors wanted it earlier, some wanted it later. Staff is proposing starting in spring so we will have more time to final the design and negotiate.

Agenda Bill 2025-06-16-04: Sustainability Consultant Work Update
Sustainability Information
City Manager Williams stated this is really a work session item; however, the timing worked out with this meeting.

Grace Thirkill, Parametrix, gave the presentation.
Presentation

In response to Council questions, Parametrix responded:

- West Linn should focus on opportunities to improve energy efficiencies.
- Parametrix staff are not experts on animals and the City should work with people who are regarding light pollutions.
- There are a lot of conflicting goals.
- Council could increase staff capacity to have time for these projects.
- Staff could identify smaller funding opportunities, partner with Energy Trust of Oregon for grant opportunities, and look for smaller projects to implement.

Council discussed repair fairs at Robinwood Station, they have two a year and coordinate with Clackamas County. There is a concern about overwhelming repairers with too many repair fairs. They typically weigh stuff they are able to fix that doesn't go to landfills, i.e., bicycles,

sewing machines, mixers, etc. The City posts the information on their website.

- The City could have flexibility where Electric Vehicle (EV) charges may be placed or partner with development to allow them to build with less cost. The Oregon Department of Energy might have good incentives.

Mayor Bialostosky directed staff to schedule a future work session with the SAB.

- SAB members have done vehicle gas, natural gas, and an electric energy audit in the past. They have a records request in now for this information.

City Manager Report [8:15 pm/5 min]

City Manager Williams discussed the upcoming Council meetings, library and parks events. Juneteenth is Thursday, City Hall will be closed.

Mayor Bialostosky thanked City Attorney Klein for working on the backload of issues. The legislative session has some significant votes coming out regarding Willamette Falls Locks, Willamette Falls Trust, and the Transportation Investment package. These are significant to the City and he will keep everyone updated with what he hears when the list drops.

Council President Baumgardner stated the Willamette Falls Landing Heritage Commission has some fun events, like a book club, and encouraged people to check out their website. She highlighted the John Klatt memorial photo contest. People can reenact one of his photos and submit for the contest. Thursday, the Yakima Lamprey festival is at Clackamette Park. It is exciting to have an Indigenous experience right in our own backyard. You will be able to sample salmon and lamprey and there will be boat tours to the falls with Elders telling stories. There may be someone in a lamprey costume walking around.

Adjourn [8:20 pm]

Draft Minutes.

22500 Salamo Road
West Linn, Oregon 97068
http://westlinnoregon.gov

WEST LINN
CITY COUNCIL MEETING
NOTES
June 23, 2025

Call to Order [6:00 pm/5 min]

Council Present:
Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Staff Present:
City Manager John Williams, City Attorney Kaylie Klein, City Recorder Kathy Mollusky, and Finance Director Lauren Breithaupt.

Approval of Agenda [6:05 pm/5 min]

Council President Mary Baumgardner moved to approve the agenda for the June 23, 2025, West Linn City Council Meeting. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Consent Agenda [6:50 pm/5 min]

Agenda Bill 2025-06-23-01: Early Renewal of AXON Body Worn Camera Contract

AXON Contract Information

Council President Mary Baumgardner moved to approve the Consent Agenda for the June 23, 2025, West Linn City Council Meeting which includes the early renewal of the AXON body worn camera contract. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Nays: None.

The motion carried 5 - 0

Mayor Bialostosky expressed his gratitude to the Police Department and City for doing the body cameras. It has been a big success for our community and police department. He thanked Council for their support of this as well.

Public Comment [6:10 pm/10 min]

There were none.

Mayor and Council Reports [6:20 pm/15 min]

Reports from Community Advisory Groups

Councilor Bryck attended the Planning Commission meeting. They reviewed upcoming potential code clean up items and received a presentation on the waterfront vision plan.

Council President Baumgardner attended the Transportation Advisory Board meeting where there was further discussion on the pedestrian prioritization plan and the Traffic Safety Committee requests and approval of forwarding the prioritization list to Council was achieved.

Mayor Bialostosky attended Oregon Department of Land Conservation and Development meeting.

Councilor Groner has lunch at the adult community center where he receives a lot of questions and answers them to the best of his ability.

Business Meeting [6:55 pm/90 min]

Agenda Bill 2025-06-23-02: Public Hearing: FY 2026-2027 Budget Adoption
Budget Information

RESOLUTION 2025-03, DECLARING THE CITY OF WEST LINN'S ELECTION TO RECEIVE STATE REVENUE SHARING FUNDS (GENERAL FUNDS OF THE STATE) IN THE 2026-2027 BIENNIUM
Director Breithaupt stated this is the annual declaration required by the state in order to receive state revenue sharing funds. A public hearing was held May 29 before the budget committee as required. This second hearing is to discuss the proposed usage of the funds. The City is estimating to receive about $320,000 for Fiscal Year 26 and also $320,000 for Fiscal Year 27. It has been budgeted for use in the general fund and general operations.

Mayor Bialostosky opened public hearing.

There were no public comments.

Mayor Bialostosky closed the public hearing.

Council President Mary Baumgardner moved to adopt Resolution 2025-03, declaring the city of West Linn's election to receive state revenue sharing funds (general funds of the state) in the 2026-2027 biennium. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

RESOLUTION 2025-04, CERTIFYING THE CITY OF WEST LINN IS ELIGIBLE IN THE 2026-2027 BIENNIUM TO RECEIVE STATE SHARED REVENUES (CIGARETTES, LIQUOR, 911, AND HIGHWAY GAS TAXES) BECAUSE IT PROVIDES FOUR OR MORE MUNICIPAL SERVICES
Director Breithaupt stated this resolution is necessary to continue to receive state shared revenue which is collected on cigarettes, liquor, 911, and highway gas tax. The City is eligible to receive these funds because we have certain required services that we provide. Those services are police protection, street construction, maintenance and lighting, sanitary sewer, storm sewer, planning, zoning and subdivision approval, and water utility service. The City utilizes these revenues to support general and street funds. The funds are distributed based on population in eligible cities.

In response to Council questions, staff responded:
- The amounts are different for the different items so we do not have a projected amount. Some are small, like the cigarette taxes are only $10,000 or $15,000 per year. Some are quite

high, like the gas tax.

Mayor Bialostosky explained the 50/30/20 split line item means 50% goes to the state, 30% to the County, and 20% to the City.

- The projected number on the gas tax is about $2.2 million per year. These numbers are based on the League of Oregon City projections and could change. They project on a per capita basis.

Mayor Bialostosky opened the public hearing.

There were no public comment.

Mayor Bialostosky closed the public hearing.

Council President Mary Baumgardner moved to adopt Resolution 2025-04, certifying the city of West Linn is eligible in the 2026-2027 biennium to receive state shared revenues (cigarettes, liquor, 911, and highway gas taxes) because it provides four or more municipal services. Councilor Leo Groner seconded the motion.

Councilor Groner stated there has been discussion about the City collecting money for marijuana taxes and clarified it is not in the current budget.

Director Breithaupt reminded everyone there is a prohibition against it in the code. There is a portion collected per capita and a portion that would be calculated if the City had dispensaries. Even if the City didn't have dispensaries, we would collect money just for allowing it.

Mayor Bialostosky stated it is good to see the gas tax number that we get from the state. He has been pushing in his testimony about the transportation package. It is serious amount of money, $2.2 million, it is our main road fund.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

RESOLUTION 2025-05, REVISING FEES AND CHARGES AS SHOWN IN ATTACHMENT A AND UPDATING THE MASTER FEES AND CHARGES DOCUMENT OF THE CITY OF WEST LINN

Director Breithaupt stated this is the annual update to the Master Fees and Charges effective July 1, 2025, and is used to balance our budgets. There are a few changes throughout the document. Most notably, the System Development Charges are increasing 2.78% which is following the CPI for the 20-year average city index. Utility billing fees (water, sewer, surface, streets and parks) are increasing 5%. Administrative fees and business licenses for sidewalk

cafes are increasing 5%. Increase in park rental fees of about $5. The Public Works and Building had a few updates to reflect inflation. Keller Dropbox and Allied Waste Republic Services provide us the rates and they are on our schedule; however, we did not bill for these. According to our Charter, we can only increase 5% for water, sewer, and storm so we have been consistently increasing it as advised by the UAB.

In response to Council questions, staff replied,

- These rates are revised every year, sometimes we do a mid-year update if there is a fee we have to revise. We might have to that this year with the right-of-way code changes.
- Inflation has gone up more than 5% in the last few years so some years we are taking a pretty big hit; it depends on the rates from Southfork Water Board.

Mayor Bialostosky stated Council is going to have to talk about that because they did raise the rates at Southfork to do some capital projects for the distribution system.

Councilor Bryck stated the Utility Advisory Board wonders what we should do because we do have limits. The cap doesn't allow them to look at all the work that needs to be done.

Council President Mary Baumgardner moved to adopt Resolution 2025-05, revising fees and charges as shown in attachment A and updating the master fees and charges document of the city of West Linn. Councilor Leo Groner seconded the motion.

Mayor Bialostosky stated the cost of living is high in the community. It is hard to provide services and feels the increases are justified in keeping up with inflation and providing the services we do.

Council President Baumgardner generally hears about housing affordability when our development costs are higher, it makes it harder for developers to build affordable housing. She is hoping we can put our heads together and find ways to diversify and bring revenues into the City so we can affect change like affordable housing. It is difficult to run a city with high expectations with the very lean budget we have. We are doing our best and she thanked staff for all the work they have done.

Councilor Bonnington noted none of us relish raising rates, but things do cost what they cost.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

RESOLUTION 2026-06, ADOPTING THE CITY OF WEST LINN BUDGET AND CAPITAL IMPROVEMENT PLAN FOR THE BIENNIUM COMMENCING JULY 1, 2025 (2026-2027 BIENNIUM), MAKING APPROPRIATIONS, LEVYING AD VALOREM TAXES, AND CLASSIFYING THE LEVY PURSUANT TO SECTION 11b, ARTICLE XI OF THE OREGON CONSTITUTION

Director Breithaupt stated this resolution requests the adoption of the City's biennial budget and Capital Improvement Plan for the 26/27 biennium. It makes appropriations, levies the tax rate, and the bonded debt rates. The budget committee met to discuss and consider approval of this budget. A public hearing was held May 27. The changes made to the proposed budget were approved by the budget committee as follows: General Fund, Non-department - West Linn Chambers $35,000 in FY 26 and FY 27 so $70,000 total. Increased appropriations $30,000 in FY 26 and 27 for Main Street grants. General fund for contingency was decreased by $60,000 to offset the increase to the Main Street grants. The West Linn Chambers increase was offset by the following: Decreased the City Manager budget by $5,000 each year for a total of $10,000; Planning Department by $10,000 each year, for a total of $20,000; Information Technology (IT) by $15,000 each year for a total of $30,000; and Human Resources by $5,000 each year for a total of $10,000 for the biennium. Staff requests the adoption of this budget of $194,078,000 along with levy of the permanent property tax rate of $2.12/$1,000 for each FY of biennium and the bonded debt levy is $1,851,000 FY 25/26 and $1,862,000 for FY 26/27.

Mayor Bialostosky opened public hearing.

There were no public comments.

Mayor Bialostosky closed the public hearing.

In response to Council questions, staff replied:

- The budget cuts were applied across the board because these budgets are very small. In some departments, we are cutting professional and technical services. Software subscriptions were cut due to timing of renewals, materials and services were cut and we a hoping to come in under through negotiations.
- We are delaying some things and making some things smaller. For example, contracts that have to do with the implementing of Highway 43 or the waterfront will be smaller, more focused.
- We are cutting some training and some purchasing to make it all work out.

Councilor Bonnington is concerned about making cuts instead of taking from contingency. Taking resources away from departments that are already strained is not preferred.

Councilor Groner has a concern about the community grants process that will be discussed under the Community Grants agenda item.

Councilor Bryck stated during the budget committee meeting, we talked about compromising - taking some from contingency, some from the departments. Budgets are not cast in concrete. If things don't happen favorably, there is an opportunity to bring a supplemental budget. If needed, we can move money from one area to another area that is spending at a lower level.

In response to Council questions, staff replied:

- We do not expect this will hinder Highway 43 implementation. We have a vacancy in that department so will have little buffer.
- IT is harder to budget for. Subscriptions aren't always just for one year, for instance, sometimes we pay for three years to receive a discount.
- Staff watch department budgets close and if one is tracking too high, we will come back with a supplemental budget. A lot of things come up that we cannot plan for.
- We can use the contingency in a supplemental budget.

City Manager Williams added we have had several discussions about problems in future years. At the department head meeting, we will have a conversation about this budget and the need to watch every single thing to minimize the cliff we have in front of us. Almost every City is cutting their budget and increasing fees. We have been lucky to put this budget together as is without cuts. He appreciates Councils comments and concerns.

Mayor Bialostosky is ready to move forward as Council trusts City staff. He thanked staff for their clarification, and he has confidence approving this budget.

Council President Mary Baumgardner moved to adopt Resolution 2025-06, adopting the city of West Linn budget and capital improvement plan for the biennium commencing July 1, 2025 (2026-2027 biennium), making appropriations, levying ad valorem taxes, and classifying the levy pursuant to Section 11b, Article XI of the Oregon constitution. Councilor Leo Groner seconded the motion.

Director Breithaupt stated the forecast is $9 million deficit in FY 29. Two years from now we will have to have this figured this out.

Mayor Bialostosky commented there has never been this big of a deficit. It is incumbent on Council to have proactive meetings with staff and the community to address this structural budget issue. In two years, we do not want to cut essential city services. We are a lean City and don't have a lot of places to make cuts.

Councilor Bryck thanked the Finance Director and City Staff. She appreciates that they show the budget years out so we can see what is coming at us and can take actions to prepare.

Council President Baumgardner thanked staff for being creative, suggesting solutions, and

keeping open minds. We cannot become complacent that everything is fine. It is good to have conversations about what we need and how to get there.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Agenda Bill 2025-06-23-03: Public Hearing: RESOLUTION 2025-07, ADJUSTING THE BUDGET FOR THE 2022-2023 BIENNIUM BY ADOPTING THIS SUPPLEMENTAL BUDGET AND REVISING APPROPRIATIONS AND BONDED DEBT PROPERTY TAX LEVY

RES 2025-07 Supplemental Budget Information

Director Breithaupt noted there is a Scribner's error in the resolution, the title should say 2024 to 25 biennium and it says 2022 to 23. The budget is for two years, and we must make adjustments to stay within budget guidelines. We need to increase the Council budget $100,000 due to the stipend vote that was not projected. We expect a $161,000 increase in the facilities department due to increase cost of utilities, repairs, and maintenance. The non-departmental debt service is increasing by $611,000 due to subscription-based agreements. Increase in nondepartmental materials and services of $400,000 due to increased legal costs related to the Oppenlander property litigation. The City Manager and Economic Development contingencies were decreased to balance the overages in the other departments. The library increase is $20,000 due to increased salaries and benefits that were unexpected.

Mayor Bialostosky opened the public hearing.

There were no public comments.

Mayor Bialostosky closed the public hearing.

Council President Mary Baumgardner moved to adopt Resolution 2025-07, adjusting the budget for the 2022-2023 biennium by adopting this supplemental budget and revising appropriations and bonded debt property tax levy. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.
Nays: None.
The motion carried 5 - 0

Agenda Bill 2025-06-23-04: RESOLUTION 2025-08, ABOLISHING THE PARKS AND RECREATION FUND, PUBLIC SAFETY FUND, LIBRARY FUND, AND PLANNING FUND, AND CONSOLIDATING THEIR BALANCES INTO THE GENERAL FUND IN ACCORDANCE WITH ORS 294.353

RES 2025-08 Information

Director Breithaupt stated the City had four special revenue funds; however, they do not need to be special revenue, restricted to a specific purpose. Parks Maintenances goes to the maintenance funds; however, it shows they spend more money than they bring in; same thing with the Library District money. It made budgeting challenging as there is a lot of movement in and out of the general fund, subsidies from the general fund, and also paying the general fund for indirect costs. Abolishing these four funds and moving them all into the general fund has been done with the adopted budget. This is for the purpose of allowing staff to do this and allowing the transfer to be made this fiscal year once we reconcile all the balances with the audit.

Council President Mary Baumgardner moved to adopt Resolution 2025-08, abolishing the parks and recreation fund, public safety fund, library fund, and planning fund, and consolidating their balances into the general fund in accordance with ORS 294.353. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Nays: None.

The motion carried 5 - 0

Agenda Bill 2025-06-23-05: Adopting Community Grants for FY 2026

Community Grant Information

Director Breithaupt stated we have $25,000 available each year for community grants. This year there were 24 requests totaling over $85,000. She explained the process and criteria used. The community members of the budget committee send their recommendation to Council for approval.

Councilor Groner's previous question concerned the process. He would like to see a more rational process for determining grants, for instance, a points scoring system that was more subjective according to criteria - dollar per population served for instance.

Mayor Bialostosky stated Council could have a discussion on the criteria at a future work session.

Council President Baumgardner asked if there were any process to communicate other options for community members who did not receive grants. For instance, St. Vincent to purchase gift cards for West Linn families for Thanksgiving could coordinate with the food pantry and combine efforts since it is a similar cause.

Director Breithaupt explained some groups didn't meet the City criteria, like they were a religious organization or City policies state we cannot purchase gift cards. She can reach out to them and let them know of other services. Staff does send a letter letting them know we will meet with them if they have questions or want more information or they can email staff.

Director Breithaupt explained it is a challenging decision for the committee. They use the criteria and are very thoughtful. There is a robust discussion why they chose what they chose and we go through each one individually.

Councilor Bryck was on the budget committee, it is not easy, all the applications have value, and they have to sort through them due to the limited funds.

Council President Mary Baumgardner moved to approve the budget committee Community Grant recommendations as illustrated in the attached. Councilor Leo Groner seconded the motion.

Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Kevin Bonnington, Councilor Carol Bryck, and Councilor Leo Groner.

Nays: None.

The motion carried 5 - 0

City Manager Report [8:25 pm/5 min]

City Manager Williams summarized the future Council agenda items and upcoming future City events.

Adjourn [8:35 pm]

Draft minutes.

Agenda Bill 2025-07-14-02

Date Prepared:	June 30, 2025
For Meeting Date:	July 14, 2025
To:	Rory Bialostosky, Mayor West Linn City Council
Through:	John Williams, City Manager JRW
From:	Erich Lais, PE – City Engineer/Public Works Director
Subject:	Intergovernmental Agreement between the City of West Linn and the State of Oregon for Delivery of a Federal Project – Willamette Falls Dr. 16th St. to Ostman Rd. Ped/Bike Upgrades

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Purpose:
To present information regarding proposed Intergovernmental Agreement (IGA) between the State and the City of West Linn for multimodal transportation improvements on Willamette Falls Drive between 16th St. and Ostman Rd.

Question(s) for Council:
Does the Council wish to enter into agreement with the State of Oregon as required to proceed with multimodal improvements along the Willamette Falls Drive corridor?

Public Hearing Required:
None Required.

Background & Discussion:
The City of West Linn applied for and was awarded $3,497,580 through the Regional Flexible Funds Allocation process which identifies and distributes the region's allotment of federal transportation money. This regional process is spearheaded by Oregon Metro. The guiding principles of the transportation investment categories for these funds are advancing equity, improving safety, implementing the region's climate strategy, and/or congestion relief. To meet the federal investment criteria for funds, the City of West Linn proposed multimodal improvements focusing on separated bike and pedestrian facilities along the Willamette Falls Drive corridor between 16th St. and Ostman Rd., continuing and connecting to the improvements that were previously constructed within the historic main street area. Upon funding, the project is added to the Statewide Transportation Improvement Program (STIP) and allows for the project to proceed to final design, right-of-way acquisitions (as needed), and project construction.

The City of West Linn is coordinating with the State of Oregon Department of Transportation (ODOT). In order to design and construct the planned improvements, the City must enter into an IGA with ODOT formalizing project delivery requirements as the City's isn't authorized under federal grant requirements to manage and deliver the project. Current allocation of federal funds described in the attached IGA

totaling $940,073.39 cover engineering, design, and estimated right-of-way acquisitions as well as project oversight provided by ODOT. The City has a required 10.27% match of all project expenditures including the current design and future construction phases.

Additional funds for construction, as awarded through the grant, will be allocated after design completion and an amendment of the project delivery document, clarifying construction expenditures and delivery timelines is anticipated.

Council has previously approved an IGA with the State for this project which has not yet been signed or executed. After approval, the State submitted minor redlines to the agreement which is now being submitted for final approval ahead of final signing. Legal review of the submitted redline changes have been completed and the changes are attached along with the final agreement.

Budget Impact:
Current project phase total: $1,047,669

$ 107,595.61 (required 10.27% local match) from the streets fund. These funds are budgeted and available.

$ 940,073.39 – Federal grant funds applied to the project.

Sustainability Impact:
Design features emphasize improvement and expansion of alternative transportation options.

Council Options:

1. Approve the proposed IGA to allow for the project to proceed as planned and funded.
2. Deny the proposed IGA thus rejecting the federal funds and direct staff to proceed in a different direction to accomplish the proposed transportation improvements.

Staff Recommendation:
Approve the proposed IGA to allow for the project to proceed as planned and funded.

Potential Motion:

1. I move to approve the proposed Intergovernmental Agreement (IGA) with the State of Oregon Department of Transportation to deliver the federally funded project for pedestrian and bike improvements on Willamette Falls Drive between 16th St. and Ostman Rd.

Attachments:

1. Proposed Project Delivery IGA with ODOT_Redline copy
2. Project Delivery IGA with ODOT_Final

Misc. Contracts and Agreements
No. 73000-00038480

A156-G092921

ODOT Delivered Federal Project
On Behalf of City of West Linn
Project Name: Willamette Falls Dr: 16th St - Ostman Rd Ped/Bike Upgrades
Key Number: 23242

THIS AGREEMENT ("Agreement") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and the City of West Linn, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.

2. Willamette Falls Dr: 16th St - Ostman Rd is ~~Willamette Falls Dr is~~ a part of the city street system under the jurisdiction and control of Agency.

3. Agency has agreed that State will deliver this project on behalf of the Agency.

4. The Project was selected as a part of the Surface Transportation Block Grant Program – Urban (STBG-U) and may include a combination of federal and state funds. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement.

5. The Stewardship and Oversight Agreement on Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

NOW THEREFORE the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering Preliminary Engineering and Right of Way phases of the Willamette Falls Dr: 16th St - Ostman Rd Ped/Bike upgrades on behalf of Agency, hereinafter referred to as "Project." Project includes installing grade separated bike facilities, pedestrian crossing, bus stops and access to transit facility, and intersection treatments prioritizing pedestrian visibility and

protection. The location of the Project is approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Parties also anticipate State delivering the construction phase of the Project. Upon full funding and the addition of this phase to the Project in the Statewide Transportation Improvement Program (STIP), this Agreement may be amended to include construction phase work, and to add the respective cost. If the Parties do not amend this Agreement to add construction phase work, those provisions in this Agreement will not apply.

3. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.

4. Project Costs and Funding.

   a. The total Project cost is estimated at $1,047,669.00, which is subject to change. Federal funds for this Project shall be limited to $940,073.39. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State and will not be available for use by Agency for this Agreement or any other projects. “Total Project Cost” means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.

   b. With the exception of Americans with Disabilities Act of 1990-related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency’s concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget. However, State may award a construction contract up to ten (10) percent (%) over engineer’s estimate without prior approval of Agency.

   c. Federal funds under this Agreement are provided under Title 23, United States Code.

   d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Assistance Listing (AL) number for this Project is 20.205, title Highway Planning and Construction. Agency is not elibible to be reimbursed for work performed under this Agreement.

   e. State will submit the requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.

f. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.

5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

6. Termination.

   a. This Agreement may be terminated by mutual written consent of both Parties.

   b. State may terminate this Agreement upon 30 days' written notice to Agency.

   c. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

      i. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

      ii. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

      iii. If Agency fails to provide payment of its share of the cost of the Project.

      iv. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

      v. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.

   d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Americans with Disabilities Act Compliance:

   a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:

      i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of

1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;

ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;

iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx**;** and

b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:

i. Pedestrian access is maintained as required by the ADA,

ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,

iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,

iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and

v. Applicable permitting and regulatory actions are consistent with ADA requirements.

c. Maintenance obligations in this section shall survive termination of this Agreement.

8. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are

incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.

9. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.

10. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.

11. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are incorporated by this reference and made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.

12. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement.

13. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

14. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

15. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 4.e (Funding), 6.d (Termination), 7.b (ADA maintenance), 10-15, 18 (Integration, Merger; Waiver); and Attachment 2, paragraphs 1 (Project Administration), 7, 9, 11, 13 (Finance), and 3~~78~~-412 (Maintenance and Contribution).

16. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

17. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

18. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.

19. State's Contract Administrator for this Agreement is Mahasti Hastings,123 NW Flanders Street, Portland, Oregon 97209, 971.264.8253, Mahasti.v.hastings@odot.state.or.us or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

20. Agency's Contract Administrator for this Agreement is Erich Lais, Public Works Director/City Engineer, City of West Linn 22500 Salamo Road, West Linn, Oregon 97068, phone:503-722-3434, elais@westlinnoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2024-2027 Statewide Transportation Improvement Program (STIP), (Key 23242) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

City of West Linn, by and through its elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

LEGAL REVIEW APPROVAL (If required in Agency's process)

By _____
Agency Counsel

Date _____

Agency Contact:
Erich Lais, Public Works Director/City Engineer
22500 Salamo Road
West Linn, Oregon 97068
503-722-3434
elais@westlinnoregon.gov

State Contact:
Mahasti Hastings, Region 1
123 NW Flanders Street,
Portland, Oregon 97209
971-264-8253
Mahasti.v.hastings@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

(Include the following signature if a traffic signal, marked crosswalk, or other traffic control device is being installed or improved on a state highway, as defined in ODOT's Traffic Manual, Chapter 5. Send to Scott Cramer as a Technical Reviewer.)

By _____
State Traffic Roadway Engineer

Date _____

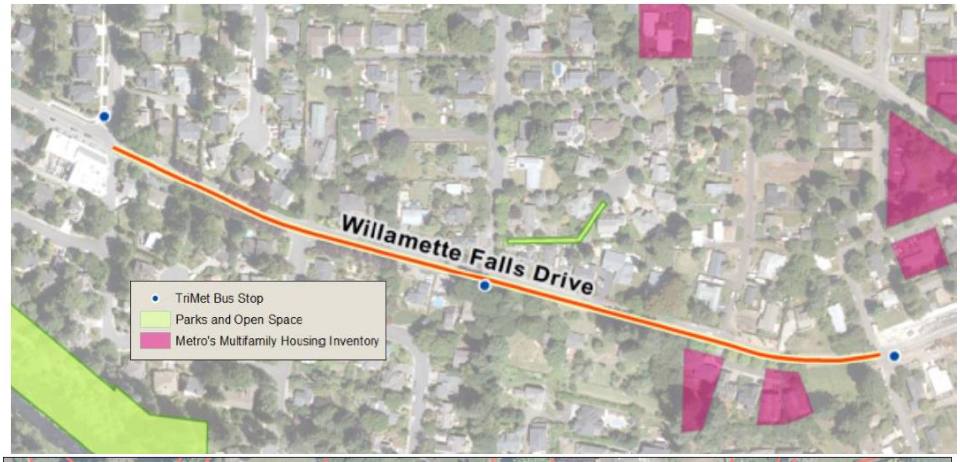
APPROVED AS TO LEGAL SUFFICIENCY

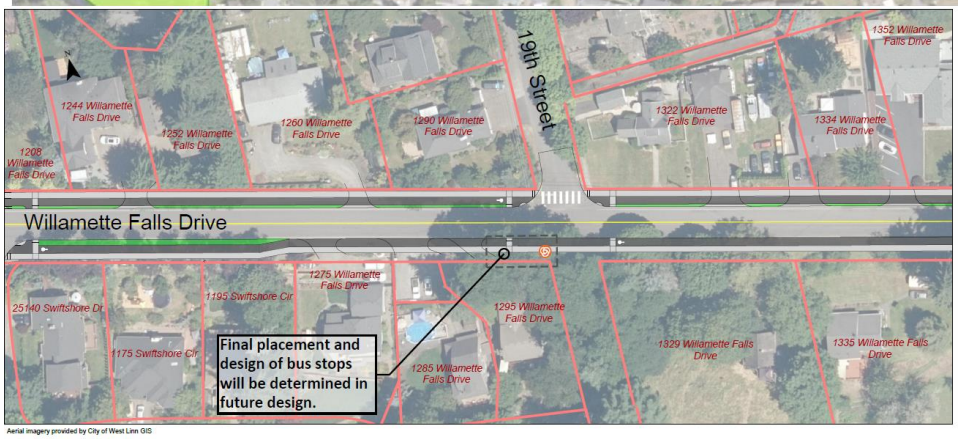
By_____
Assistant Attorney General (If Over $250,000)

Date_____

Agency/State
Agreement No. 73000-00038480

EXHIBIT A – Project Location Map





[1] Bus stop locations are preliminary based on existing stop locations and potential stop consolidation. Final stop locations will be determined in the design phase of the project.
[2] Potential Right-of-way impacts are estimated and not based on survey. Actual right-of-way impacts will be determined in the next phase after acquiring survey data and refinement of the design to account for vertical grading, stormwater retention and utility relocation.

West Linn, Oregon | Figure 6

Commented [HSD1]: Is the orange line supposed to be down the middle of the map?

Commented [AS2R1]: I will replace with another one I got

ATTACHMENT NO. 1 to AGREEMENT NO. 73000-00038480
SPECIAL PROVISIONS

1. State or its consultant shall conduct all work components necessary to complete the Project, except for those responsibilities specifically assigned to Agency in this Agreement.

   a. State or its consultant shall conduct preliminary engineering and design work required to produce final plans, specifications, and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; acquire necessary right of way and easements; and arrange for all utility relocations and adjustments.

   b. State will advertise, bid, and award the construction contract. Upon State's award of the construction contract, a consultant hired and overseen by the State shall be responsible for contract administration and construction engineering & inspection, including all required materials testing and quality documentation. State shall make all contractor payments.

   c. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.

2. State and Agency agree that the useful life of this Project is defined as 10 years.

3. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

4. State will purchase right of way in State's name. Upon completion of the Project, State and Agency agree that any right of way purchased outside of State jurisdiction will be transferred to Agency. Agency agrees to take title to the property and shall maintain the property pursuant to this Agreement. Agency shall use the property for public road purposes. If the property is no longer used for public road purposes, it shall revert to State.

5. To reflect the changes made to 23 U.S.C. 102 by the Infrastructure Investment and Jobs Act of 2021 (Public Law 117-58), Paragraph 11.b. of Attachment No. 2 Federal Standard Provisions is deleted in its entirety.

Commented [CG3]: For reference only: Section 11310(a) of the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the "Bipartisan Infrastructure Law" (BIL)), amended 23 U.S.C. 102 by striking what had previously been subsection (b). Prior to BIL, 23 U.S.C. 102(b) required a State to repay preliminary engineering (PE) costs reimbursed with Federal-aid funds if a project did not advance to construction or right-of-way acquisition within 10 years of the funds becoming available, also known as the "10-year PE rule." There for this paragraph is removed from the Federal Standard Provisions.

ATTACHMENT NO. 2
FEDERAL STANDARD PROVISIONS

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.

2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

3. State will provide or secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.

4. Agency may perform only those elements of the Project identified in the special provisions.

PROJECT FUNDING REQUEST

5. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. State, its consultant or Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

6. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or contractor, using the criteria in 2 CFR 200.331.

7. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.

8. Agency's estimated share and advance deposit.

   a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

   b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid, must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.

   c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash or check submitted to the Oregon Department of Transportation.

9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

10. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.

11. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if the following events occurs:

Commented [HSD4]: See comment below on paragraph 11b.

Commented [AW5R4]: Serena, you are correct and this was my misunderstanding. I changed it back and added paragraphs to Attachment 1.

a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

12. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.

13. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the final total cost of the Project has been computed, State shall furnish Agency with an itemized statement. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total cost of the Project. Any portion of deposits made in excess of the final total cost of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the final total cost of the Project.

DESIGN STANDARDS

14. Agency and State agree that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with State's Oregon Bicycle & Pedestrian Design Guide (current version). State or its consultant shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. State or its consultant may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.

15. Agency agrees that if the Project is on the Oregon State Highway System or a State-owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current Contract Plans Development Guide.

16. State and Agency agree that for all projects on the Oregon State Highway System or a State-owned facility, any design element that does not meet ODOT Highway Design Manual design standards

must be justified and documented by means of a design exception. State and Agency further agree that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retain authority for said approval. FHWA shall review any design exceptions for projects subject to Project of Division Interest and retains authority for their approval.

17. ODOT agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. State or its consultant shall, on behalf of Agency, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

PRELIMINARY & CONSTRUCTION ENGINEERING

18. Preliminary engineering and construction engineering may be performed by either a) State, or b) a State-approved consultant. Engineering work will be monitored by State to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, or b) a State-approved consultant. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State shall offer Agency the opportunity to review the documents prior to advertising for bids.

19. Architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects must follow the State's processes to ensure federal reimbursement. State will award, execute, and administer the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 731-148-0130, OAR 731-148-0220(3), OAR 731-148-0260 and State Personal Services Contracting Procedures, as applicable and as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the state approved consultant prior to receiving authorization from State to proceed.

20. The State or its consultant responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.

21. State shall prepare construction contract and bidding documents, advertise for bid proposals, award all construction contracts, and administer the construction contracts.

22. Upon State's award of a construction contract, State shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.

23. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

Disadvantaged Business Enterprises (DBE) Obligations

24. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

    "*The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).*"

25. State and Agency agree to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

26. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

RIGHT OF WAY

27. Right of Way activities shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24.

28. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. State or its consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way office.

29. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be entirely responsible for project acquisition and coordination of the right of way certification.

30. State or its consultant shall ensure that all project right of way monumentation will be conducted in conformance with ORS 209.155.

31. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

~~32. State will purchase right of way in State's name. Upon completion of the Project, State and Agency agree that any right of way purchased outside of State jurisdiction will be transferred to Agency. Agency agrees to take title to the property and shall maintain the property pursuant to this Agreement. Agency shall use the property for public road purposes. If the property is no longer used for public road purposes, it shall revert to State.~~

RAILROADS

~~33.~~32. State shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

UTILITIES

~~34.~~33. State or its consultant shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. State or its consultant shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility & Railroad Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

GRADE CHANGE LIABILITY

~~35.~~34. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

~~36.~~35. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

~~37.~~36. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, in connection with or arising out of the Project covered by the Project Agreement.

MAINTENANCE RESPONSIBILITIES

~~38.~~37. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were

Commented [HSD6]: I thought Attachment 2 didn't get amended? In our recent amendments/updates to the template, this paragraph is in Attachment 1.

There was also another paragraph to be added to Attachment 1:

To reflect the changes made to 23 U.S.C. 102 by the Infrastructure Investment and Jobs Act of 2021 (Public Law 117-58), Paragraph 11.b. of Attachment No. 2 Federal Standard Provisions is deleted in its entirety.

I saw that you deleted this paragraph already. Is ODOT now amending Attachment 2 directly?

Commented [AW7R6]: Serena, you are correct and this was my misunderstanding. I changed it back and added paragraphs to Attachment 1.

provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

CONTRIBUTION

~~39.~~38. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

~~40.~~39. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

~~41.~~40. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

ALTERNATIVE DISPUTE RESOLUTION

~~42.~~41. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

WORKERS' COMPENSATION COVERAGE

~~43.~~42. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand ($500,000) must be included. State and Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

~~44.~~43. Agency certifies by signing the Agreement that:

a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.

e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than one hundred thousand dollars ($100,000) for each such failure.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

By signing this Agreement, Agency agrees to fulfill the responsibility imposed by 2 CFR Subpart C, including 2 CFR 180.300, 180.355, 180.360, and 180.365, regarding debarment, suspension, and other responsibility matters. For the purpose of this provision only, Agency is considered a participant in a covered transaction. Furthermore,

by signing this Agreement, Agency is providing the certification for its principals required in Appendix to 2 CFR part 180 – Covered Transactions.

A156-G092921

ODOT Delivered Federal Project
On Behalf of City of West Linn
Project Name: Willamette Falls Dr: 16th St - Ostman Rd Ped/Bike Upgrades
Key Number: 23242

THIS AGREEMENT ("Agreement") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and the City of West Linn, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.

2. Willamette Falls Dr: 16th St - Ostman Rd is a part of the city street system under the jurisdiction and control of Agency.

3. Agency has agreed that State will deliver this project on behalf of the Agency.

4. The Project was selected as a part of the Surface Transportation Block Grant Program – Urban (STBG-U) and may include a combination of federal and state funds. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement.

5. The Stewardship and Oversight Agreement on Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

NOW THEREFORE the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering Preliminary Engineering and Right of Way phases of the Willamette Falls Dr: 16th St - Ostman Rd Ped/Bike upgrades on behalf of Agency, hereinafter referred to as "Project." Project includes installing grade separated bike facilities, pedestrian crossings, bus stops and access to transit facility, and intersection treatments prioritizing pedestrian visibility and protection. The location of the Project is approximately as shown on the map attached

hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Parties also anticipate the State delivering the construction phase of the Project. Upon full funding and the addition of this phase to the Project in the Statewide Transportation Improvement Program (STIP), this Agreement may be amended to include construction phase work, and to add the respective cost. If the Parties do not amend this Agreement to add construction phase work, those provisions in this Agreement will not apply.

3. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.

4. Project Costs and Funding.

   a. The total Project cost is estimated at $1,047,669.00, which is subject to change. Federal funds for this Project shall be limited to $940,073.39. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State and will not be available for use by the Agency for this Agreement or any other projects. “Total Project Cost” means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.

   b. With the exception of Americans with Disabilities Act of 1990-related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency’s concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget. However, State may award a construction contract up to ten (10) percent (%) over engineer’s estimate without prior approval of Agency.

   c. Federal funds under this Agreement are provided under Title 23, United States Code.

   d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Assistance Listing (AL) number for this Project is 20.205, title Highway Planning and Construction. Agency is not elibible to be reimbursed for work performed under this Agreement.

   e. State will submit the requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at the Agency expense.

f. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.

5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

6. Termination.

   a. This Agreement may be terminated by mutual written consent of both Parties.

   b. State may terminate this Agreement upon 30 days' written notice to Agency.

   c. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such a later date as may be established by State, under any of the following conditions:

      i. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

      ii. If Agency fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

      iii. If the Agency fails to provide payment of its share of the cost of the Project.

      iv. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

      v. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.

   d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Americans with Disabilities Act Compliance:

   a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:

      i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb

ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;

ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;

iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx**;** and

b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:

i. Pedestrian access is maintained as required by the ADA,

ii. Any complaints received by an Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,

iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,

iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and

v. Applicable permitting and regulatory actions are consistent with ADA requirements.

c. Maintenance obligations in this section shall survive termination of this Agreement.

8. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are

incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.

9. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.

10. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.

11. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are incorporated by this reference and made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.

12. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement.

13. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

14. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

15. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 4.e (Funding), 6.d (Termination), 7.b (ADA maintenance), 10-15, 18 (Integration, Merger; Waiver); and Attachment 2, paragraphs 1 (Project Administration), 7, 9, 11, 13 (Finance), and 37-412 (Maintenance and Contribution).

16. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

17. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

18. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right of Way Services Agreement in furtherance of the Project.

19. State's Contract Administrator for this Agreement is Mahasti Hastings,123 NW Flanders Street, Portland, Oregon 97209, 971.264.8253, Mahasti.v.hastings@odot.state.or.us or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

20. Agency's Contract Administrator for this Agreement is Erich Lais, Public Works Director/City Engineer, City of West Linn 22500 Salamo Road, West Linn, Oregon 97068, phone:503-722-3434, elais@westlinnoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2024-2027 Statewide Transportation Improvement Program (STIP), (Key 23242) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

City of West Linn, by and through its elected officials

By _____

Title _____

Date _____

LEGAL REVIEW APPROVAL (If required in Agency's process)

By _____
Agency Counsel

Date _____

Agency Contact:
Erich Lais, Public Works Director
City Engineer
22500 Salamo Road
West Linn, Oregon 97068
503-722-3434
elais@westlinnoregon.gov

State Contact:
Mahasti Hastings, Region 1
123 NW Flanders Street,
Portland, Oregon 97209
971-264-8253
Mahasti.v.hastings@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Right of Way Manager

Date _____

By _____
State Traffic Engineer

Date _____

By _____
State Roadway Engineer

Date _____

By _____
Region 1 Right of Way Manager

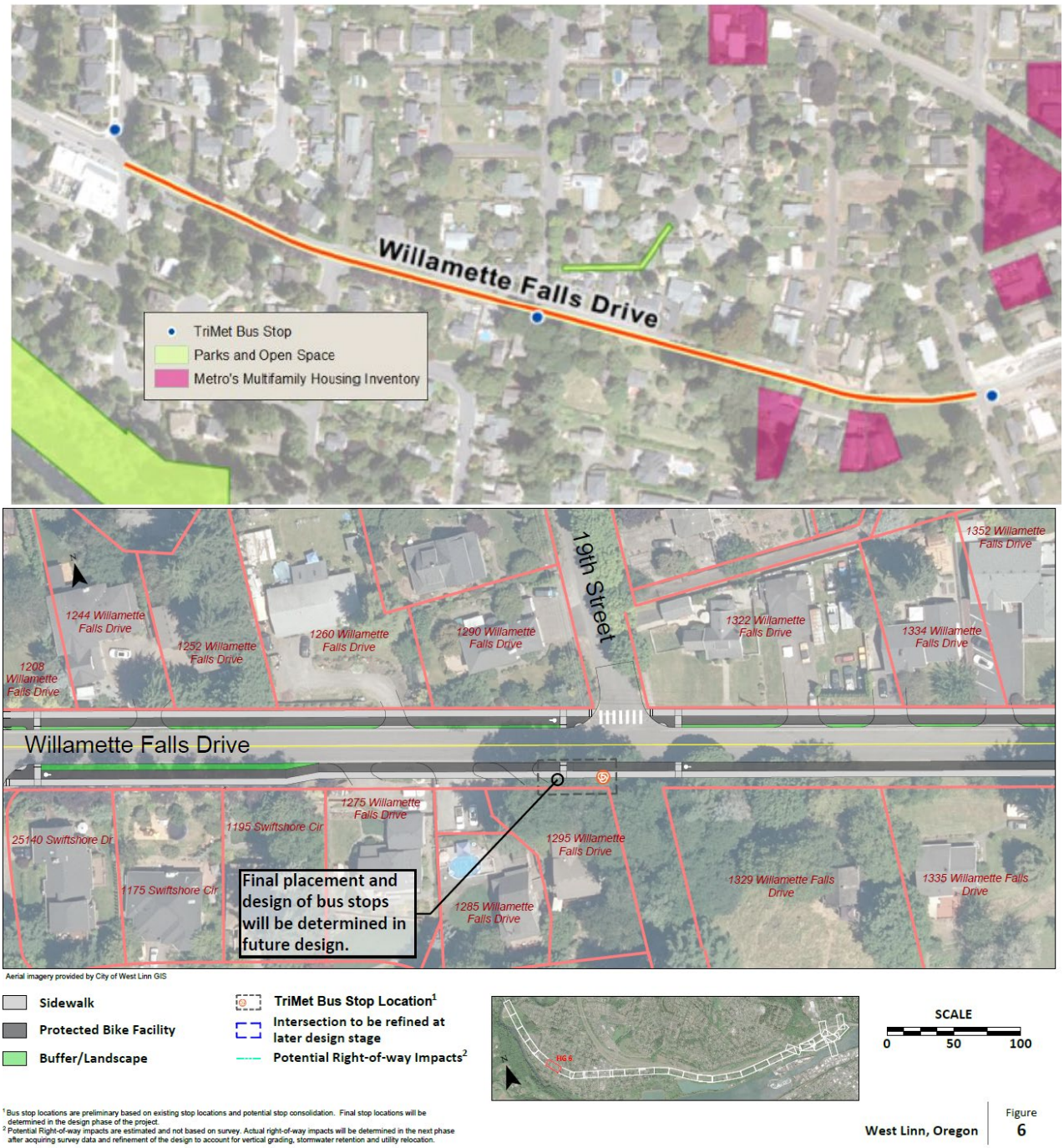
Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Serena Hewitt _____
Assistant Attorney General (If Over $250,000)

Date via email dated 05/16/2025___

EXHIBIT A – Project Location Map



ATTACHMENT NO. 1 to AGREEMENT NO. 73000-00038480
SPECIAL PROVISIONS

1. State or its consultant shall conduct all work components necessary to complete the Project, except for those responsibilities specifically assigned to Agency in this Agreement.

a. State or its consultant shall conduct preliminary engineering and design work required to produce final plans, specifications, and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; acquire necessary right of way and easements; and arrange for all utility relocations and adjustments.

b. State will advertise, bid, and award the construction contract. Upon State's award of the construction contract, a consultant hired and overseen by the State shall be responsible for contract administration and construction engineering & inspection, including all required materials testing and quality documentation. State shall make all contractor payments.

c. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.

2. State and Agency agree that the useful life of this Project is defined as 10 years.

3. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

4. State will purchase right of way in State's name. Upon completion of the Project, State and Agency agree that any right of way purchased outside of State jurisdiction will be transferred to Agency. Agency agrees to take title to the property and shall maintain the property pursuant to this Agreement. Agency shall use the property for public road purposes. If the property is no longer used for public road purposes, it shall revert to State.

5. To reflect the changes made to 23 U.S.C. 102 by the Infrastructure Investment and Jobs Act of 2021 (Public Law 117-58), Paragraph 11.b. of Attachment No. 2 Federal Standard Provisions is deleted in its entirety.

ATTACHMENT NO. 2
FEDERAL STANDARD PROVISIONS

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.

2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

3. State will provide or secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.

4. Agency may perform only those elements of the Project identified in the special provisions.

PROJECT FUNDING REQUEST

5. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. State, its consultant or Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

6. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or contractor, using the criteria in 2 CFR 200.331.

7. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.

8. Agency's estimated share and advance deposit.

   a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

   b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid, must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.

   c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash or check submitted to the Oregon Department of Transportation.

9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

10. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.

11. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if the following events occur:

    a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the

federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

12. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.

13. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the final total cost of the Project has been computed, State shall furnish Agency with an itemized statement. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total cost of the Project. Any portion of deposits made in excess of the final total cost of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the final total cost of the Project.

DESIGN STANDARDS

14. Agency and State agree that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with State's Oregon Bicycle & Pedestrian Design Guide (current version). State or its consultant shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. State or its consultant may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.

15. Agency agrees that if the Project is on the Oregon State Highway System or a State-owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current Contract Plans Development Guide.

16. State and Agency agree that for all projects on the Oregon State Highway System or a State-owned facility, any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. State and Agency further agree that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State

shall review any design exceptions on the Oregon State Highway System and retain authority for said approval. FHWA shall review any design exceptions for projects subject to Project of Division Interest and retains authority for their approval.

17. ODOT agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. State or its consultant shall, on behalf of Agency, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

PRELIMINARY & CONSTRUCTION ENGINEERING

18. Preliminary engineering and construction engineering may be performed by either a) State, or b) a State-approved consultant. Engineering work will be monitored by State to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, or b) a State-approved consultant. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State shall offer Agency the opportunity to review the documents prior to advertising for bids.

19. Architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects must follow the State's processes to ensure federal reimbursement. State will award, execute, and administer the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 731-148-0130, OAR 731-148-0220(3), OAR 731-148-0260 and State Personal Services Contracting Procedures, as applicable and as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the state approved consultant prior to receiving authorization from State to proceed.

20. The State or its consultant responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.

21. State shall prepare construction contract and bidding documents, advertise for bid proposals, award all construction contracts, and administer the construction contracts.

22. Upon State's award of a construction contract, State shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.

23. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

Disadvantaged Business Enterprises (DBE) Obligations

24. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

    "*The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).*"

25. State and Agency agree to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

26. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

RIGHT OF WAY

27. Right of Way activities shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24.

28. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. State or its consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way office.

29. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be entirely responsible for project acquisition and coordination of the right of way certification.

30. State or its consultant shall ensure that all project right of way monumentation will be conducted in conformance with ORS 209.155.

31. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

RAILROADS

32. State shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

UTILITIES

33. State or its consultant shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. State or its consultant shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility & Railroad Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

GRADE CHANGE LIABILITY

34. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

35. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

36. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, in connection with or arising out of the Project covered by the Project Agreement.

MAINTENANCE RESPONSIBILITIES

37. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

CONTRIBUTION

38. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal

pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

39. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

40. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

ALTERNATIVE DISPUTE RESOLUTION

41. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

WORKERS' COMPENSATION COVERAGE

42. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand ($500,000) must be included. State and Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

43. Agency certifies by signing the Agreement that:

a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.

e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than one hundred thousand dollars ($100,000) for each such failure.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

By signing this Agreement, Agency agrees to fulfill the responsibility imposed by 2 CFR Subpart C, including 2 CFR 180.300, 180.355, 180.360, and 180.365, regarding debarment, suspension, and other responsibility matters. For the purpose of this provision only, Agency is considered a participant in a covered transaction. Furthermore, by signing this Agreement, Agency is providing the certification for its principals required in Appendix to 2 CFR part 180 – Covered Transactions.

Agenda Bill 2025-07-14-03

Date Prepared:	July 1, 2025
For Meeting Date:	July 14, 2025
To:	Rory Bialostosky, Mayor West Linn City Council
Through:	John Williams, City Manager *JRW*
From:	Shaun Chiaramonte, Information Technology Manager *SC*
Subject:	Resolution 2025-09, Comcast of Oregon II, Inc. ("Comcast") Franchise Extension Agreement

Purpose:
To grant Comcast a one-year franchise extension agreement.

Question(s) for Council:
Does Council want to extend the franchise with Comcast for one year?

Public Hearing Required:
None Required.

Background & Discussion:
West Linn currently has a cable franchise with Comcast which is set to expire June 30, 2025. The City is part of the Metropolitan Area Communications Commission (MACC) Member Jurisdiction that negotiates with Comcast on West Linn's behalf. MACC and Comcast have been engaged in informal franchise renewal negotiations. On June 13, 2025, the MACC Commission adopted Resolution 2025-02 recommending that Member Jurisdictions extend the Comcast Franchise to June 30, 2026 to allow MACC and Comcast additional time to complete the informal renewal process. Comcast has agreed to execute extension agreements with each Member Jurisdiction.

Budget Impact:
$0.

Sustainability Impact:
N/A.

Council Options:
Council could approve the resolution extending Comcast Franchise to June 30, 2026 or not approve the resolution and direct staff on how they would like the City to proceed.

Staff Recommendation:
The City finds that it is in the best interest of the City and its community to extend the term of the Comcast Franchise and recommends allowing MACC to complete the informal renewal process.

Potential Motion:
Approval of the Consent Agenda will approve the Franchise Extension Agreement and authorize the City Manager to sign it.

Attachments:

1. Report to MACC Member Jurisdictions.
2. MACC Resolution 2025-02, Extension of the Cable Francise Term with Comcast
3. Resolution 2025-09, Authorizing the Extension Agreement
4. Franchise Extension Agreement

REPORT TO MACC MEMBER JURISDICTIONS
RECOMMENDATION
COMCAST CABLE FRANCHISE TERM EXTENSION
JULY 2025

(Prepared by MACC Staff)

Your jurisdiction is a member of the Metropolitan Area Communications Commission (MACC), the intergovernmental agency that administers and regulates cable television franchises for fifteen cities and Washington County. MACC currently administers Comcast's multiple cable television franchises (Comcast Franchise) on behalf of its members, as well as a Ziply Cable Franchise for eleven jurisdictions where that service is offered. MACC staff, and its legal counsel, negotiate directly on your behalf. Each MACC jurisdiction has its own representative, a MACC Commissioner.

MACC Recommendation – On June 13, 2025, the MACC Board of Commissioners (MACC Commission) unanimously passed a resolution (copy attached) recommending its fifteen member jurisdictions extend the current Comcast Franchise term from June 30, 2025 to June 30, 2026, in order to provide time to complete the ongoing process to renew the Comcast Franchise.

BACKGROUND

MACC staff is currently negotiating the renewal of the MACC franchise with Comcast of Oregon II, Inc. (“Comcast”), which franchise expires on June 30, 2025. MACC staff and legal counsel have exchanged draft franchise proposals with Comcast and are participating in regular meetings with Comcast in an effort to reach agreement on a renewed franchise through informal negotiations as set forth in Section 626(h) of the Cable Act. We are making progress toward agreement, but will not finalize a renewed franchise prior to the franchise expiration date. MACC staff and its legal counsel recommend extending the term of franchise agreements to allow additional time to complete the informal renewal process. Extending the franchise term requires an amendment to each member jurisdictions’ franchise agreement, for which the MACC Intergovernmental Agreement requires the unanimous consent of all affected member jurisdictions.

MACC staff and Comcast have agreed on a franchise amendment to extend the term of the franchise through June 30, 2026, or until a renewed franchise is granted, whichever occurs first. Both MACC staff and Comcast believe that negotiations should conclude well before June 30, 2026, but given the resources required of MACC, the member jurisdictions and Comcast to extend the franchise, MACC recommends a one-year extension to minimize the likelihood that an additional extension will be required. MACC staff and Comcast will work diligently to complete the renewal as soon as possible.

At the MACC Commission's June 13th meeting, the MACC Commission unanimously agreed to recommend that the MACC member jurisdictions extend the term of the Comcast Franchise Agreement to June 30, 2026.

ACTION REQUESTED

MACC asks that your jurisdiction agree to an extension of the Comcast franchise through June 30, 2026, and execute the extension agreement with Comcast to allow the Commission additional time to complete the informal renewal process set forth in 47 U.S.C. § 546(h).

MACC staff and legal counsel have prepared a resolution to effect this change in your jurisdiction.

MACC staff would be happy to answer any questions you have about this recommended action.

Enclosures:

- Franchise Extension Agreement
- MACC Resolution 2025-02

METROPOLITAN AREA COMMUNICATIONS COMMISSION

RESOLUTION NO. 2025-02

A RESOLUTION RECOMMENDING THAT THE MEMBER JURISDICTIONS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION EXTEND THE TERM OF THE CABLE TELEVISION FRANCHISE WITH COMCAST OF OREGON II, INC. TO ENABLE THE COMMISSION TO COMPLETE THE INFORMAL RENEWAL PROCESS

WHEREAS, the Metropolitan Area Communications Commission ("MACC") is an intergovernmental commission formed pursuant to an intergovernmental agreement under ORS Chapter 190 ("IGA"), with the membership of Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin and West Linn ("Member Jurisdictions"); and

WHEREAS, in 2015, the Member Jurisdictions executed cable television franchise agreements with Comcast of Oregon II, Inc. ("Comcast"), authorizing Comcast to construct, operate, and maintain a cable communications system to provide cable service within the municipal boundaries of the Member Jurisdictions, which will expire on June 30, 2025 ("Franchises"); and

WHEREAS, by letter dated August 3, 2022, from Comcast to the Member Jurisdictions, Comcast invoked the formal renewal procedure set forth in Section 626 of Title VI of the Communications Act of 1934, as amended (the "Cable Act"), while expressing its desire to pursue the franchise renewal through informal negotiations rather than the formal renewal procedure; and

WHEREAS, the IGA authorizes MACC to process Comcast's renewal request on behalf of the Member Jurisdictions, including informal negotiations as set forth in Section 626(h) of the Cable Act, 47 U.S.C. § 546(h), and the formal renewal procedures set forth in Sections 626(a)-(g) of the Cable Act, 47 U.S.C. § 546(a)-(g); and

WHEREAS, MACC and Comcast have been engaged in informal franchise renewal negotiations as set forth in 47 U.S.C. § 546(h); and

WHEREAS, MACC and Comcast require additional time to complete the informal renewal process, beyond the June 30, 2025 expiration of the Franchises; and

WHEREAS, Comcast has agreed to execute extension agreements with each Member Jurisdiction extending the Franchises through June 30, 2026; and

WHEREAS, the Commission recommends that the Member Jurisdictions execute the extension agreement to allow the Commission and Comcast to complete the informal franchise renewal process.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION:

Section 1. The Commission recommends that the Member Jurisdictions agree to an extension of the Franchises through June 30, 2026, and execute the extension agreements with Comcast substantially in the form attached hereto as Exhibit A to allow the Commission additional time to complete the informal renewal process set forth in 47 U.S.C. § 546(h).

Section 2. This resolution shall be effective upon its adoption by the Commission and signature by the Board Chair.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THIS 13TH DAY OF JUNE, 2025.

Shane M Boyle

Shane Boyle, Chair

Attachment: Exhibit A

RESOLUTION 2025-09

A RESOLUTION EXTENDING THE TERM OF THE CABLE TELEVISION FRANCHISE WITH COMCAST OF OREGON II, INC. TO ENABLE THE METROPOLITAN AREA COMMUNICATIONS COMMISSION TO COMPLETE THE INFORMAL RENEWAL PROCESS

WHEREAS, the Metropolitan Area Communications Commission ("MACC") is an intergovernmental commission formed by Intergovernmental Agreement ("IGA") under ORS Chapter 190, with Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin and West Linn as members ("Member Jurisdictions"); and

WHEREAS, the IGA contemplates that MACC and its Member Jurisdictions may grant one or more nonexclusive cable franchise agreements to construct, operate, and maintain a cable system to provide cable service within the combined boundaries of the Member Jurisdictions; and

WHEREAS, Comcast of Oregon II, Inc. ("Comcast") currently holds cable franchises with the Member Jurisdictions with effective dates of July 1, 2015, which were to expire on June 30, 2025 ("Comcast Franchises"); and

WHEREAS, on August 3, 2022, Comcast requested that the Comcast Franchises be renewed; and

WHEREAS, the IGA authorizes MACC to process Comcast's renewal request on behalf of the Member Jurisdictions, including informal negotiations as set forth in 47 U.S.C. § 546(h) and the formal renewal process set forth in 47 U.S.C. § 546 (a)-(g); and

WHEREAS, MACC and Comcast have been engaged in informal franchise renewal negotiations as set forth in 47 U.S.C. § 546(h); and

WHEREAS, on June 13, 2025, the MACC Commission adopted Resolution 2025-02, recommending that the Member Jurisdictions extend the Comcast Franchises to June 30, 2026, to allow MACC and Comcast additional time to complete the informal renewal process; and

WHEREAS, Comcast has agreed to execute extension agreements with each Member Jurisdiction; and

WHEREAS, the City of West Linn finds that it is in the best interest of the City and its residents to extend the term of the Comcast Franchise to allow MACC to complete the informal renewal process.

NOW, THEREFORE, THE CITY OF WEST LINN RESOLVES AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute the extension agreement with Comcast substantially in the form attached hereto as Exhibit A, extending the term of the Franchise through June 30, 2026, to allow MACC to complete the informal renewal process set forth in 47 U.S.C. § 546(h).

This resolution was PASSED and ADOPTED this 14th day of July, 2025, and takes effect upon passage.

_____
RORY BIALOSTOSKY, MAYOR

ATTEST:

_____
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Attachment: Exhibit A

FRANCHISE EXTENSION AGREEMENT

WHEREAS, Comcast of Oregon II, Inc. ("Comcast") currently holds a cable franchise with the City of _____ ("City"), with an effective date of July 1, 2015, which was to expire on June 30, 2025 ("Franchise"); and

WHEREAS, the City is a member of the Metropolitan Area Communications Commission ("MACC"), an intergovernmental commission formed through an Intergovernmental Agreement in accordance with ORS Chapter 190, to which the City transferred administration responsibilities associated with the Franchise, including renewal negotiations; and

WHEREAS, MACC, on behalf of the City, has been working with Comcast to reach agreement on a renewed franchise through the informal renewal process in accordance with 47 U.S.C. § 546; and

WHEREAS, the City and Comcast Oregon wish to extend the Franchise to allow for additional negotiations toward agreement on a renewed franchise agreement.

NOW, THEREFORE, the City and Comcast agree as follows:

1. The Franchise shall be extended to expire on June 30, 2026, unless a renewed franchise agreement takes effect prior to that date, in which case the Franchise shall expire on the effective date of the renewed franchise.
2. All provisions of the Franchise, other than the duration of the Franchise as set forth in Section 2.3, shall remain in full force and effect through the expiration date set forth herein.
3. The parties do not waive any rights which they enjoy under law as a result of agreeing to this Franchise Extension Agreement.

ACCEPTED this __ day of ____, 2025.

City of _____, Oregon

By: _____

Print Name: _____

Title: _____

ACCEPTED this ____ day of _____, 2025.

Comcast of Oregon II, Inc.

By: _____

Print Name: _____

Title: _____

Agenda Bill 2025-07-14-04

Date Prepared:	July 7, 2025
For Meeting Date:	July 14, 2025
To:	Rory Bialostosky, Mayor West Linn City Council
Through:	John Williams, City Manager JRW
From:	Darren Wyss, Planning Manager DSW
Subject:	Letter of Support - Housing Planning Assistance Grant Application

Purpose:
To authorize the Mayor to sign a letter of support for a grant application to request funding to implement the adopted West Linn Housing Production Strategy (HPS).

Question(s) for Council:
Should Council authorize the Mayor to sign the letter of support?

Public Hearing Required:
Yes (this is not a land use action and cannot be appealed)

Background & Discussion:
HB 2003 (2019) required the City of West Linn to adopt a Housing Capacity Analysis (HCA) and then a Housing Production Strategy (HPS) to address the current and future housing needs of the community. At its May 12, 2025 hearing, City Council adopted the HPS. The focus will now turn to implementing the actions found in the HPS.

The City will need to show progress on actions adopted into the HPS over the six-year implementation cycle established by the legislature. The legislature has dedicated funding for help with HPS implementation and staff will be submitting a grant funding application in July 2025. The application requires support by the City Council.

Budget Impact:
None anticipated.

Sustainability Impact:
The intent of the HPS is to increase the supply of housing choices and promote more equitable land use planning outcomes.

Council Options:
1. Authorize the Mayor to sign the letter of support, with or without modifications; or
2. Do not authorize the Mayor to sign the letter of support.

Staff Recommendation:
Authorize the Mayor to sign the attached letter of support.

Potential Motion:
1. Move to authorize the Mayor to sign the attached letter of support for Housing Planning Assistance grant funding.

Attachments:
1. Draft Letter of Support

CITY HALL 22500 Salamo Rd, West Linn, OR 97068 Telephone: (503) 657-0331 Fax: (503) 650-9041

City of West Linn

July 14, 2025

Grants Administrative Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

RE: Housing Assistance Grant Application

Dear DLCD,

The West Linn City Council is pleased to support the City's application for Housing Planning Assistance program funds for implementation of the adopted West Linn Housing Production Strategy. We appreciate the financial resources approved by the Legislature to help communities plan for our housing future. With consultant assistance, any funds awarded would be utilized to help the City implement the Housing Production Strategy actions that will be critical in helping meet the housing needs of current and future West Linn residents.

Housing affordability and availability is a growing concern in not only the City of West Linn, but also in the region and state. The City is committed to helping mitigate these concerns through implementing effective housing policies and programs and evaluating permitting processes and costs. With several long-range planning projects underway in the City, including revisioning the Willamette River Waterfront and Highway 43 Corridor, there is limited staff resources or budget funds available to take on this important issue. Grant funding and consultant assistance will be of great benefit to the City as a third-party evaluation of policies, programs, and processes will lead to strategy implementation that will ensure the City is appropriately positioned to meet its future housing needs.

The West Linn City Council is committed to complying with state statutes and administrative rules, while also doing its fair share to help solve the housing issues that are present in the region and the state. Thank you for allowing us the opportunity to apply for additional funds and for your time and consideration.

Sincerely,

Rory Bialostosky
Mayor
City of West Linn

Agenda Bill 2025-07-14-05

Date Prepared: July 1, 2025

For Meeting Date: July 14, 2025

To: Rory Bialostosky, Mayor
West Linn City Council

Through: John Williams, City Manager

From: Erich Lais, PE – City Engineer/Public Works Director

Subject: Sale of Real Surplus Property 6123 Skyline Dr.

Purpose:
The City Council is required to hold a public hearing and determine if the City should accept a final offer for the sale of the City-owned property located at 6123 Skyline Drive.

Question(s) for Council:
Does City Council wish to proceed with the Sale of City owned property located at 6123 Skyline Dr?

Public Hearing Required:
Yes.

Background & Discussion:

- The City purchased the referenced property in 2015 as part of the Bolton Reservoir Replacement Project in order to provide adequate onsite staging areas. The property is not currently used by the City and is no longer relevant to the present or planned water system.
- The property located at 6123 Skyline Drive property was purchased for $385,000.
- The purchase of the properties was approved through Resolution 2015-02 which states: "The City Council authorizes the purchase of these properties with the intent to surplus and sell the properties after the Bolton Reservoir replacement is completed. Any proceeds received from the future sale of the properties would be deposited into the water fund."
- The property was declared surplus and approved for future sale by the City Council through Resolution 2018-03 on or around January, 8, 2018.
- Since the initial purchase of the property, the lot has been partitioned into three buildable lots.
- Under state law and the City's ordinance for sale of surplus property, the City Council is required to hold a public hearing following public notice at least 7 days in advance of the hearing. Public notice was published in the West Linn Tidings (print and online).
- The City listed the property for sale on June 6, 2025 for $670,000 as recommended by the City's realtor via a Comprehensive Market Analysis report (CMA).
- The City received its first offer within 1 day of the listing and was informed by other interested parties that additional offers would be submitted.

- In response to a multiple offer scenario, the City set a deadline for final offers to be submitted and reviewed by Tuesday, June 10, 2025. The City received 3 offers in total, which are summarized and attached to this report.
- The best and highest offer was received by The Portlock Company LLC, which included an escalation clause of $21,000, no seller paid commission, no seller represented utility requirements, and no request for land use or building permit approval ahead of closing of sale. The total offer is equal to $826,350.00.

Budget Impact:
$ Revenue for the Water Fund as outlined in Resolution 2015-02

Sustainability Impact:
Not applicable.

Council Options:
1. Accept the offer submitted by The Portlock Company, LLC.
2. Do not accept the offer and direct staff to continue to market the properties.

Staff Recommendation:
Staff recommends sale of the property to The Portlock Company, LLC.

Potential Motion:
Motion to approve the sale of the property located at 6123 Skyline Drive to The Portlock Company, LLC and authorize the City Manager to execute all necessary documents to complete the transaction.

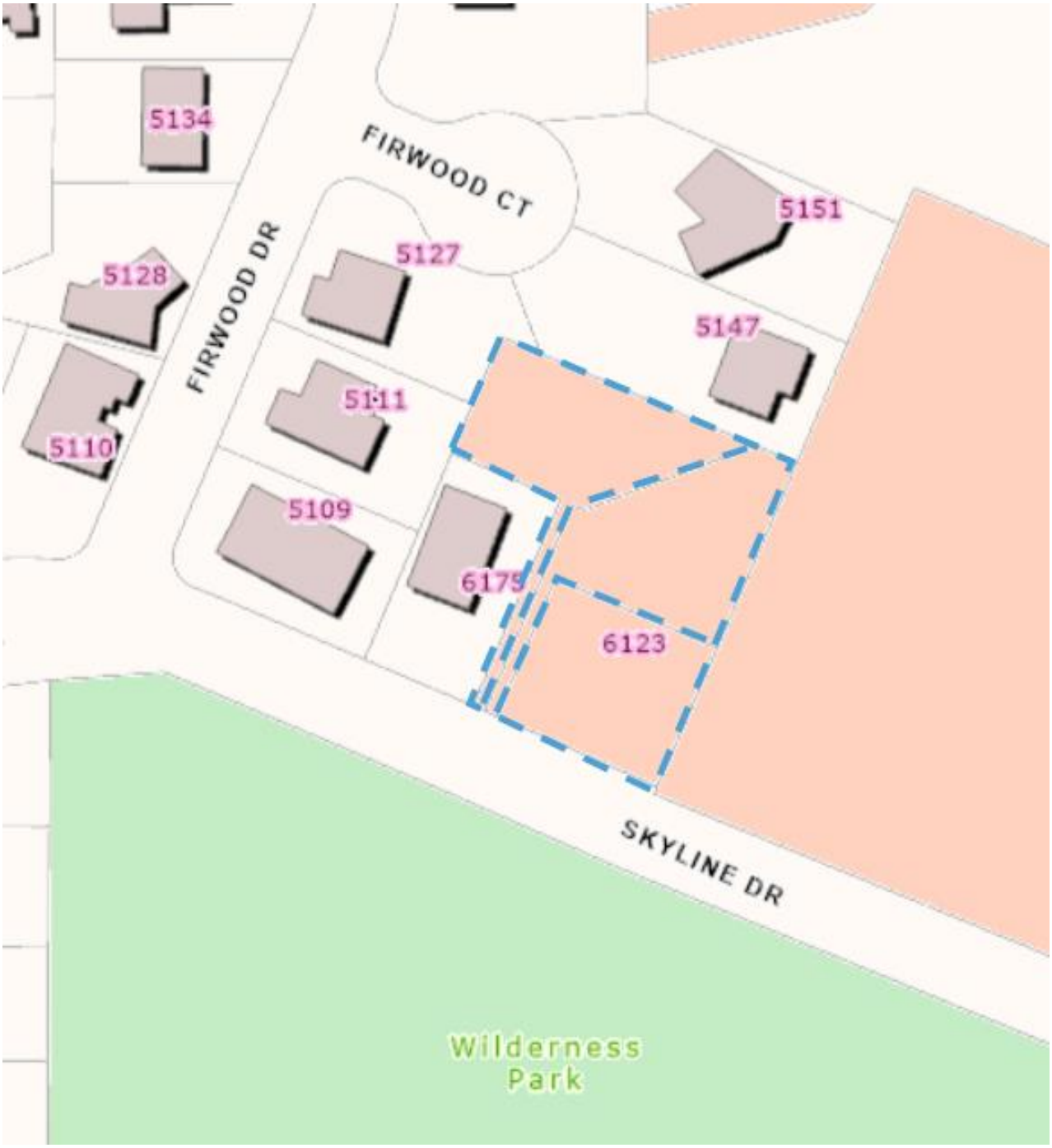
Attachments:
1. Offer Summary
2. Property Map

WINGS NW
REAL ESTATE

Multiple Offer Summary 6123 Skyline Drive, West Linn

	Offer 1	Offer 2	Offer 3
Received	6/5	6/10	6/10
Buyer(s) Names	Black Diamond Homes Inc.	The Portlock Company LLC	Icon Construction and Development
Close Date	As written when submitted: 7/10/2025 - 10 business day due diligence	3 business days after 24 business day due diligence period completed	As written when submitted 7/21/2025 - 15 business day due diligence
Offer Price	$670,000.00	$751,000.00	$826,000.00
Seller Contributions	Line 76-77: 2.5% of Sales Price= $16,750	**Zero**	Line 76-77: 2.5% of Sales Price= $20,650
Due Diligence	10 Days	24 Business Days	15 Business Days
Earnest Money / Type	$10,000.00	$30,000.00	$20,000.00
Down Pmt	None Listed	Cash	Cash
Finance Type	Line 106: 'Other': Community Financial Corp.	Cash	Cash
Contingent	Dependent on Financing	No	No
Escrow	FATCO - Keeley Robinson	FATCO - Annette McCarthy	FATCO - Lake Oswego
Proof of Funds	Charles Schwab Trust Account Summary-4/2025	Bank of America	None Provided
Appraisal Req'd	Yes - Financed	No	No
Pre-Approval Letter	No Pre-Approval Provided from Community Financial Corp.	Cash - Proof of Funds Provided	Cash - Line 94: Verification of funds provided upon request
Seller Property Disclosures	Line 246: Buyer to Review	Line 246: Buyer to Review	Line 252: Buyer Waives
Seller Representations	Lines 261-266: Marked public sewer, public water	Lines 261-266: Left unmarked (safest for the seller)	Lines 261-266: Marked public sewer and public water
Additional Provisions	Line 316: Locate Property Pins and install any property pins that are missing.	Line 316: Escalation Clause: In the event of a competing offer with a higher net purchase price, Buyer agrees to increase their price to **$21,000 above the highest competing offer**. Copy of competing offer to be provided - net purchase price shall mean the offer price minus any seller-paid concessions.	Line 316: Addendum A: **Buyer shall grant Seller an exclusive right to negotiate the purchase of the property known as 1793 8th Ave, West Linn, OR for a period of one-year commencing upon Closing of this transaction (the "Exclusive Negotiation Period") at terms and conditions mutually acceptable to both parties. During the Exclusive Negotiation Period, Buyer shall negotiate with Seller in good faith and shall not enter into a purchase and sale agreement on 1793 8th Ave. with any other party.**

	Offer 1	Offer 2	Offer 3
Offer Net	**$653,250.00**	$805,350 + $21,000= **$826,350.00**	**$805,350.00**
Additional Documents	Builder Resume, Charles Schwab Account Summary	Bank of America Proof of Funds	Addendum A
Communication Notes	"Hi Elizabeth, Black Diamond Homes wanted me to send you a note indicating that if the City of West Linn has a specific idea of what they wanted to see built on the property, they would try and accomplish this goal. Thanks"	Hi Elizabeth, I'm excited to be submitting this offer on behalf of The Portlock Company. We love these three lots and think they fit perfectly for the type of high quality homes we're building in West Linn. As I mentioned on the phone, our owner, JJ Portlock, is a West Linn resident and his family are deeply ingrained in the community, as well as our whole Portlock Company team are almost all West Linn residents. We care deeply about building homes that fit well into the neighborhoods we're building in and doing our best to help the community of West Linn in all aspects of our building and daily lives. We're submitting a very strong offer of $751k and have included an escalation clause to outbid any competing offer by $21k. I'm taking no BAC on this sale, so **there are no seller paid concessions being asked for**. Typically on these deals we'd close at land use approval by the City or first building permit approval, but we don't want to delay this process and are happy closing 3 business days after the end of the 24 business day feasibility period.	Elizabeth, Attached is our offer to purchase 6123 Skyline. Please let me know if you have any questions.


5134
FIRWOOD CT
5151
5128
FIRWOOD DR
5127
5147
5111
5110
5109
6175
6123
SKYLINE DR
Wilderness
Park

ICON™
CONSTRUCTION
AND DEVELOPMENT

1969 Willamette Falls Drive, Suite 260 West Linn, OR 97068 CCB #150499
Phone (503) 657-0406 • Fax (503) 655-5991

July 11, 2025

Mr. Rory Bialostosky, Mayor
West Linn City Council
22500 Salamo Road
West Linn, Oregon 97068

By Email: citycouncil@westlinnoregon.gov

RE: Agenda Bill 2025-07-14-05: Sale of Real Surplus Property 6123 Skyline Drive

Mr. Mayor and City Councilors:

Icon Construction & Development, LLC (Icon) requests the City Council not accept the offer by The Portlock Company, LLC (Portlock) and seek best and final bids from Icon and Portlock before making a final decision. This request is based on the following facts:

- Icon's offer of $826,000 was the highest offer received, $75,000 higher than Portlock, and $156,000 higher than the listing price. Portlock's escalator of $21,000 over any offer is disingenuous in that it allows Portlock to tie up the property for a free look during due diligence and decide if the higher price is acceptable to them. If Portlock thought the property was worth $826,000, why didn't they offer that amount. This puts the City at risk of a retrade once the property facts are understood.

- There are several issues with the memo and bid comparison table presented in the July 1, 2025 memo to the Council.

    - The memo correctly points out that since the initial purchase by the City, the lot has been partitioned into three buildable lots. What the memo does not point out is that Icon processed and paid for the partition process while under contract to purchase the lot from the City. Icon successfully purchased the other lot acquired by the City at 6175 Skyline Drive and was under contract for 6123 Skyline Dr lot. We processed, paid for and received land use approval for the 3-lot partition and were working on engineering to understand what the City requirements would be for utility connections. We paid for engineering designs and submitted them to the City for review.

      As we did not receive timely response to the engineering submittal, we requested 30-day extensions to our closing. We were granted two such

extensions but, having not received any input from the City engineering department on our submittal, we requested a third 30-day extension. This last extension was denied by the City. Icon was forced to terminate the purchase contract as it was too risky to close on the property without knowing the specifics of the engineering requirements. In total, Icon spent over $50,000 on the land use and engineering.

Subsequently, Icon learned that the former City Engineer and City Manager had decided to have the City retain and develop the property, which it did utilizing the approved 3-lot partition and preliminary engineering paid for by Icon. Therefore, the City benefitted from Icon's work and improved the value of the property from a single unplatted lot purchased for $385,000 to a permitted 3-lot partition with engineering and improvements with a listed value of $670,000.

- The memo mentions one advantage of the Portlock offer is no seller paid commissions. We are not privy to the listing agreement between the City and the listing broker, but typical broker arrangements are for the listing broker to receive 5% commission and then often the listing broker shares that commission paying 2.5% to the buyer broker, as Icon included in our offer. Portlock apparently waived the buyer broker 2.5% commission, something Icon is certainly willing to do if given the opportunity. In any event, it is likely the City still has seller paid commission obligations to the listing broker but perhaps it is only 2.5%, and offset by Portlock's disingenuous $21,000 escalator, as the commission on the Icon offer of $826,000 would be $20,650 and that would result in the net purchase price shown for Portlock of $826,350. Icon was not given the opportunity to work with the listing broker in a similar manner.

- There is mention of the benefit to the City of the Portlock offer having no seller represented utility requirements. All that section does is acknowledge there is public water and sewer serving the property. There is no advantage to the City by Portlock no checking the box for these necessary utility connections and might even suggest a lack of understanding on the importance of that section of the standard form contract.

- The memo does not mention that Portlock did require a seller disclosure (Contract Line 246), which is extensively detailed and requires the City to make substantial representations. Icon, based on our extensive knowledge of the property waived that requirement.

- The memo lists but does not mention that Icon's Due Diligence period of 15 business days is 2 weeks shorter than Portlock's Due Diligence period of 24 business days. This difference would result in a quicker close by Icon.

- The memo mentions a benefit of the Portlock offer is no request for land use or building permit approval ahead of closing the sale. Icon also does not have this requirement.

- The memo notes Portlock had a proof of funds and shows None for Icon in one place and then correctly shows available upon request.

- Importantly, while the memo does disclose the option Icon is willing to give the City for an exclusive right to negotiate the purchase of the property known as 1793 8th Ave, the memo fails to note that as a non-monetary benefit of the Icon offer. In fact, the Council may recall that Icon had offered to swap the 8th Ave property for the Skyline property with the City only paying the difference between the appraised values during the early discussions on the private/public development of the Oppenlander Property.

For all of these reasons, Icon requests the City Council not accept the Portlock offer and request best and final bids from Icon and Portlock before making a final decision.

Thank you for your time and consideration.

Sincerely,

Mark Handris
Managing Member
Icon Construction & Development, LLC

Agenda Bill 2025-07-14-06

Date Prepared:	July 3, 2025
For Meeting Date:	July 14, 2025
To:	Rory Bialostosky, Mayor West Linn City Council
Through:	John Williams, City Manager JRW Lauren Breithaupt, Finance Director LB
From:	Stephanie Hastings, Management Analyst- Revenue & Procurement SH
Subject:	WLMC Chapter 10 - Utility License and Use of the Right-Of-Way

Purpose:
To update the Municipal Code relating to utility licenses and right-of-way use to provide clarification on management of the right-of-way.

Question(s) for Council:
Does the Council wish to repeal the existing Chapter 10 Utility License and Use of the Right-Of-Way of the West Linn Municipal Code (WLMC) and replace it with an updated and expanded version of the code?

Public Hearing Required:
No.

Background & Discussion:

In 2021 Council adopted Ordinance 1723, adding Chapter 10 Utility License and Use of the Right-Of-Way to the Municipal Code. This adoption requires utility providers (e.g. PGE, NW Natural Gas, Verizon, Ziply, and other telecommunication companies) to obtain a license to use or place facilities in the right-of-way. This change was made to allow for more efficient, fair, and uniform treatment of all utilities that use the City's right-of-way, to reduce staff time, legal resources, and expenses spent negotiating franchising agreements, as well as remove limitations that prevent the City from capturing revenue from wholesale and other subcategories of communication utilities in the right-of-way.

In the October 2023 Budget Committee Report, staff identified potential revenue sources for Council could explore to stabilize the City's fiscal outlook. Among these sources were missed revenue opportunities related to utility use of the City's right-of-way. After further study of current right-of-way management and practices of other municipalities in Oregon, staff identified two potential sources of revenue related to utility use of the right-of-way: (1) capturing unpaid fees from current operators in the right-of-way, as well as (2) extending right-of-way usage fees to utility providers using the right-of-way without ownership of facilities in the right of way.

In 2024, the Finance Department hired outside legal counsel specializing in right-of-way ordinances to assist staff in reviewing and implementing Chapter 10 of the Municipal Code. Based on counsel's experience with utilities in the right-of-way, counsel suggested extensive code amendments to clarify and improve definitions, licensing and reporting requirements, fees and payments, construction and location requirements, maintenance requirements, and the enforcement process. Outside legal counsel's recommendations have been reviewed with Public Works staff and the City Attorney's Office.

At the April 21 Council Work session, staff presented draft Ordinance 1759, with a recommendation to repeal the current Chapter 10 of the West Linn Municipal Code (WLMC) and replace it with an expanded version that provides clarification on the management and use of the right-of-way. In addition to addressing gaps in language to better support management of the right-of-way and collection of unpaid right-of-way fees, the proposed ordinance seeks to capture additional revenue by incorporating language to extend right-of-way usage fees to utility providers using the right-of-way without ownership of facilities in the right of way.

To address the capture of unpaid revenue, the proposed code revisions expand the licensing program to capture both active and passive utility use of the public right-of-way, as well as reintroduce the language governing audits of current providers that is present in our current utility franchise agreements. This approach is not uncommon in the Portland Metropolitan Area; nearby cities of Milwaukie, Oregon City, Tualatin and North Plains have adopted similar code language that allow the city to collect fees from utility providers, including wireless providers.

At the April 21st work session when the proposed Ordinance was initially presented, Council heard public comments from representatives for AT&T and Verizon Wireless. Since the work session, Wireless Policy Group (on behalf of AT&T) and CTIA (a trade association for the wireless industry submitted additional public comments on the proposed code revisions. These letters (attached) expressed the following industry-specific positions and concerns:

- Cost to wireless providers and impact to funding for infrastructure investment
- Preemption of fees under Corporate Activity Tax
- Interpretation of "user" and "actual use" as applied to use of third-party facilities in the right-of-way
- Ability to track and pay fees based on data traffic through small wireless facilities
- Preemption of fees under 2018 Telecommunications Act

Staff has discussed these concerns with the City's outside legal counsel that specializes in municipal telecommunications and who has assisted with the entire code review project, as well as the City Attorney. In short, the City's position is that there are alternative interpretations and positions to the issues raised in the letters, and the Legal Department can support the options presented by staff below. For more detail and specific questions, please review the City's Legal Memorandum and consult with the City Attorney.

Concerning process, there are two steps to complete: (1) enacting the ordinance that Council prefers, and then, (2) adopting by Resolution, the Master Fees and Charges that apply. Staff has attached a DRAFT Master Fees and Charges document simply to preview the final step.

Budget Impact:
Potential additional General Fund revenue of $424,000 - $1,273,000 per year. These estimates are based on the following calculations:

Low end/conservative estimate: $424,000/year
This assumes 10,104 households with one phone line paying $50 per month before taxes and fees. (10,104*$50*0.07*12)

High End estimate: $1,273,000/year
This is what is used by the Council for Community & Economic Research when calculating cost of living for a household in the PDX region. It assumes an average three-line family plan per household (national norm) with a monthly fee of $150. This is calculated using 10,104 households (see Oregonian article). (10,104*150*0.07*12)

Sustainability Impact:
None.

Council Options:
1. Enact proposed Ordinance 1759_1 related to utility licenses and use of the right-of-way as presented at the work session.
2. Direct staff to modify the ordinance in a particular way and bring to the August 4, 2025 Council Meeting for adoption.
3. Enact proposed Ordinance 1759_2 related to utility licenses and use of the right-of-way, which expressly excludes wireless providers that do not own facilities in the right-of-way from right-of-way usage fees.
4. Take no action on the proposed ordinance and request a subsequent work session.

Staff Recommendation:
Staff recommends repealing the current Chapter 10 Utility License and Use of the Right-Of-Way of the West Linn Municipal Code (WLMC) and proceeding with enactment of Ordinance 1759_2 related to utility licenses and use of the right-of-way exempting non-owner wireless.

Potential Motion:
1. I move to repeal the existing Chapter 10 of the West Linn Municipal Code (WLMC) and replace it with Ordinance 1759_2 related to utility licenses and use of the right-of-way exempting non-owner wireless.

Attachments:
1. Proposed Ordinance 1759_1 repealing and replacing Chapter 10 Utility License and Use of the Right-Of-Way (Work session Draft).
2. Proposed Ordinance 1759_2 repealing and replacing Chapter 10 Utility License and Use of the Right-Of-Way, but exempting non-owner wireless.
3. Public comment received from CTIA.
4. Public comment received from AT&T.
5. Resolution 2025-07 Master Fees & Charges for Proposed Ordinance .
6. DRAFT Master Fees & Charges for Proposed Ordinance.

ORDINANCE 1759

AN ORDINANCE RELATING TO UTILITY LICENSES AND USE OF THE RIGHT-OF-WAY

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

> Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, the City has jurisdiction to control the public right-of-way within the City and may regulate the use of the right-of-way by ordinance, franchise, license, permit or any combination thereof; and

WHEREAS, Chapter 10 of the Municipal Code was enacted in 2021 to provide uniform, standardized terms and compensation for the use of the City's right-of-way by utility providers;

WHEREAS, the need for additional clarity and improvements to Chapter 10 of the Municipal Code have been identified that will improve code implementation and compliance by utility providers using the right-of-way within West Linn; and

WHEREAS, the City finds it is in the public interest to enact the changes to the West Linn Municipal Code as set forth in this Ordinance.

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Repeal. West Linn Municipal Code Chapter 10 [Utility License and Use of the Right-Of-Way] is repealed in its entirety. Any municipal code provisions in conflict with the provisions in this Ordinance are also repealed.

SECTION 2. Amendment. West Linn Municipal Code Chapter 10 [Utility License and Use of the Right-Of-Way] is adopted as set forth is Exhibit A.

SECTION 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 4. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and

in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions of the ordinance were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 5. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions need not be codified and the City Recorder or the designee is authorized to correct any cross-references and any typographical errors.

SECTION 6. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the 14th day of July, 2025, and duly PASSED and ADOPTED this _____ day of _____, 2025.

_____
RORY BIALOSTOSKY, MAYOR

ATTEST:

_____
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Chapter 10

UTILITY LICENSE AND USE OF THE RIGHT-OF-WAY

UTILITY LICENSE AND USE OF THE RIGHT-OF-WAY

UTILITY LICENSE AND USE OF THE RIGHT-OF-WAY

10.000 Title.

The ordinance codified in this chapter shall be known and may be referenced as the Utility License and Use of the Right-of-Way ordinance.

10.010 Jurisdiction & Management of the Right-of-Way

(1) The City has jurisdiction and exercises regulatory management over all rights-of-way within the city under authority of the City Charter and state law.

(2) The City has jurisdiction and exercises regulatory management over each right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

(3) The exercise of jurisdiction and regulatory management of a 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.

(4) The provisions of this chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

10.020 Regulatory Fees & Compensation Not a Tax

(1) The fees and costs provided for in this chapter, and any compensation charged and paid for use of the right-of-way provided for in this chapter, are separate from, and in addition to, any and all other federal, state, local, and city charges, including but not limited to: any permit fee, or any other generally applicable fee, tax, or charge on business, occupations, property, or income as may be levied, imposed, or due from a utility operator, utility provider or licensee, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

(2) The City has determined that any fee or tax provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

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

10.030 Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein:

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

"Communication Service” means any service provided for the purpose of 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. Communications service includes all forms of telephone services and voice, video, data or information transport, but does not include:

1. Cable Service;
2. Open video system service, as defines in 47 C.F.R. 76;
5. Over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and
6. Direct-to-home satellite services within the meaning of Section 602 of the Telecommunications Act.

"Franchise" means a grant of authority by agreement and contract and ordinance allowing the use of right-of-way within the City for utility facilities.

"Person" means an individual, corporation, company, association, joint stock company or association, firm, partnership, limited liability company or governmental entity

"Right-of-way" means the surface of, and the space above and below, any public street, road, alley, highway, dedicated way, local access road, sidewalks and other public ways used or intended to be used by the general public for vehicles and pedestrians, and any utility easement within the city that are designated for providers of utility services and regulated under the West Linn Municipal Code. This definition is limited to areas over which the City has the right, jurisdiction or authority to grant a license to utility operators to occupy and use such areas for utility facilities.

"Utility Facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located or to be located within the right-of-way in the City and used or to be used for the purpose of providing utility services.

"Utility Operator" means any person who owns, places, controls, operates, or maintains a utility facility within the city

"Utility Provider" means any person who provides utility service to customers within the city limits, whether or not the provider owns any utility facilities in the right-of-way.

"Utility Services" means the provision, by means of utility facilities and without regard to whether such facilities are owned by the service provider, of electricity, natural gas, communications service, or cable service, to or from customers within the corporate boundaries of the City, or the transmission of any of these services through the City whether or not customers within the City receive those transmissions or services. "Utility services" shall not include the provision of water, sewer or stormwater service.

10.040 Utility Provider Registration

(1) Registration Required. Every person that desires to provide utility services to customers within the city shall register with the City prior to providing any utility services to any customer in the city. Every person providing utility services to customers within the city as of the effective date of this chapter shall register within 30 days of the effective date of this chapter.

(2) Annual Registration. After registering with the City pursuant to subsection (1) of this section, the registrant shall, by December 31st of each year, file with the City a new registration form if it intends to provide utility service at any time in the following calendar year. Registrants that file an initial registration pursuant to subsection (1) of this section on or after September 30th shall not be required to file an annual registration until December 31st of the following year.

(3) Registration Application. The registration shall be on a form provided by the City, and shall be accompanied by any additional documents required by the City to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and list the facilities over which the utility services will be provided.

(4) Registration Fee. Each application for registration shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council sufficient to fully recover all of the City's costs of administering the registration program.

(5) Exception. A person with a valid franchise agreement or right-of-way utility license from the City shall not be required to register to provide the utility services expressly permitted by the franchise agreement or right-of-way utility license.

10.050 Right-of-Way Utility Licenses and Other Agreements.

(1) License Required.

(a) Except those utility operators with a valid franchise under Chapter 9, every person shall obtain a right-of-way utility license from the City prior to conducting any work in the right-of-way related to utility facilities.

(b) Every person or business that owns, operates or controls utility facilities in the right-of-way as of the effective date of this chapter shall apply for a right-of-way utility license from the City within 30 days of the later of: (i) the effective date of this chapter, (ii) the expiration of a valid franchise or other agreement from the City.

(2) License Application. The right-of-way utility license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, a description of the facilities and ownership of the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter.

(3) License Application Fee. A nonrefundable application fee shall accompany the right-of-way utility application as set by the City Council.

(4) Determination by City. The City shall issue a written determination granting or denying the right-of-way utility license in whole or in part. If the right-of-way utility license is denied, the written

determination shall include the reasons for denial. The right-of-way utility license shall be evaluated based upon the provisions of this chapter, the continuing capacity of the right-of-way to accommodate the applicant's proposed utility facilities and the applicable Federal, State and local laws, rules, regulations and policies. If the City determines that an applicant is in violation of the terms of this Chapter at the time it submits its application, the City may require the applicant to cure the violation or submit a detailed plan to cure the violation before the City will consider the application or grant the right-of-way utility license. If the City requires the applicant to cure or submit a plan to cure a violation, the City will grant or deny the right-of-way utility license application only after confirming that the violation has been cured or of accepting the applicant's plan to cure the violation.

(5) Changes to Information Listed on Right-of-Way Utility License Application. Within 30 days of a material change to the information listed on the right-of-way utility license application, the licensee shall notify the City in writing of such change. Material changes include Licensee's name, address, contact information for the authorized contract/representative, changes in the services offered and types of facilities installed in the right-of-way.

(6) Franchise Agreements. If the public interest warrants, as determined by the City in its sole discretion, the City and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this chapter with the review and approval of City Council. The franchisee shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with the express provisions of any such franchise. In the event of a conflict between the express provisions of a franchise and this chapter, the franchise shall control. Utility operators providing cable service shall be subject to the separate cable franchise requirements of the City and other applicable authority.

(7) Rights Granted

(a) A right-of-way utility license granted under this chapter authorizes and permits the licensee to construct, place, maintain, and operate utility facilities in the right-of-way for the term of the license, subject to the provisions of city code, rules, regulations and policies, and other applicable provisions of state and federal law.

(b) Each right-of-way utility license granted under this Chapter authorizes only those utility facilities and services applied for and approved by the City. The City may approve the provision of multiple services in one right-of-way utility license.

(c) A right-of-way utility license granted under this chapter shall be personal to the licensee and may not be assigned, sublicensed, or transferred, in whole or in part, except as permitted by this chapter.

(d) A right-of-way utility license granted under this chapter does not grant, convey, create, or vest in a licensee any real property interest in land, including any fee, leasehold interest, or easement, and does not convey equitable or legal title in the right-of-way. The right-of-way utility license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title of record that may affect the right-of-way. A right-of-way utility license granted under this chapter is not a warranty of title. Licensee expressly acknowledges and agrees to enter on to and use the licensed right-of-way in its "as-is and with all faults" condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the right-of-way's condition or suitability for the licensee's use. By its acceptance of the right-of-way utility license, the licensee expressly acknowledges and agrees

that neither the City nor its agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the physical, structural or environmental condition of the right-of-way, and the present or future suitability of the right-of-way for the licensee's use.

(e) The issuance of a right-of-way utility license does not constitute a waiver or bar to the City's exercise of any governmental right or power, including without limitation the City's police powers and regulatory powers, regardless of whether such powers existed before or after the right-of-way utility license is issued.

(8) Term. Subject to the termination provisions in subsection 14 of this section, the right-of-way utility license granted pursuant to this chapter will be effective as of the date it is issued by the City and will have a term ending five calendar years from: (1) January 1st of the year in which the right-of-way utility license took effect for licenses that become effective between January 1st and June 30th; or (2) January 1st of the year after the right-of-way utility license took effect for licenses that become effective between July 1st and December 31st.

(9) License Nonexclusive. No right-of-way utility license granted pursuant to this section shall confer any exclusive right, privilege, license, or franchise to occupy or use the right-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises, or other rights to other persons, as well as the City's right to use the right-of-way, for similar or different purposes.

(10) Reservation of City Rights.

(a) The City reserves all rights, title, and interest in its right-of-way. A right-of-way utility license granted under this chapter does not prevent the City from exercising any of its rights, including without limitation grading, paving, repairing, or altering any right-of-way, constructing, laying down, repairing, relocating, or removing city facilities or establishing any other public work, utility facilities, or improvement of any kind, including repairs, replacement, or removal of any city facilities.

(b) If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any right-of-way, public work, city utility facility, city improvement, improvement that implements a city urban renewal agency project, or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in this chapter, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

(11) Multiple Services

(a) A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the right-of-way utility license and Right-of-Way Usage Fee requirements of this chapter for the portion of the facilities and extent of utility services delivered over those facilities.

(b) A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate right-of-way utility license for each utility service, provided the license granted by the City authorizes the multiple utility services and the utility operator

files separate remittance forms and pays the applicable Right-of-Way Usage Fee for each utility service.

(c) A utility operator may lease capacity on or in its utility facilities to third parties, provided (i) the utility operator provides the City with the name and business address of any third party lessee, unless disclosure is prohibited by applicable law; (ii) the use of the operator's capacity does not require or involve any additional equipment owned or operated by the lessee to be installed on the facility; and (iii) the operator maintains control over and responsibility for the facility at all times.

(d) A utility operator is not required to pay the right-of-way utility provider registration fee, right-of-way utility license fee or Right-of-Way Usage Fee owed to the City by the third party that leases capacity of the utility operator's facilities.

(12) Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the right-of-way utility license. The right-of-way utility license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility facilities and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. The licensee requesting the transfer or assignment must cooperate with the City and provide documentation, as the City deems necessary, in the City's sole discretion and at no cost to the City, to evaluate the transferee's ability to comply with the provisions of the right-of-way utility license. If the City approves such transfer or assignment, the transferee or assignee shall become responsible for fulfilling all obligations under the right-of-way utility license. A transfer or assignment of a right-of-way utility license does not extend the term of the license.

(13) Renewal. At least 90, but no more than 180, calendar days before the expiration of a right-of-way utility license granted under this section, a licensee seeking renewal of its license shall submit a right-of-way utility license application to the City, including all information and fees required in this chapter as may be supplemented by the City Administrator. The City shall review the application and grant or deny the right-of-way utility license within 90 days after the application is duly filed. If the City determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the City may require, by a written notice, that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application or grant the right-of-way utility license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the right-of-way utility license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

(14) Termination.

(a) Revocation or Termination of a License. The City Council may terminate or revoke the right-of-way utility license granted pursuant to this chapter for any of the following reasons:

(i) Violation of any of the provisions of this chapter;

(ii) Violation of any provision of the right-of-way utility license;

(iii) Misrepresentation in a right-of-way utility license application;

(iv) Failure to pay taxes, compensation, fees or costs due the City after final determination by the City of the taxes, compensation, fees or costs;

(v) Failure to restore the right-of-way after work as required by this chapter or other applicable state and local laws, ordinances, rules and regulations;

(vi) Failure to comply with technical, safety and engineering standards related to work

in the right-of-way; or

(vii) Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.

(b) Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

(i) The egregiousness of the misconduct;
(ii) The harm that resulted;
(iii) Whether the violation was intentional;
(iv) The licensee's history of compliance; and/or
(v) The licensee's cooperation in discovering, admitting and/or curing the violation.

(c) Notice and Cure. The City shall give the licensee written notice of any apparent violations before terminating a right-of-way utility license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the licensee to demonstrate that the licensee has remained in compliance, that the licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the licensee is in the process of curing a violation or noncompliance, the licensee must demonstrate that it acted promptly and continues to actively work on compliance. If the licensee does not respond or if the City Administrator or designee determines that the licensee's response is inadequate, the City Administrator or designee shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the right-of-way utility license shall be terminated or revoked and if any penalties or sanctions will be imposed.

(d) Termination by Licensee. If a licensee ceases to be required to have a right-of-way utility license under this chapter, the licensee may terminate its license by giving the City 30 days' prior written notice. Licensee may reapply for a right-of-way utility license at any time. No refunds or credits will be given for right-of-way utility licenses terminated by the licensee or the City. Within 45 days of surrendering a right-of-way utility license, the licensee shall file a final remittance form with the City stating, "final remittance" and shall pay all fees due under this chapter through the date of termination. The licensee shall also remove its utility facilities from the right-of-way as required by West Linn Municipal Code Section 10.070.

10.060 Construction and Restoration.

(1) Construction Codes.

(a) Utility facilities shall be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including but not limited to the National Electrical Code and the National Electrical Safety Code and the Public Works Standards, in effect at the time of the work.

(b) When a utility operator, or any person acting on its behalf, does any work in or affecting the right-of-way, the utility operator shall, at its own expense, promptly restore the right-of-way as directed by the City consistent with applicable city codes and Public Works Standards, rules and regulations in effect at the time of the work.

(2) Construction Permits.

(a) No person shall perform any work on utility facilities within the right-of-way without first obtaining all required permits and approvals, including but not limited to any permits required in Section 3.250 and the provisions of this Chapter, and wireless siting permits required in chapter 57 of the Community Development Code and any applicable City design standards.

(b) The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the owner of the facilities has applied for and received a valid right-of-way utility license as required by this chapter, or has a current franchise agreement, and all applicable fees have been paid.

(c) No permit is required for routine maintenance or repairs to customer service drops where such repairs or maintenance do not require cutting, digging, or breaking of, or damage to, the right-of-way and do not result in closing or blocking any portion of the travel lane for vehicular traffic, bicycle lanes or sidewalks.

(d) Emergencies. In the event of an emergency, a utility operator with a right-of-way utility license pursuant to this chapter or a valid franchise agreement, or the utility operator's contractor, may perform work on its utility facilities without first obtaining a permit from the City; provided, that, to the extent reasonably feasible, it attempts to notify the City Engineer prior to commencing the emergency work and in any event applies for a permit from the City as soon as reasonably practicable after commencing the emergency work. For purposes of this subsection (2), "emergency" means a circumstance in which immediate work or action is necessary to restore lost service or prevent immediate harm to persons or property.

(e) Applications for Permits. Applications for permits to perform work within the right-of-way shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(i) That the utility facilities will be constructed in accordance with all applicable codes, rules and regulations, including Public Works Standards.

(ii) The location and route of all utility facilities to be installed above ground or on existing utility poles and, if the utility operator owns the existing utility poles, a comprehensive summary, including ownership and structural condition, of any and all infrastructure currently attached to the pole. Unless approved in writing by the City Engineer, the construction of new utility poles is prohibited. An existing utility pole that is damaged or failing may be repaired or replaced with a new utility pole of substantially similar dimensions and materials. For utility pole appurtenances placed on poles not owned by the applicant, provide written consent of the utility operator that owns the pole which authorizes its use for the appurtenances and certifies its structural integrity for that use.

(iii) The location and route of all utility facilities on or in the right-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the right-of-way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. The City may require additional information necessary to demonstrate that the proposed location can accommodate the utility facilities, as determined by the City. A cross-section shall be provided showing the applicant's new and existing utility facilities in relation to the street, curb, sidewalk, or right-of-way.

(iv) The construction methods to be employed for work within or adjacent to the right-of-way, description of any improvements that applicant proposes to temporarily or permanently remove or relocate, and if deemed necessary by the City, methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way.

(v) The permittee has an adequate traffic control plan

(f) All permit applications shall be accompanied by the verification of a 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. The City may, in its sole discretion, require the verification of a registered professional engineer or other licensed professional, at no cost to the City.

(g) All permit applications shall be accompanied by a written construction schedule, which shall include an estimated start date and a deadline for completion of construction. The construction schedule is subject to approval by the City.

(h) Prior to issuance of a construction permit, the applicant shall pay a permit fee in the amount determined by resolution of the City Council.

(i) If satisfied that the application, plans and documents submitted comply with all requirements of this chapter, the City shall issue a permit authorizing the work in the right-of-way, 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.

(j) Except in the case of an emergency, the permittee shall notify the City not less than two working days in advance of any work in the right-of-way.

(k) All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the utility facilities. The City and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

(l) All work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter shall be removed or corrected at the sole cost and expense of the permittee. The City is authorized to stop work in order to ensure compliance with the provisions of this chapter. If the permittee fails to remove or correct work as required in this subsection, the City may remove or correct the work at the cost and expense of the permittee, after notice and opportunity to cure, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations.

(m) The permittee shall be responsible for providing correct and complete information on the permit application and in any related information provided to the City. If the City believes the permittee misrepresented, misstated, or omitted any material fact(s) in or related to its permit application, the City may deny or revoke the permit. The City may at any time require the permittee to take additional measures to protect the health, safety, and welfare of the public. The permittee shall be responsible for and pay all costs and expenses for such measures.

(n) All construction activities must comply with the work hours and noise regulations of the City Municipal Code Section 5.487

(o) The permittee shall promptly complete all work so as to minimize disruption of the right-of-way

and other public and private property. All work within the right-of-way, including restoration, must be completed within 60 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the City.

(p) The permittee shall protect the work area with sufficient traffic controls that follow the latest edition of the ODOT Temporary Traffic Control Handbook, reviewed and accepted by the City before work begins. The permittee shall at all times use such workers, tools and materials, flaggers, barricades, and other safety devices as may be necessary to properly protect bicyclists, pedestrians, construction personnel, and vehicular traffic upon the roadway, and to warn and safeguard the public against injury or damage resulting from the work. All work must comply with all applicable Americans with Disabilities Act requirements and the requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

(q) Any supervision or control exercised by the City shall not relieve the permittee or utility operator of any duty to the general public nor shall such supervision or control relieve the permittee or utility operator from any liability for loss, damage or injury to persons or property.

(3) Performance Surety.

(a) The City may, in the City's sole discretion, require a utility operator or permittee to provide a performance bond or other form of surety acceptable to the City equal to at least 125 percent of the estimated cost of the work within the right-of-way, which bond shall be provided before work is commenced.

(b) If required, the performance bond or other form of surety acceptable to the City shall remain in force until 60 days after substantial completion of the work, as determined in writing by the City, including restoration of right-of-way and other property affected by the work.

(c) If required, the performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:

(i) Timely completion of the work;

(ii) That the work is performed in compliance with applicable plans, permits, technical codes and standards;

(iii) Proper location of the utility facilities as specified by the City;

(iv) Restoration of the right-of-way and other property affected by the work;

(v) Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

(d) The release of the performance bond or other surety pursuant to subsection (3)(a) of this section does not relieve the utility operator from its obligation to restore right-of-way or other property as required in subsection (5) of this section regardless of when the failure to restore right-of-way or other property as required by this chapter occurs or is discovered.

(4) Injury to Persons or Property. A utility operator is responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work, regardless of whether the work is performed by a utility operator or performed by an independent contractor performing the work on behalf of the utility operator. A utility operator, or any

person acting on its behalf, must preserve and protect from injury or damage the public using the right-of-way, other utility operators' facilities in the right-of-way, and any adjoining property, and take other necessary measures to protect life and property, including but not limited to sidewalks, streets, buildings, walls, fences, trees, and facilities that may be subject to damage from the permitted work.

(5) Restoration.

(a) When an operator, or any person acting on its behalf, does any work in or affecting any right-of-way, it shall, at its own expense, promptly restore such right-of-way or property to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules, and regulations, unless otherwise directed by the City.

(b) If weather or other conditions beyond the operator's control do not permit the complete restoration required by the City, the operator shall temporarily restore the affected right-of-way or property. Such temporary restoration shall be at the operator's sole expense and the operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the City.

(c) If the utility operator fails to restore right-of-way as required in this chapter, the City shall give the utility operator written notice and provide the utility operator a reasonable period of time, which shall be not less than 10 days, unless an emergency or threat to public safety is deemed to exist, and shall not exceed 30 days unless agreed to in writing by the City, to restore the right-of-way. If, after said notice, the utility operator fails to restore the right-of-way as required in this chapter, the City shall cause such restoration to be made at the cost and expense of the utility operator. If the City determines a threat to public safety exists, the City may provide necessary temporary safeguards, at the utility operator's sole cost and expense, and the utility operator shall have 24 hours to commence restoration. If the utility operator does not commence work in 24 hours, the City, at its sole option, may commence restoration at the utility operator's sole cost and expense. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an invoice from the City.

(6) Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City or its agents to determine compliance with the provisions of this chapter and all other applicable state and city laws, codes, ordinances, rules, and regulations. Every utility operator shall reasonably cooperate with the City in permitting the inspection of utility facilities in a timely manner after request by the City. The utility operator shall perform all testing, or permit the City or its agents to perform any testing at the operator's expense, required by the City to determine that the installation of the operator's facilities and the restoration of the right-of-way comply with the terms of this chapter and applicable state and city laws, codes, ordinances, rules, and regulations.

(7) Coordination of Construction. All operators shall make a good faith effort to both cooperate with and coordinate their future construction schedules with those of the City and other users of the right-of-way.

(a) Prior to January 1 of each year, operators shall provide the City with a schedule of known proposed construction activities for that year in, around, or that may affect the right-of-way and any city facilities.

(b) At the City's request, operators shall meet with the City annually, or as determined by the City,

to schedule and coordinate construction in the right-of-way.

(c) All construction locations, activities, and schedules within the right-of-way shall be coordinated as ordered by the City to minimize public inconvenience, disruption, and damages to persons and property.

(8) Interference with Right-of-Way. No utility operator or other person may locate or maintain any utility facilities so as to unreasonably interfere with the use of the right-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the right-of-way. Utility facilities shall not be located in a manner that restricts the line of sight for vehicles or pedestrians nor interferes with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the right-of-way shall at all times be consistent with city codes, ordinances, rules and regulations, which includes without limitation any policies, standards, specifications, and other guidelines adopted by the City Engineer pursuant to this chapter.

10.070 Location of Facilities

(1) Location of Facilities. Unless otherwise agreed to in writing by the City:

(a) Utilities shall be installed underground in all areas of the City where there are no existing overhead utility poles in the right-of-way or no space on existing poles in the right-of-way. No new poles are to be added to the right-of-way unless specifically approved by the City Engineer. This requirement shall not apply to antennas, pedestals, cabinets or other above-ground equipment of any utility operator for which the City has given written authorization to place such above-ground equipment in the right-of-way. The City reserves the right to require written approval of the location of any such above-ground equipment in the right-of-way.

(b) Whenever any existing electric utilities, cable facilities or communications facilities are located underground within a right-of-way of the City, the utility operator with permission to occupy the same right-of-way shall install all new facilities underground at its own expense. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts where there are existing poles in the right-of-way, or to antennas, pedestals, cabinets, or other above-ground equipment of any utility operator for which the City has given written authorization to place such above-ground equipment in the right-of-way.

(2) Relocation of Utility Facilities.

(a) The City may require a utility operator, at the utility operator's expense, to temporarily or permanently remove, relocate, change or alter the location or position of any utility facility within a right-of-way, including relocation of aerial facilities underground. A request under this section shall be made in writing by the City. The requirement to relocate aerial facilities underground shall not apply to antennas or high voltage lines unless otherwise directed by the City.

(b) Nothing herein shall be deemed to preclude a utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs, or agreements; provided, that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

(c) The City shall provide written notice of the time by which a utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, change, alter or underground any utility facility as requested by the City, by the date established by

the City, the utility operator shall pay all costs incurred by the City due to such failure. Costs shall include but not be limited to costs related to project delays. If the utility operator refuses to timely remove, relocate, change, alter or underground its facilities as requested by the City, the City may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facility to be removed, relocated, changed, altered, or undergrounded at the utility operator's sole expense. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an invoice from the City.

(d) The City shall not bear any responsibility, incur any costs or otherwise compensate the utility operator in relocation of its facilities, including instances in which the utility operator must relocate outside the right-of-way.

(3) Removal of Unauthorized Facilities.

(a) Unless otherwise agreed to in writing by the City, within 30 days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within the right-of-way shall, at its own expense, remove the facility and restore the right-of-way.

(b) A utility facility is unauthorized under any of the following circumstances:

(i) The utility facility is outside the scope of authority granted by the City under the right-of-way utility license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the right-of-way utility license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.

(ii) The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one year. An operator may attempt to overcome this presumption by presenting plans for future use of the facility to the City, which will determine application of the presumption in its sole discretion.

(4) Removal by City.

(a) The City retains the right and privilege to cut or move any utility facilities located within the right-of-way, without notice, as the City may determine to be necessary, appropriate, or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable State and Federal safety laws and regulations to the extent reasonably practical without impeding the City's response to the emergency. The City will attempt to notify the utility operator of any cutting or moving of facilities prior to doing so. If such notice is not practical, the City will notify the operator as soon as reasonably practical after resolution of the emergency.

(b) If the utility operator fails to remove any facility when required to do so under this chapter, the City may, upon at least 10 days prior written notice, remove the facility using qualified personnel or contractors consistent with applicable State and Federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an invoice from the City. The obligation to remove shall survive the termination of the right-of-way utility license or

franchise.

(c) The City shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to this section or resulting from the utility operator's failure to remove, relocate, alter, or underground its facilities as required by this chapter.

(5) Engineering Record Drawings

(a)The utility operator shall provide the City with a complete set of record drawings in a form acceptable to the City showing the location of all its utility facilities in the right-of-way after initial construction if such plan changed during construction. The utility operator shall, at no cost to the City, provide updated complete sets of as-built plans showing all utility facilities in the rights-of-way upon request of the City, but not more than once per year.

(b) The utility provider will also provide, at no cost to the City, a comprehensive map showing the location of any facilities in the city. Such map will be provided in a format acceptable to the City with accompanying data sufficient for the City to determine the exact location of facilities (GIS). The City may not request such information more than once per calendar year.

(c) Within 30 days of a written request from the City, or as otherwise agreed to in writing by the City, every utility operator shall make available for inspection by the City at reasonable times and intervals all maps, records, books, and other documents maintained by the utility operator with respect to its utility facilities within the right-of-way reasonably necessary for the City to ensure compliance with this chapter or to protect the public health, safety, and welfare. Access shall be provided within the city unless prior arrangement for access elsewhere has been made with the City.

10.080 Maintenance

(1) Every utility operator shall install and maintain all utility facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own cost and expense, repair and maintain utility facilities from time to time as may be necessary to accomplish this purpose.

(2) If a utility operator fails to repair and maintain facilities as required in subsection 1 of this section, the City may provide written notice of the failure to repair or maintain and establish a date upon which such repair or maintenance must occur. If the utility operator fails to cause the repair or maintenance to occur within the date established by the City, the City may perform such repair or maintenance using qualified personnel or contractors and charge the utility operator for the City's costs. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an invoice from the City.

10.090 Vacation of Rights-of-Way

(1) If the City vacates any right-of-way, or portion thereof, that an operator uses, the operator shall, at its own expense, remove its facilities from the right-of-way unless: (a) the City reserves a public utility easement, which the City shall make a reasonable effort to do; provided, that it is practicable to do so and there is no expense to the City; or (b) the operator obtains an easement for its facilities.

(2) If the operator fails to remove its facilities within 30 days after a right-of-way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified workers in accordance with state and federal laws and regulations at the operator's sole expense. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an

invoice from the City.

10.100 Fees, Payment and Penalties.

(1) Except as set forth in subsection (5) of this section, every utility operator and every utility provider shall pay the City a right-of-way usage fee as determined by resolution of the City Council.

(2) No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

(3) To the extent that Federal or State law imposes limitations on the amount that the City can charge as a right-of-way usage fee that is less than the fee established in its fees and charges resolution, the right-of-way usage fee shall be the maximum amount allowed by applicable law.

(4) Utility operators that pay a franchise fee may deduct the amount of the franchise fee payments from the amount due for the right-of-way usage fee, but in no case will the right-of-way usage fee be less than zero dollars. Nothing in this section limits the City's authority to establish a franchise fee that is greater than the right-of-way usage fee.

(5) A person that is both a utility operator and a utility provider shall be subject to the right-of-way usage fee(s) applicable to utility operators and, in addition, to the right-of-way usage fee(s) applicable to utility providers; provided, however, that the person must pay only the greater of the two fees, or, if the two fees are the same, the utility operator right-of-way usage fee.

(6) Unless otherwise agreed to in writing by the City, the right-of-way usage fee set forth in subsection (1) of this section shall be paid quarterly, in arrears, within 30 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable on a remittance form provided by the City. A utility operator or utility provider shall provide, at no cost to the City, any additional reports or information the City deems necessary, in its sole discretion, to ensure compliance with this section. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the city limits, or any other information needed for the City to readily verify compliance.

(7) In the event the right-of-way fee is not received by the City on or before the due date or is underpaid, the utility operator or utility provider must pay interest from the due date until full payment is received by the city at a rate equal to nine percent per annum, compounded daily, or the maximum interest rate allowed by law.

(8) The City reserves the right to enact other fees and taxes applicable to the utility operators and utility providers subject to this chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator or utility provider may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the right-of-way usage fee or any other fees required by this chapter.

10.110 Records, Reporting and Appeal.

(1) Each person subject to this chapter shall maintain records that document the accuracy of payments pursuant to West Linn Municipal Code Section 10.100 for at least seven years.

(2) The City may conduct an investigation into the accuracy of the payments received by the City,

including any revenues included or excluded from the gross revenues used to calculate the right-of-way usage fees owed. The utility operator or utility provider shall make available for investigation all records and accounting of the utility operator or utility provider for verification of the reports of the company and the fees paid by the company. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the city limits, or any other information needed for the City to readily verify compliance.

(3) If the City's audit of the books, records and other documents or information of the utility operator or utility provider demonstrates that the operator or provider has underpaid the right-of-way usage fee or franchise fee by 3% or more in any one year, the operator shall reimburse the City for the cost of the audit, in addition to any interest and penalties owed as provided by this chapter or as specified in a franchise agreement.(4) Any underpayment, including any interest, penalties or audit and review cost reimbursement, shall be paid within 30 days of the City's notice to the utility operator or utility provider of such underpayment.

(5) A utility operator or utility provider may appeal the City's demand for payment to the City Council. The appeal must be in writing and specify the grounds for the appeal. The Council will hold a hearing on the appeal. If the Council determines that the utility operator or utility provider is required to pay an additional amount, the utility operator or utility provider shall pay the amount owed within 30 days of the Council's decision.

10.120 Insurance & Indemnification

(1) Insurance

(a) All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:

(i) Comprehensive general liability insurance with limits not less than Three Million Dollars ($3,000,000) per occurrence and Three Million Dollars ($3,000,000) general aggregate for damage to property or personal injury (including death) and Three Million Dollars ($3,000,000) for all other types of liability.

(ii) Commercial automobile liability insurance covering all owned, non-owned and hired vehicles with a limit not less than Three Million Dollars ($3,000,000) per accident for bodily injury and personal damage.

(iii) Worker's compensation within statutory limits and employer's liability with limits of not less than $1,000,000.

(iv) If not otherwise included in the policies required by subsection (1)(a) (i) of this section, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $3,000,000.

(v) Utility operators may utilize primary and umbrella liability insurance policies to satisfy the preceding insurance policy limit requirements.

(b) The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall

name, with the exception of workers' compensation, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. Upon receipt of notice from its insurer(s) the utility operator shall provide the City with 30 days' prior written notice of cancellation or required coverage, and the certificate of insurance shall include such an endorsement. The utility operator may use a blanket additional insured endorsement with the written approval of the City. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance within 30 days. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage, subject to written approval by the City.

(c) The utility operator shall maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, evidencing the coverage required above.

(2) Finance Assurance

Unless otherwise agreed to in writing by the City, before a franchise granted or right-of-way utility license issued pursuant to this chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security or assurance, in a form acceptable to the City, as security for the full and complete performance of the franchise or right-of-way utility license, if applicable, and compliance with the terms of this chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by WLMC Section 3.255(3).

(3) Indemnification

To the fullest extent permitted by law, each utility operator will defend, indemnify and hold harmless the City and its officers, employees, agents and representatives from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless or wrongful acts, or any acts or omissions, failure to act or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors or lessees in the construction, operation, maintenance, repair or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise agreement. The acceptance of a right-of-way utility license under WLMC 10.040 constitutes such an agreement by the applicant whether the same is expressed or not.

10.130 Compliance

Every licensee, utility operator and utility provider shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules, and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license, registration, franchise, or agreement granted under this chapter. It is the sole responsibility of the person authorized to construct, install, operate and maintain a utility facility in the 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.

10.140 Confidential & Proprietary Information

If any person is required by this chapter to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, the City will take reasonable steps to protect the confidential or proprietary nature of the books, records, maps or information to the extent permitted by the Oregon Public Records Law; provided, that all documents are clearly marked as confidential by the person at the time of disclosure to the City. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably possible the City will notify the person who submitted the confidential information of the records request prior to releasing the confidential information. The City is not required to incur any costs to protect such documents, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

10.150 Severability & Preemption

(1) The provisions of this chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

(2) If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this chapter is for any reason declared or 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 this chapter 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, term, provision, condition, covenant or portion of this chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

10.160 Application to Existing Agreements.

To the extent that this chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this chapter shall apply to all existing franchise agreements granted to utilities by the City.

10.170 Violation.

(1) Any person found in violation of any provision of this chapter or the right-of-way utility license shall be subject to a penalty of not less than $150.00 nor more than $2,000 per day for each day the violation has existed. Each violation of any provision of this chapter or the right-of-way utility license shall be considered a separate violation for which separate penalties can be imposed. A finding of a violation of this chapter or a right-of-way utility license and assessment of penalties shall not relieve the responsible party of the obligation to remedy the violation.

(2) The City Manager or designee is authorized to find a person in violation of this chapter or a right-of-way utility license and to establish the amount of the penalty consistent with the range provided in subsection (1).

(3) Prior to imposing a penalty, the City Manager or designee shall provide such person with notice of the violation and an opportunity to provide evidence that the violation has been cured. The City Manager or designee shall state the basis for the violation and the amount of the penalty imposed.

(4) In establishing the amount of a penalty, the City Manager or designee shall consider the following factors:

a. The actions taken by the person to mitigate or correct the violation;

b. Whether the violation is repeated or continuous in nature;

c. The magnitude or gravity of the violation;

d. The cooperation in discovering, admitting, or curing the violation;

e. The cost to the city of investigating, correcting, attempting to correct and/or prosecuting the violation; and

f. Any other factor deemed to be relevant.

(5) A person subject to penalties under the provisions of subsection (3) of this section may appeal the City Manager or designee's decision pursuant to the Administrative Appeals Process in section 1.400 - 1.430 of the West Linn Municipal Code.

(6) The penalties imposed by this section are in addition to and not in lieu of any remedies available to the City.

ORDINANCE 1759

AN ORDINANCE RELATING TO UTILITY LICENSES AND USE OF THE RIGHT-OF-WAY

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

> Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, the City has jurisdiction to control the public right-of-way within the City and may regulate the use of the right-of-way by ordinance, franchise, license, permit or any combination thereof; and

WHEREAS, Chapter 10 of the Municipal Code was enacted in 2021 to provide uniform, standardized terms and compensation for the use of the City's right-of-way by utility providers;

WHEREAS, the need for additional clarity and improvements to Chapter 10 of the Municipal Code have been identified that will improve code implementation and compliance by utility providers using the right-of-way within West Linn; and

WHEREAS, the City finds it is in the public interest to enact the changes to the West Linn Municipal Code as set forth in this Ordinance.

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Repeal. West Linn Municipal Code Chapter 10 [Utility License and Use of the Right-Of-Way] is repealed in its entirety. Any municipal code provisions in conflict with the provisions in this Ordinance are also repealed.

SECTION 2. Amendment. West Linn Municipal Code Chapter 10 [Utility License and Use of the Right-Of-Way] is adopted as set forth is Exhibit A.

SECTION 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 4. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and

in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions of the ordinance were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 5. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions need not be codified and the City Recorder or the designee is authorized to correct any cross-references and any typographical errors.

SECTION 6. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the 14th day of July, 2025, and duly PASSED and ADOPTED this _____ day of _____, 2025.

_____
RORY BIALOSTOSKY, MAYOR

ATTEST:

_____
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Chapter 10

UTILITY LICENSE AND USE OF THE RIGHT-OF-WAY

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UTILITY LICENSE AND USE OF THE RIGHT-OF-WAY

10.000 Title.

The ordinance codified in this chapter shall be known and may be referenced as the Utility License and Use of the Right-of-Way ordinance.

10.010 Jurisdiction & Management of the Right-of-Way

(1) The City has jurisdiction and exercises regulatory management over all rights-of-way within the city under authority of the City Charter and state law.

(2) The City has jurisdiction and exercises regulatory management over each right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

(3) The exercise of jurisdiction and regulatory management of a 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.

(4) The provisions of this chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

10.020 Regulatory Fees & Compensation Not a Tax

(1) The fees and costs provided for in this chapter, and any compensation charged and paid for use of the right-of-way provided for in this chapter, are separate from, and in addition to, any and all other federal, state, local, and city charges, including but not limited to: any permit fee, or any other generally applicable fee, tax, or charge on business, occupations, property, or income as may be levied, imposed, or due from a utility operator, utility provider or licensee, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

(2) The City has determined that any fee or tax provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

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

10.030 Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein:

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

"Communication Service” means any service provided for the purpose of 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. Communications service includes all forms of telephone services and voice, video, data or information transport, but does not include:

1. Cable Service;
2. Open video system service, as defines in 47 C.F.R. 76;
5. Over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and
6. Direct-to-home satellite services within the meaning of Section 602 of the Telecommunications Act.

"Franchise" means a grant of authority by agreement and contract and ordinance allowing the use of right-of-way within the City for utility facilities.

"Person" means an individual, corporation, company, association, joint stock company or association, firm, partnership, limited liability company or governmental entity

"Right-of-way" means the surface of, and the space above and below, any public street, road, alley, highway, dedicated way, local access road, sidewalks and other public ways used or intended to be used by the general public for vehicles and pedestrians, and any utility easement within the city that are designated for providers of utility services and regulated under the West Linn Municipal Code. This definition is limited to areas over which the City has the right, jurisdiction or authority to grant a license to utility operators to occupy and use such areas for utility facilities.

"Utility Facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located or to be located within the right-of-way in the City and used or to be used for the purpose of providing utility services.

"Utility Operator" means any person who owns, places, controls, operates, or maintains a utility facility within the city

"Utility Provider" means any person who provides utility service to customers within the city limits, whether or not the provider owns any utility facilities in the right-of-way.

"Utility Services" means the provision, by means of utility facilities and without regard to whether such facilities are owned by the service provider, of electricity, natural gas, communications service, or cable service, to or from customers within the corporate boundaries of the City, or the transmission of any of these services through the City whether or not customers within the City receive those transmissions or services. "Utility services" shall not include the provision of water, sewer or stormwater service.

10.040 Utility Provider Registration

(1) Registration Required. Every person that desires to provide utility services to customers within the city shall register with the City prior to providing any utility services to any customer in the city. Every person providing utility services to customers within the city as of the effective date of this chapter shall register within 30 days of the effective date of this chapter.

(2) Annual Registration. After registering with the City pursuant to subsection (1) of this section, the registrant shall, by December 31st of each year, file with the City a new registration form if it intends to provide utility service at any time in the following calendar year. Registrants that file an initial

registration pursuant to subsection (1) of this section on or after September 30th shall not be required to file an annual registration until December 31st of the following year.

(3) Registration Application. The registration shall be on a form provided by the City, and shall be accompanied by any additional documents required by the City to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and list the facilities over which the utility services will be provided.

(4) Registration Fee. Each application for registration shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council sufficient to fully recover all of the City's costs of administering the registration program.

(5) Exception. A person with a valid franchise agreement or right-of-way utility license from the City shall not be required to register to provide the utility services expressly permitted by the franchise agreement or right-of-way utility license.

10.050 Right-of-Way Utility Licenses and Other Agreements.

(1) License Required.

(a) Except those utility operators with a valid franchise under Chapter 9, every person shall obtain a right-of-way utility license from the City prior to conducting any work in the right-of-way related to utility facilities.

(b) Every person or business that owns, operates or controls utility facilities in the right-of-way as of the effective date of this chapter shall apply for a right-of-way utility license from the City within 30 days of the later of: (i) the effective date of this chapter, (ii) the expiration of a valid franchise or other agreement from the City.

(2) License Application. The right-of-way utility license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, a description of the facilities and ownership of the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter.

(3) License Application Fee. A nonrefundable application fee shall accompany the right-of-way utility application as set by the City Council.

(4) Determination by City. The City shall issue a written determination granting or denying the right-of-way utility license in whole or in part. If the right-of-way utility license is denied, the written determination shall include the reasons for denial. The right-of-way utility license shall be evaluated based upon the provisions of this chapter, the continuing capacity of the right-of-way to accommodate the applicant's proposed utility facilities and the applicable Federal, State and local laws, rules, regulations and policies. If the City determines that an applicant is in violation of the terms of this Chapter at the time it submits its application, the City may require the applicant to cure the violation or submit a detailed plan to cure the violation before the City will consider the application or grant the

right-of-way utility license. If the City requires the applicant to cure or submit a plan to cure a violation, the City will grant or deny the right-of-way utility license application only after confirming that the violation has been cured or of accepting the applicant's plan to cure the violation.

(5) Changes to Information Listed on Right-of-Way Utility License Application. Within 30 days of a material change to the information listed on the right-of-way utility license application, the licensee shall notify the City in writing of such change. Material changes include Licensee's name, address, contact information for the authorized contract/representative, changes in the services offered and types of facilities installed in the right-of-way.

(6) Franchise Agreements. If the public interest warrants, as determined by the City in its sole discretion, the City and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this chapter with the review and approval of City Council. The franchisee shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with the express provisions of any such franchise. In the event of a conflict between the express provisions of a franchise and this chapter, the franchise shall control. Utility operators providing cable service shall be subject to the separate cable franchise requirements of the City and other applicable authority.

(7) Rights Granted

(a) A right-of-way utility license granted under this chapter authorizes and permits the licensee to construct, place, maintain, and operate utility facilities in the right-of-way for the term of the license, subject to the provisions of city code, rules, regulations and policies, and other applicable provisions of state and federal law.

(b) Each right-of-way utility license granted under this Chapter authorizes only those utility facilities and services applied for and approved by the City. The City may approve the provision of multiple services in one right-of-way utility license.

(c) A right-of-way utility license granted under this chapter shall be personal to the licensee and may not be assigned, sublicensed, or transferred, in whole or in part, except as permitted by this chapter.

(d) A right-of-way utility license granted under this chapter does not grant, convey, create, or vest in a licensee any real property interest in land, including any fee, leasehold interest, or easement, and does not convey equitable or legal title in the right-of-way. The right-of-way utility license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title of record that may affect the right-of-way. A right-of-way utility license granted under this chapter is not a warranty of title. Licensee expressly acknowledges and agrees to enter on to and use the licensed right-of-way in its "as-is and with all faults" condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the right-of-way's condition or suitability for the licensee's use. By its acceptance of the right-of-way utility license, the licensee expressly acknowledges and agrees that neither the City nor its agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the

physical, structural or environmental condition of the right-of-way, and the present or future suitability of the right-of-way for the licensee's use.

(e) The issuance of a right-of-way utility license does not constitute a waiver or bar to the City's exercise of any governmental right or power, including without limitation the City's police powers and regulatory powers, regardless of whether such powers existed before or after the right-of-way utility license is issued.

(8) Term. Subject to the termination provisions in subsection 14 of this section, the right-of-way utility license granted pursuant to this chapter will be effective as of the date it is issued by the City and will have a term ending five calendar years from: (1) January 1st of the year in which the right-of-way utility license took effect for licenses that become effective between January 1st and June 30th; or (2) January 1st of the year after the right-of-way utility license took effect for licenses that become effective between July 1st and December 31st.

(9) License Nonexclusive. No right-of-way utility license granted pursuant to this section shall confer any exclusive right, privilege, license, or franchise to occupy or use the right-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises, or other rights to other persons, as well as the City's right to use the right-of-way, for similar or different purposes.

(10) Reservation of City Rights.

(a) The City reserves all rights, title, and interest in its right-of-way. A right-of-way utility license granted under this chapter does not prevent the City from exercising any of its rights, including without limitation grading, paving, repairing, or altering any right-of-way, constructing, laying down, repairing, relocating, or removing city facilities or establishing any other public work, utility facilities, or improvement of any kind, including repairs, replacement, or removal of any city facilities.

(b) If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any right-of-way, public work, city utility facility, city improvement, improvement that implements a city urban renewal agency project, or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in this chapter, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

(11) Multiple Services

(a) A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the right-of-way utility license and Right-of-Way Usage Fee requirements of this chapter for the portion of the facilities and extent of utility services delivered over those facilities.

(b) A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate right-of-way utility license for each utility service, provided the license granted by the City authorizes the multiple utility services and the utility operator

files separate remittance forms and pays the applicable Right-of-Way Usage Fee for each utility service.

(c) A utility operator may lease capacity on or in its utility facilities to third parties, provided (i) the utility operator provides the City with the name and business address of any third party lessee, unless disclosure is prohibited by applicable law; (ii) the use of the operator's capacity does not require or involve any additional equipment owned or operated by the lessee to be installed on the facility; and (iii) the operator maintains control over and responsibility for the facility at all times.

(d) A utility operator is not required to pay the right-of-way utility provider registration fee, right-of-way utility license fee or Right-of-Way Usage Fee owed to the City by the third party that leases capacity of the utility operator's facilities.

(12) Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the right-of-way utility license. The right-of-way utility license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility facilities and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. The licensee requesting the transfer or assignment must cooperate with the City and provide documentation, as the City deems necessary, in the City's sole discretion and at no cost to the City, to evaluate the transferee's ability to comply with the provisions of the right-of-way utility license. If the City approves such transfer or assignment, the transferee or assignee shall become responsible for fulfilling all obligations under the right-of-way utility license. A transfer or assignment of a right-of-way utility license does not extend the term of the license.

(13) Renewal. At least 90, but no more than 180, calendar days before the expiration of a right-of-way utility license granted under this section, a licensee seeking renewal of its license shall submit a right-of-way utility license application to the City, including all information and fees required in this chapter as may be supplemented by the City Administrator. The City shall review the application and grant or deny the right-of-way utility license within 90 days after the application is duly filed. If the City determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the City may require, by a written notice, that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application or grant the right-of-way utility license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the right-of-way utility license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

(14) Termination.

(a) Revocation or Termination of a License. The City Council may terminate or revoke the right-of-way utility license granted pursuant to this chapter for any of the following reasons:

(i) Violation of any of the provisions of this chapter;

(ii) Violation of any provision of the right-of-way utility license;

(iii) Misrepresentation in a right-of-way utility license application;

(iv) Failure to pay taxes, compensation, fees or costs due the City after final determination by the City of the taxes, compensation, fees or costs;

(v) Failure to restore the right-of-way after work as required by this chapter or other applicable state and local laws, ordinances, rules and regulations;
(vi) Failure to comply with technical, safety and engineering standards related to work in the right-of-way; or
(vii) Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.

(b) Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:
(i) The egregiousness of the misconduct;
(ii) The harm that resulted;
(iii) Whether the violation was intentional;
(iv) The licensee's history of compliance; and/or
(v) The licensee's cooperation in discovering, admitting and/or curing the violation.

(c) Notice and Cure. The City shall give the licensee written notice of any apparent violations before terminating a right-of-way utility license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the licensee to demonstrate that the licensee has remained in compliance, that the licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the licensee is in the process of curing a violation or noncompliance, the licensee must demonstrate that it acted promptly and continues to actively work on compliance. If the licensee does not respond or if the City Administrator or designee determines that the licensee's response is inadequate, the City Administrator or designee shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the right-of-way utility license shall be terminated or revoked and if any penalties or sanctions will be imposed.

(d) Termination by Licensee. If a licensee ceases to be required to have a right-of-way utility license under this chapter, the licensee may terminate its license by giving the City 30 days' prior written notice. Licensee may reapply for a right-of-way utility license at any time. No refunds or credits will be given for right-of-way utility licenses terminated by the licensee or the City. Within 45 days of surrendering a right-of-way utility license, the licensee shall file a final remittance form with the City stating, "final remittance" and shall pay all fees due under this chapter through the date of termination. The licensee shall also remove its utility facilities from the right-of-way as required by West Linn Municipal Code Section 10.070.

10.060 Construction and Restoration.

(1) Construction Codes.

(a) Utility facilities shall be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including but not limited to the National Electrical Code and the National Electrical Safety Code and the Public Works Standards, in effect at the time of the work.

(b) When a utility operator, or any person acting on its behalf, does any work in or affecting the right-of-way, the utility operator shall, at its own expense, promptly restore the right-of-way as directed by the City consistent with applicable city codes and Public Works Standards, rules and regulations in effect at the time of the work.

(2) Construction Permits.

(a) No person shall perform any work on utility facilities within the right-of-way without first obtaining all required permits and approvals, including but not limited to any permits required in Section 3.250 and the provisions of this Chapter, and wireless siting permits required in chapter 57 of the Community Development Code and any applicable City design standards.

(b) The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the owner of the facilities has applied for and received a valid right-of-way utility license as required by this chapter, or has a current franchise agreement, and all applicable fees have been paid.

(c) No permit is required for routine maintenance or repairs to customer service drops where such repairs or maintenance do not require cutting, digging, or breaking of, or damage to, the right-of-way and do not result in closing or blocking any portion of the travel lane for vehicular traffic, bicycle lanes or sidewalks.

(d) Emergencies. In the event of an emergency, a utility operator with a right-of-way utility license pursuant to this chapter or a valid franchise agreement, or the utility operator's contractor, may perform work on its utility facilities without first obtaining a permit from the City; provided, that, to the extent reasonably feasible, it attempts to notify the City Engineer prior to commencing the emergency work and in any event applies for a permit from the City as soon as reasonably practicable after commencing the emergency work. For purposes of this subsection (2), "emergency" means a circumstance in which immediate work or action is necessary to restore lost service or prevent immediate harm to persons or property.

(e) Applications for Permits. Applications for permits to perform work within the right-of-way shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(i) That the utility facilities will be constructed in accordance with all applicable codes, rules and regulations, including Public Works Standards.

(ii) The location and route of all utility facilities to be installed above ground or on existing utility poles and, if the utility operator owns the existing utility poles, a comprehensive summary, including ownership and structural condition, of any and all infrastructure currently attached to the pole. Unless approved in writing by the City Engineer, the construction of new utility poles is prohibited. An existing utility pole that is damaged or failing may be repaired or replaced with a new utility pole of substantially similar dimensions and materials. For utility pole appurtenances placed on poles not owned by the applicant, provide written consent of the utility operator that owns the pole which authorizes its use for the appurtenances and certifies its structural integrity for that use.

(iii) The location and route of all utility facilities on or in the right-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the right-of-way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. The City may require additional information necessary to demonstrate that the proposed location can accommodate the utility facilities, as determined by the City. A cross-section shall be provided showing the applicant's new and existing utility facilities in relation to the street, curb, sidewalk, or right-of-way.

(iv) The construction methods to be employed for work within or adjacent to the right-of-way, description of any improvements that applicant proposes to temporarily or permanently remove or relocate, and if deemed necessary by the City, methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way.

(v) The permittee has an adequate traffic control plan

(f) All permit applications shall be accompanied by the verification of a 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. The City may, in its sole discretion, require the verification of a registered professional engineer or other licensed professional, at no cost to the City.

(g) All permit applications shall be accompanied by a written construction schedule, which shall include an estimated start date and a deadline for completion of construction. The construction schedule is subject to approval by the City.

(h) Prior to issuance of a construction permit, the applicant shall pay a permit fee in the amount determined by resolution of the City Council.

(i) If satisfied that the application, plans and documents submitted comply with all requirements of this chapter, the City shall issue a permit authorizing the work in the right-of-way, 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.

(j) Except in the case of an emergency, the permittee shall notify the City not less than two working days in advance of any work in the right-of-way.

(k) All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the utility facilities. The City and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

(l) All work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter shall be removed or corrected at the sole cost and expense of the permittee. The City is authorized to stop work in order to ensure compliance with the provisions of this chapter. If the permittee fails to remove or correct work as required in this subsection, the City may remove or correct the work at the cost and expense of the permittee, after notice and opportunity to cure, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations.

(m) The permittee shall be responsible for providing correct and complete information on the permit application and in any related information provided to the City. If the City believes the permittee misrepresented, misstated, or omitted any material fact(s) in or related to its permit application, the City may deny or revoke the permit. The City may at any time require the permittee to take additional measures to protect the health, safety, and welfare of the public. The permittee shall be responsible for and pay all costs and expenses for such measures.

(n) All construction activities must comply with the work hours and noise regulations of the City Municipal Code Section 5.487

(o) The permittee shall promptly complete all work so as to minimize disruption of the right-of-way and other public and private property. All work within the right-of-way, including restoration, must be completed within 60 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the City.

(p) The permittee shall protect the work area with sufficient traffic controls that follow the latest edition of the ODOT Temporary Traffic Control Handbook, reviewed and accepted by the City before work begins. The permittee shall at all times use such workers, tools and materials, flaggers, barricades, and other safety devices as may be necessary to properly protect bicyclists, pedestrians, construction personnel, and vehicular traffic upon the roadway, and to warn and safeguard the public against injury or damage resulting from the work. All work must comply with all applicable Americans with Disabilities Act requirements and the requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

(q) Any supervision or control exercised by the City shall not relieve the permittee or utility operator of any duty to the general public nor shall such supervision or control relieve the permittee or utility operator from any liability for loss, damage or injury to persons or property.

(3) Performance Surety.

(a) The City may, in the City's sole discretion, require a utility operator or permittee to provide a performance bond or other form of surety acceptable to the City equal to at least 125 percent of the estimated cost of the work within the right-of-way, which bond shall be provided before work is commenced.

(b) If required, the performance bond or other form of surety acceptable to the City shall remain in force until 60 days after substantial completion of the work, as determined in writing by the City, including restoration of right-of-way and other property affected by the work.

(c) If required, the performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:

(i) Timely completion of the work;

(ii) That the work is performed in compliance with applicable plans, permits, technical codes and standards;

(iii) Proper location of the utility facilities as specified by the City;

(iv) Restoration of the right-of-way and other property affected by the work;

(v) Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

(d) The release of the performance bond or other surety pursuant to subsection (3)(a) of this section does not relieve the utility operator from its obligation to restore right-of-way or other property as required in subsection (5) of this section regardless of when the failure to restore right-of-way or other property as required by this chapter occurs or is discovered.

(4) Injury to Persons or Property. A utility operator is responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work, regardless of whether the work is performed by a utility operator or performed by an independent contractor performing the work on behalf of the utility operator. A utility operator, or any person acting on its behalf, must preserve and protect from injury or damage the public using the right-of-way, other utility operators' facilities in the right-of-way, and any adjoining property, and take other necessary measures to protect life and property, including but not limited to sidewalks, streets, buildings, walls, fences, trees, and facilities that may be subject to damage from the permitted work.

(5) Restoration.

(a) When an operator, or any person acting on its behalf, does any work in or affecting any right-of-way, it shall, at its own expense, promptly restore such right-of-way or property to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules, and regulations, unless otherwise directed by the City.

(b) If weather or other conditions beyond the operator’s control do not permit the complete restoration required by the City, the operator shall temporarily restore the affected right-of-way or property. Such temporary restoration shall be at the operator’s sole expense and the operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the City.

(c) If the utility operator fails to restore right-of-way as required in this chapter, the City shall give the utility operator written notice and provide the utility operator a reasonable period of time, which shall be not less than 10 days, unless an emergency or threat to public safety is deemed to exist, and shall not exceed 30 days unless agreed to in writing by the City, to restore the right-of-way. If, after said notice, the utility operator fails to restore the right-of-way as required in this chapter, the City shall cause such restoration to be made at the cost and expense of the utility operator. If the City determines a threat to public safety exists, the City may provide necessary temporary safeguards, at the utility operator’s sole cost and expense, and the utility operator shall have 24 hours to commence restoration. If the utility operator does not commence work in 24 hours, the City, at its sole option, may commence restoration at the utility operator’s sole cost and expense. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an invoice from the City.

(6) Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City or its agents to determine compliance with the provisions of this chapter and all other applicable state and city laws, codes, ordinances, rules, and regulations. Every utility operator shall reasonably cooperate with the City in permitting the inspection of utility facilities in a timely manner after request by the City. The utility operator shall perform all testing, or permit the City or its agents to perform any testing at the operator's expense, required by the City to determine that the installation of the operator's facilities and the restoration of the right-of-way comply with the terms of this chapter and applicable state and city laws, codes, ordinances, rules, and regulations.

(7) Coordination of Construction. All operators shall make a good faith effort to both cooperate with and coordinate their future construction schedules with those of the City and other users of the right-of-way.

(a) Prior to January 1 of each year, operators shall provide the City with a schedule of known proposed construction activities for that year in, around, or that may affect the right-of-way and any city facilities.

(b) At the City's request, operators shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in the right-of-way.

(c) All construction locations, activities, and schedules within the right-of-way shall be coordinated as ordered by the City to minimize public inconvenience, disruption, and damages to persons and property.

(8) Interference with Right-of-Way. No utility operator or other person may locate or maintain any utility facilities so as to unreasonably interfere with the use of the right-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the right-of-way. Utility facilities shall not be located in a manner that restricts the line of sight for vehicles or pedestrians nor interferes with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the right-of-way shall at all times be consistent with city codes, ordinances, rules and regulations, which includes without limitation any policies, standards, specifications, and other guidelines adopted by the City Engineer pursuant to this chapter.

10.070 Location of Facilities

(1) Location of Facilities. Unless otherwise agreed to in writing by the City:

(a) Utilities shall be installed underground in all areas of the City where there are no existing overhead utility poles in the right-of-way or no space on existing poles in the right-of-way. No new poles are to be added to the right-of-way unless specifically approved by the City Engineer. This requirement shall not apply to antennas, pedestals, cabinets or other above-ground equipment of any utility operator for which the City has given written authorization to place such above-ground equipment in the right-of-way. The City reserves the right to require written approval of the location of any such above-ground equipment in the right-of-way.

(b) Whenever any existing electric utilities, cable facilities or communications facilities are located underground within a right-of-way of the City, the utility operator with permission to occupy the same right-of-way shall install all new facilities underground at its own expense. This requirement

shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts where there are existing poles in the right-of-way, or to antennas, pedestals, cabinets, or other above-ground equipment of any utility operator for which the City has given written authorization to place such above-ground equipment in the right-of-way.

(2) Relocation of Utility Facilities.

(a) The City may require a utility operator, at the utility operator's expense, to temporarily or permanently remove, relocate, change or alter the location or position of any utility facility within a right-of-way, including relocation of aerial facilities underground. A request under this section shall be made in writing by the City. The requirement to relocate aerial facilities underground shall not apply to antennas or high voltage lines unless otherwise directed by the City.

(b) Nothing herein shall be deemed to preclude a utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs, or agreements; provided, that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

(c) The City shall provide written notice of the time by which a utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, change, alter or underground any utility facility as requested by the City, by the date established by the City, the utility operator shall pay all costs incurred by the City due to such failure. Costs shall include but not be limited to costs related to project delays. If the utility operator refuses to timely remove, relocate, change, alter or underground its facilities as requested by the City, the City may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facility to be removed, relocated, changed, altered, or undergrounded at the utility operator's sole expense. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an invoice from the City.

(d) The City shall not bear any responsibility, incur any costs or otherwise compensate the utility operator in relocation of its facilities, including instances in which the utility operator must relocate outside the right-of-way.

(3) Removal of Unauthorized Facilities.

(a) Unless otherwise agreed to in writing by the City, within 30 days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within the right-of-way shall, at its own expense, remove the facility and restore the right-of-way.

(b) A utility facility is unauthorized under any of the following circumstances:

(i) The utility facility is outside the scope of authority granted by the City under the right-of-way utility license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the right-of-way utility license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.

(ii) The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one year. An operator may attempt to overcome this presumption by presenting plans for future use of the facility to the City, which will determine application of the presumption in its sole discretion.

(4) Removal by City.

(a) The City retains the right and privilege to cut or move any utility facilities located within the right-of-way, without notice, as the City may determine to be necessary, appropriate, or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable State and Federal safety laws and regulations to the extent reasonably practical without impeding the City's response to the emergency. The City will attempt to notify the utility operator of any cutting or moving of facilities prior to doing so. If such notice is not practical, the City will notify the operator as soon as reasonably practical after resolution of the emergency.

(b) If the utility operator fails to remove any facility when required to do so under this chapter, the City may, upon at least 10 days prior written notice, remove the facility using qualified personnel or contractors consistent with applicable State and Federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an invoice from the City. The obligation to remove shall survive the termination of the right-of-way utility license or franchise.

(c) The City shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to this section or resulting from the utility operator's failure to remove, relocate, alter, or underground its facilities as required by this chapter.

(5) Engineering Record Drawings

(a)The utility operator shall provide the City with a complete set of record drawings in a form acceptable to the City showing the location of all its utility facilities in the right-of-way after initial construction if such plan changed during construction. The utility operator shall, at no cost to the City, provide updated complete sets of as-built plans showing all utility facilities in the rights-of-way upon request of the City, but not more than once per year.

(b) The utility provider will also provide, at no cost to the City, a comprehensive map showing the location of any facilities in the city. Such map will be provided in a format acceptable to the City with accompanying data sufficient for the City to determine the exact location of facilities (GIS). The City may not request such information more than once per calendar year.

(c) Within 30 days of a written request from the City, or as otherwise agreed to in writing by the City, every utility operator shall make available for inspection by the City at reasonable times and intervals all maps, records, books, and other documents maintained by the utility operator with respect to its utility facilities within the right-of-way reasonably necessary for the City to ensure compliance with this chapter or to protect the public health, safety, and welfare. Access shall be

provided within the city unless prior arrangement for access elsewhere has been made with the City.

10.080 Maintenance

(1) Every utility operator shall install and maintain all utility facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own cost and expense, repair and maintain utility facilities from time to time as may be necessary to accomplish this purpose.

(2) If a utility operator fails to repair and maintain facilities as required in subsection 1 of this section, the City may provide written notice of the failure to repair or maintain and establish a date upon which such repair or maintenance must occur. If the utility operator fails to cause the repair or maintenance to occur within the date established by the City, the City may perform such repair or maintenance using qualified personnel or contractors and charge the utility operator for the City's costs. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an invoice from the City.

10.090 Vacation of Rights-of-Way

(1) If the City vacates any right-of-way, or portion thereof, that an operator uses, the operator shall, at its own expense, remove its facilities from the right-of-way unless: (a) the City reserves a public utility easement, which the City shall make a reasonable effort to do; provided, that it is practicable to do so and there is no expense to the City; or (b) the operator obtains an easement for its facilities.
(2) If the operator fails to remove its facilities within 30 days after a right-of-way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified workers in accordance with state and federal laws and regulations at the operator's sole expense. The utility operator shall reimburse the City for the costs the City incurred within 30 days of receipt of an invoice from the City.

10.100 Fees, Payment and Penalties.

(1) Except as set forth in subsection (5) of this section, every utility operator and every utility provider shall pay the City a right-of-way usage fee as determined by resolution of the City Council.

(2) No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

(3) To the extent that Federal or State law imposes limitations on the amount that the City can charge as a right-of-way usage fee that is less than the fee established in its fees and charges resolution, the right-of-way usage fee shall be the maximum amount allowed by applicable law.

(4) Utility operators that pay a franchise fee may deduct the amount of the franchise fee payments from the amount due for the right-of-way usage fee, but in no case will the right-of-way usage fee be less than zero dollars. Nothing in this section limits the City's authority to establish a franchise fee that is greater than the right-of-way usage fee.

(5) Exceptions.

(a) A person that is both a utility operator and a utility provider shall be subject to the right-of-way usage fee(s) applicable to utility operators and, in addition, to the right-of-way usage fee(s) applicable to utility providers; provided, however, that the person must pay only the greater of the two fees, or, if the two fees are the same, the utility operator right-of-way usage fee.

(b) A utility provider that does not own any utility facilities in the rights-of-way shall not be subject to any right-of-way usage fees for the provision of wireless communications services to customers in the City.

(6) Unless otherwise agreed to in writing by the City, the right-of-way usage fee set forth in subsection (1) of this section shall be paid quarterly, in arrears, within 30 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable on a remittance form provided by the City. A utility operator or utility provider shall provide, at no cost to the City, any additional reports or information the City deems necessary, in its sole discretion, to ensure compliance with this section. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the city limits, or any other information needed for the City to readily verify compliance.

(7) In the event the right-of-way fee is not received by the City on or before the due date or is underpaid, the utility operator or utility provider must pay interest from the due date until full payment is received by the city at a rate equal to nine percent per annum, compounded daily, or the maximum interest rate allowed by law.

(8) The City reserves the right to enact other fees and taxes applicable to the utility operators and utility providers subject to this chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator or utility provider may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the right-of-way usage fee or any other fees required by this chapter.

10.110 Records, Reporting and Appeal.

(1) Each person subject to this chapter shall maintain records that document the accuracy of payments pursuant to West Linn Municipal Code Section 10.100 for at least seven years.

(2) The City may conduct an investigation into the accuracy of the payments received by the City, including any revenues included or excluded from the gross revenues used to calculate the right-of-way usage fees owed. The utility operator or utility provider shall make available for investigation all records and accounting of the utility operator or utility provider for verification of the reports of the company and the fees paid by the company. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the city limits, or any other information needed for the City to readily verify compliance.

(3) If the City's audit of the books, records and other documents or information of the utility operator or utility provider demonstrates that the operator or provider has underpaid the right-of-way usage fee or franchise fee by 3% or more in any one year, the operator shall reimburse the City for the cost of the audit, in addition to any interest and penalties owed as provided by this chapter or as specified in a franchise agreement.(4) Any underpayment, including any interest, penalties or audit and review cost

reimbursement, shall be paid within 30 days of the City's notice to the utility operator or utility provider of such underpayment.

(5) A utility operator or utility provider may appeal the City's demand for payment to the City Council. The appeal must be in writing and specify the grounds for the appeal. The Council will hold a hearing on the appeal. If the Council determines that the utility operator or utility provider is required to pay an additional amount, the utility operator or utility provider shall pay the amount owed within 30 days of the Council's decision.

10.120 Insurance & Indemnification

(1) Insurance

(a) All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:

(i) Comprehensive general liability insurance with limits not less than Three Million Dollars ($3,000,000) per occurrence and Three Million Dollars ($3,000,000) general aggregate for damage to property or personal injury (including death) and Three Million Dollars ($3,000,000) for all other types of liability.

(ii) Commercial automobile liability insurance covering all owned, non-owned and hired vehicles with a limit not less than Three Million Dollars ($3,000,000) per accident for bodily injury and personal damage.

(iii) Worker's compensation within statutory limits and employer's liability with limits of not less than $1,000,000.

(iv) If not otherwise included in the policies required by subsection (1)(a) (i) of this section, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $3,000,000.

(v) Utility operators may utilize primary and umbrella liability insurance policies to satisfy the preceding insurance policy limit requirements.

(b) The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, with the exception of workers' compensation, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. Upon receipt of notice from its insurer(s) the utility operator shall provide the City with 30 days' prior written notice of cancellation or required coverage, and the certificate of insurance shall include such an endorsement. The utility operator may use a blanket additional insured endorsement with the written approval of the City. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance within 30 days. The utility operator shall maintain continuous uninterrupted coverage, in the terms and

amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage, subject to written approval by the City.

(c) The utility operator shall maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, evidencing the coverage required above.

(2) Finance Assurance

Unless otherwise agreed to in writing by the City, before a franchise granted or right-of-way utility license issued pursuant to this chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security or assurance, in a form acceptable to the City, as security for the full and complete performance of the franchise or right-of-way utility license, if applicable, and compliance with the terms of this chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by WLMC Section 3.255(3).

(3) Indemnification

To the fullest extent permitted by law, each utility operator will defend, indemnify and hold harmless the City and its officers, employees, agents and representatives from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless or wrongful acts, or any acts or omissions, failure to act or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors or lessees in the construction, operation, maintenance, repair or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise agreement. The acceptance of a right-of-way utility license under WLMC 10.040 constitutes such an agreement by the applicant whether the same is expressed or not.

10.130 Compliance

Every licensee, utility operator and utility provider shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules, and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license, registration, franchise, or agreement granted under this chapter. It is the sole responsibility of the person authorized to construct, install, operate and maintain a utility facility in the 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.

10.140 Confidential & Proprietary Information

If any person is required by this chapter to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, the City will take reasonable steps to protect the confidential or proprietary nature of the books, records, maps or information to the extent permitted by the Oregon Public Records Law; provided, that all documents are clearly marked as confidential by the person at the time of disclosure to the City. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably possible the City will notify the person who submitted the confidential information of the records request prior to releasing the confidential information. The City is not required to incur any costs to protect such documents, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

10.150 Severability & Preemption

(1) The provisions of this chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

(2) If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this chapter is for any reason declared or 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 this chapter 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, term, provision, condition, covenant or portion of this chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

10.160 Application to Existing Agreements.

To the extent that this chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this chapter shall apply to all existing franchise agreements granted to utilities by the City.

10.170 Violation.

(1) Any person found in violation of any provision of this chapter or the right-of-way utility license shall be subject to a penalty of not less than $150.00 nor more than $2,000 per day for each day the violation has existed. Each violation of any provision of this chapter or the right-of-way utility license shall be considered a separate violation for which separate penalties can be imposed. A finding of a violation of this chapter or a right-of-way utility license and assessment of penalties shall not relieve the responsible party of the obligation to remedy the violation.

(2) The City Manager or designee is authorized to find a person in violation of this chapter or a right-of-way utility license and to establish the amount of the penalty consistent with the range provided in subsection (1).

(3) Prior to imposing a penalty, the City Manager or designee shall provide such person with notice of the violation and an opportunity to provide evidence that the violation has been cured. The City Manager or designee shall state the basis for the violation and the amount of the penalty imposed.

(4) In establishing the amount of a penalty, the City Manager or designee shall consider the following factors:

a. The actions taken by the person to mitigate or correct the violation;

b. Whether the violation is repeated or continuous in nature;

c. The magnitude or gravity of the violation;

d. The cooperation in discovering, admitting, or curing the violation;

e. The cost to the city of investigating, correcting, attempting to correct and/or prosecuting the violation; and

f. Any other factor deemed to be relevant.

(5) A person subject to penalties under the provisions of subsection (3) of this section may appeal the City Manager or designee's decision pursuant to the Administrative Appeals Process in section 1.400 - 1.430 of the West Linn Municipal Code.

(6) The penalties imposed by this section are in addition to and not in lieu of any remedies available to the City.

May 7, 2025

The Honorable Rory Bialostosky
Mayor of West Linn
City of West Linn
22500 Salamo Road
West Linn, OR 97068

via email: citycouncil@westlinnoregon.gov

RE: Wireless industry comments on proposed updates to the West Linn Municipal Code (WLMC) Chapter 10 – Utility License and Use of the Right-Of-Way & Associated Fee Schedule

Dear Mayor Bialostosky and Members of the West Linn City Council:

On behalf of CTIA®, the trade association for the wireless industry, and Crown Castle, we respectfully submit this letter to the City of West Linn (the "City") as public comment regarding the City's proposed changes to West Linn Municipal Code (WLMC) Chapter 10 – Utility License and Use of the Right-Of-Way ("ROW") and the associated Fee Schedule (the "Proposed Ordinance").

Our industry has significant concerns with the Proposed Ordinance and the information conveyed by City staff regarding how the Proposed Ordinance would apply to the wireless industry. We are concerned that this regulation would be unlawful under state and federal law and that it would impose exceedingly high costs on wireless providers – costs that are likely to impede investment in upgraded and expanded wireless communications service. In this letter, we provide detailed comments with respect to our concerns.

Thank you for this opportunity to provide input. We are grateful to the City for hearing our concerns and working with our industry to enact policy that we hope will support investment in local communities.

About the Wireless Industry

Wireless carriers operate in a manner that is significantly different from companies that provide cable and fiber-optic connectivity to homes and businesses ("wireline broadband providers"). In fact, wireless service itself is substantially different. Wireless service uses radio frequencies to

wirelessly connect a mobile device with the nearest antenna. That antenna may be hidden in a church steeple, sitting on a rooftop, attached to a building façade or mounted on a freestanding tower structure. All these solutions are known generically as cell sites. Typically, cell sites are on private property and do not locate any infrastructure in the ROW. Wireline broadband providers run lines through the ROW to serve physical addresses while wireless services are delivered via radio frequency waves.

From the cell site, the call or data session then travels through a high-speed connection to a network switching center where it is then directed to the recipient. This all happens in fractions of a second. Most of the time, the high-speed connection from the cell site to the networking switch is provided by a third-party fiber-optic service provider. The wireless carrier contracts with the fiber provider for service in a way that is like any home or business fiber service connection. The electricity that runs the site is also connected via a service connection from the local power provider, much as it is for most homes and businesses.

Traditional, or macro cell, sites are most often the best choice for meeting coverage and capacity needs. Macro sites are cell sites or towers that provide coverage to a broad area, up to several square miles. Small cells are just like the name implies – short range cell sites used to complement macro cell towers in a smaller geographic area ranging from a few hundred feet to upwards of 1,000 feet from each site. These lower power antennas enhance capacity in high traffic areas, dense urban areas, suburban neighborhoods, and more. Small cells use small radios and one or more small antennas, and they are typically placed on existing structures including utility poles and streetlights in the ROW.

Higher volume wireless traffic requires more wireless facilities just like more vehicle traffic needs more lanes. Many wireless users share each cell site, and congestion may result when too many customers try to use it at the same time. Wireless coverage may already exist in an area, but with data usage increasing exponentially each year, more capacity is needed. To meet rising capacity demands, wireless providers need to add more wireless antennas closer to users and closer to other cell sites to provide the reliable service customers have come to expect.

The wireless industry is highly competitive, and the actual cost to consumers for data has fallen over time. The cost per megabyte of data declined over the decade since 2010 by 99%. In fact, when recent once-in-a-generation inflation caused over 94% of goods and services to increase in price, wireless service and smartphones decreased in price. Prices have decreased over the long-term, too—*unlimited data plans saw a price decline of more than 40% since 2010*.[1]

The Proposed "Fees" Are Not Permissible under State Law and Are Unreasonable

<u>The proposed fees are a privilege tax on wireless carriers, which is preempted by the Oregon Corporate Activities Tax.</u>

[1] https://www.ctia.org/the-wireless-industry/infographics-library

The City is proposing to charge wireless service providers a "fee," based on percentage of gross revenue, for doing business in the City, without the wireless service provider owning or operating any facilities in the ROW, and without any additional management cost incurred by the City. The wireless carriers do not receive any good or service in exchange for this "fee" and do not impose any additional burden on the City's ROW. As such, this "fee" is in fact a tax, levied by the City for the privilege to do business in the City.

Taxes of this nature are preempted by the Oregon Corporate Activities Tax, which centrally assesses commercial activity in the state.[2] Such a new local tax is therefore unlawful.[3]

Wireless communications providers are not providers of wireline broadband service.

The assertion that wireless providers "use" the ROW by contracting for third-party wired transport service is an unconventional interpretation of the term "use" and is an inaccurate representation of modern communications industries.

Wireless providers are ***not*** providers of wireline services and therefore should not be subject to any fees or taxes imposed by the City under the rationale of charging both the owner/operator of wireline infrastructure and the potentially multiple providers of wireline service.

Like any business, wireless communications providers contract for the utility services needed to operate their business. In this case, wireless providers contract with power companies and with fiber-optic service providers for the inputs needed to operate a wireless communications facility. The wireless provider pays those service providers for the utilities and transport needed to send and receive wireless communications radio signals. The end user applications of these services are also significantly different. In fact, most households have both a wired broadband service connection while individuals contract separately for mobile services because they are separate forms of service.

Wireless providers are customers of wireline companies, and they use that fiber transport service, in conjunction with power service and specialized equipment to provide the fundamentally different product of wireless service through wireless radio frequency signals.

To help illustrate, here is a practical example. Consider a coffee shop or café. That café contracts with power, broadband, water and sewer services providers to operate its business. It uses those services, in conjunction with specialized ingredients and equipment, to produce the products that they sell, including beverages, pastries, and an environment where people can connect to Wi-Fi to work or recreate online while they eat and drink. The café is making use of services, paying the service providers and producing a uniquely different product it then sells. Just like that café,

[2] ORS 317A.158 (Local Taxes Preempted).

[3] Note also that, by its terms, the state authorized privilege tax (for the privilege of ***actually using*** the ROW) does not apply to wireless service providers. ORS 221.515(1); See definitions in ORS 221.515(4), ORS 133.721 ("telecommunications carrier" and "telecommunications service"), and ORS 759.005 ("telecommunications service" and "telecommunications utility" excluding radio common carriers).

a wireless carriers' payments to the utility and fiber transport service providers are subject to the percentage of gross revenue fees paid to the City by the service provider that actually occupies the ROW. The same is true for every business within the City, including data centers, retail stores, movie theaters, etc.

Following an initial review of the Proposed Ordinance, members of our industry did not raise concerns over this issue because the term "use" when applied to ROW ordinances and fees is not generally interpreted as including being a customer of utility or fiber transport services for the use of providing a different product or service. We find this interpretation to be unreasonable and unlawful as described herein.

<u>The wireless industry cannot practically track and pay fees based on data traffic through specific small wireless facilities.</u>

As a matter of logistics, wireless carriers do not bill customers based on which sites they utilize. Wireless service is by definition mobile and not tied to a physical location. The wireless carrier is not able to attribute a portion of gross revenue to a specific facility, because wireless revenues are linked to billing addresses and not the address where service is provided. In fact, due to the nature of the service, people often receive service in locations that are very far from their billing address.

This further emphasizes the point that wireless communications services are fundamentally different from wireline services. Wireline services are tied to a specific service address and geographic location. Wireless services are not.

Moreover, this practical inability to allocate revenue to certain facilities means that the City's efforts to collect *both* per-site ROW fees for small wireless facilities *and* percentage of revenue fees for otherwise "using" the ROW do not withstand scrutiny under the Federal Communications Commission's 2018 order setting presumptively reasonable ROW fees for small wireless facilities,[4] discussed below. Under the Proposed Ordinance, the City will necessarily be charging small wireless facilities percentage of revenue fees, contrary to the Wireless Broadband Order.

The City's Proposed Fees are Not Compliant with Federal Law

<u>Fees that charge both the facility owner/operator and the service provider for the use of the same infrastructure materially inhibit deployment of wireless service and are unlawful.</u>

[4] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment,* Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) ("Wireless Broadband Order") *affirmed in part and vacated in part*, *City of Portland v. United States*, 969 F.3d 1020(9th Cir. 2020), *cert. denied*, 594 U.S. ___, 141 S.Ct. 2855 (June 28, 2021)(No. 20-1354).

In 2018, the FCC addressed fee-based and other regulatory barriers to deployment.[5] It interpreted Sections 253(a), 253(c) and 332(c)(7) of the Telecommunications Act[6] to set guardrails on local regulation, holding that any fee that "materially inhibits" the provision of wireless services is preempted by §§ 253(a) and 332(c)(7).[7] It further held that to qualify for the § 253(c) exception allowing reasonable ROW fees, fees for small wireless facilities must be based on the locality's reasonable costs to manage the ROW, and adopted presumptively lawful fees of $100 for each initial application and $270 in annual charges. Localities may charge higher ROW fees, but only if they demonstrate that such higher fees are based on a reasonable approximation of the locality's actual and reasonable ROW management costs.

By collecting fees from both wireless providers and the owners/operators of utility or transport facilities, the City proposes to collect duplicative fees for the same impact on the ROW, which is contrary to federal law. Even where a strict cost-based rule may not necessarily apply (such as it clearly does for small wireless facilities), fees imposed under § 253(c) must be related to actual "use" of the ROW.

The Proposed Ordinance's sweeping references to ROW "use" to include lessees and other providers that do not own or operate any ROW facilities themselves is inconsistent with the way courts have interpreted that term. Courts have rejected the proposition that a communications service provider "uses" the ROW simply by obtaining services from facilities-based providers (those actually owning/operating facilities located in the ROW).[8] In another example, where a city attempted to collect duplicative ROW fees from a passive owner of facilities in the ROW after a change in corporate structure, the FCC ruled that the city may collect fees from the operator ***only***.[9]

As currently drafted, the Proposed Ordinance would apply numerous obligations on wireless service providers that do not own or operate facilities in the ROW. Those obligations impose unjustified costs and burdens and will discourage and delay the provision of new or expanded high-speed wireless services. There is no legitimate basis to impose fees, registration, and other regulatory burdens on wireless providers that do not own or operate facilities in the ROW.

<u>The "competitively neutral" language in federal law was not intended to apply to fundamentally different providers of communications services.</u>

[5] Wireless Broadband Order.
[6] 47 U.S.C. §§ 253, 337.
[7] Wireless Broadband Order at ¶¶ 35-37.
[8] *See, e.g., AT&T Communications of the Southwest, Inc. v. City of Austin,* 40 F.Supp.2d 852 (W.D. Tex. 1998), *vacated on other grounds*, 235 F.3d 241 (5th Cir. 2000). *See* findings of fact on motion for preliminary injunction in 975 F. Supp. 928, 938 (W.D. Tex. 1997).
[9] Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC, Petition for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act of 1934, WC Docket 20-46, 35 FCC Rcd 12811 (2020).

When the FCC addressed the limits imposed by Sections 253 and 332on a local jurisdiction's regulation of small wireless facility deployment, it concluded that ROW access fees and other fees violate Sections 253 or 332(c)(7) unless three conditions are met: (1) the fees are a reasonable approximation of the local government's actual costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.[10]

The assertion that federal law requires that providers of wireless communications service be charged the same fees as providers of wireline transport service is inaccurate. As discussed above, wireline providers and wireless carriers provide fundamentally different services that serve customers in substantially different ways. The vast majority of wireline transport provider infrastructure is in the ROW and not on property subject to private lease agreements and the associated cost of doing business. These different services are ***not*** "similarly-situated."

Section 253(c) of the Act does provide that "[n]othing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, ***for use of public rights-of-way*** on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."[11] Our understanding of this language is that it is intended to prohibit state and local governments from setting rates that would charge two wireless carriers different amounts for the same use. In other words, we understand this language to require fair and competitively neutral treatment for similarly-situated competitors. As discussed above, wireless carriers and wireline providers are ***not*** similarly-situated.

Federal courts have rejected competitive neutrality as the justification for charging those providers not actually using the ROW. In one example, the City of Dallas, Texas argued that it must impose its franchise obligations on a service provider known as Teligent to satisfy the requirement in § 253(c) that it act in a "competitively neutral and nondiscriminatory" manner. The court held:

> The provision simply mandates, however, that when a city imposes fees for the use of the rights-of-way, or imposes conditions on that use, it does so in a way that is competitively neutral and nondiscriminatory. The statute does not require that the City treat all providers of local telephone service identically, regardless of whether or not they use the rights-of-way, or how much of the rights-of-way they use. Because Teligent will not use the City's rights-of-way at all [because Teligent would only lease capacity from a franchised carrier], the City's regulatory power is not implicated, and its duty to be competitively neutral is not invoked."[12]

[10] Wireless Broadband Order, ¶ 50.

[11] (emphasis added).

[12] *AT&T Commc'ns of the Southwest, Inc. v. City of Dallas*, 8 F.Supp.2d 582 (N.D.Tex.1998)("*City of Dallas I*"); *AT&T Commc'ns of the Southwest, Inc. v. City of Dallas*, 52 F.Supp.2d 756, 761 (N.D. Tex. 1998)("*City of Dallas II*"); *AT&T*

Fees based on a percentage of gross revenue materially inhibit deployment of wireless service and are unlawful.

Courts have specifically invalidated gross revenues fees, finding that they are not based on a locality's costs and can prohibit service, contrary to the language and purpose of Section 253. For example, the U.S. Court of Appeals for the First Circuit found that because a five percent gross revenues fee "'materially inhibits or limits the ability'" of providers to compete, it violates Section 253.[13] Summarizing this case law in its Wireless Broadband Order, the FCC held: "[W]e agree with courts that have recognized that gross revenue fees generally are not based on the costs associated with an entity's use of the ROW and where that is the case, are preempted under Section 253(a)."[14]

The Proposed Ordinance would adopt a fee schedule that clearly violates the guardrails that the Act, the FCC and federal courts have established. The Proposed Ordinance imposes an annual percentage gross revenue fee on wireless providers, even when small cells are the only wireless facilities in the ROW or when a macro cell is located entirely on private property, via the fees imposed on providers, which would be determined by providers' revenues from their operations in the City. The FCC and courts have held, a gross revenue fee is unlawful because it is calculated based on providers' revenues – not on the locality's reasonable costs to maintain the ROW. In addition to its illegality, this substantial fee is likely to discourage additional investment in wireless services in the City and could constitute and effective prohibition of service under federal law.

Federal law supports low, cost-based fees to speed investment in wireless infrastructure.

Congress has recognized that excessive ROW fees can impair the public's access to communications services. Section 253(a) of the Act thus preempts state and local laws that "prohibit or have the effect of prohibiting any entity" from providing service.[15] Section 253(c) only permits fees that recover "fair and reasonable compensation" for ROW use.[16] Section

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Commc'ns of the Southwest, Inc. v. City of Dallas, 52 F.Supp.2d 763 (N.D. Tex. 1999), *vacated and remanded on other grounds*, 243 F.3d 928 (5th Cir. 2001)("*City of Dallas III*").

[13] *Puerto Rico Telephone Co. Inc. v. Municipality of Guayanilla*, 450 F.3d 9, 22 (1st Cir. 2006). Similarly, in *XO Missouri, Inc. v. City of Maryland Heights*, 256 F. Supp. 2d 987, 994 (E.D. Mo. 2003), the court held that fees based on providers' revenues are unlawful: "The Court adopts the reasoning supporting other courts' decisions that revenue-based fees are impermissible under the [1996 Telecom Act]. Thus, to meet the definition of "fair and reasonable compensation" a fee charged by a municipality must be directly related to the actual costs incurred by the municipality when a telecommunications provider makes use of the rights-of-way. . . [P]lainly a fee that does more than make a municipality whole is not compensatory in the literal sense and instead risks becoming an economic barrier to entry." *See also TCG New York, Inc. v. City of White Plains,* 305 F.3d 67 (2d Cir. 2002) (finding that a five percent gross revenue fee violated Section 253(a).

[14] Wireless Broadband Order at ¶ 70.

[15] 47 U.S.C. § 253(a).

[16] 47 U.S.C. § 253(c).

332(c)(7) of the Act contains similar language preempting regulation of personal wireless facilities that has the effect of prohibiting those services.[17] In the Wireless Broadband Order, the FCC set presumptively reasonable, cost-based rates for small wireless facilities.

The U.S. Court of Appeals for the Ninth Circuit, which has jurisdiction to hear appeals involving Oregon, affirmed the FCC's interpretation of Sections 253 and 332 to limit local fees.[18] The court rejected localities' argument that Section 253(c) authorized them to set fees that were not cost based: "The statute requires that compensation be 'fair and reasonable'; this does not mean that state and local governments should be permitted to make a profit by charging fees above costs."[19]

Other courts have held that a locality that seeks to impose fees is obligated to provide the factual basis for determining that the fees are reasonable and based on the locality's actual costs. Where the locality has not done so, its fees have been struck down.[20]

Low Fees for Wireless Service Are in the Best Interest of the City

Robust wireless service supports economic and community development.

Federal regulations aimed at decreasing the cost of deploying wireless communications infrastructure exist to strengthen the U.S. economy and improve the quality of life for citizens. In fact, 74% of Americans say government should make it easier to build wireless networks.[21]

For over forty years the wireless industry has pushed the boundaries of what is possible – helping America become the most innovative and advanced country on earth. In the 1980s, the wireless industry made it possible to make phone calls on the go. In the 1990s, we created text messaging. At the turn of the century, we introduced mobile gaming, as well as streaming audio and video. Connecting everyone and everything is unlocking innovation across every part of our lives—powering breakthroughs in healthcare, energy, manufacturing, agriculture, transportation and education. Wireless industry innovation is creating new industries and new jobs, improving safety, reducing waste and enhancing our environment.

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[17] 47 U.S.C. § 332(c)(7).

[18] *City of Portland v. United States,* 969 F.3d 1020 (9th Cir. 2020).

[19] *Id,* 969 F.3d at 7715. The court also affirmed the FCC's holding that "Section 332 should be construed as having the same meaning and governed by the same preemption standard as the identical language in Section 253(a). *Id.*

[20] For example, in a recent case, a locality's multiple permit fees were found to be unlawful because the locality failed to provide cost-based justification for the fees. *Crown Castle Fiber, LLC v. Town of Oyster Bay,* 2024 WL 1051171 (E.D.N.Y. 2024). In *Cellco Partnership v. City of Rochester,* 473 F. Supp. 3d 268 (2020), the court invalidated a city's fees charged to a wireless provider. It found that the fees were derived from a "cost spreadsheet, but that the spreadsheet "is based virtually entirely on speculation and guesswork, and that was designed not to be an accurate reflection of the City's actual costs, but as a post hoc justification for the fees already enacted." *See also New Jersey Payphone Association, Inc. v. Town of West New York*, 130 F.Supp.2d 631, 638 (D.N.J. 2001); *Puerto Rico Telephone Co. Inc. v. Municipality of Guayanilla*, 450 F.3d 9, 22 (1st Cir. 2006); *AT & T Commc'ns of Sw., Inc. v. City of Dallas*, 8 F. Supp. 2d 582, 593 (N.D. Tex. 1998).

[21] CTIA Industry Data (9/7/23).

Wireless services support emergency preparedness.

The reliability of a cell phone is never more important than when a crisis strikes. In such situations, a simple call or text message can make the difference between life and death. According to NENA, the 9-1-1 Association, "An estimated 240 million calls are made to 9-1-1 in the U.S. each year. In many areas, 80% or more are from wireless devices."[22] In Oregon, 82.5% of 911 calls are from a wireless phone.[23]

Wireless technology is critical for the provision of emergency services. Wireless carriers coordinate with first responders and can mobilize charging stations, special equipment, emergency vehicles and more to support local, state and federal agencies in the event of an emergency. Wireless services also provide the connectivity that first responders need to operate most effectively, including connectivity for mobile devices on their person and in their vehicles.

Fighting climate change is a global imperative and robust wireless service is a key part of the solution. Wireless networks are unleashing new use cases across industries that are increasing efficiency and lowering emissions. According to Accenture, 5G's impact across just five industries will help the U.S. reduce emissions equal to taking 72 million cars off the road.[24] 5G innovation across transportation, manufacturing, energy, agriculture and everyday life is transforming the way we live and work and is also having a transformative effect on our ability to tackle this generational challenge.

Wireless service improves quality of life.

Wireless communication services are essential for supporting our communities. With 76% of adults living in homes without a landline phone,[25] recent increases in remote work, and many essential tools we use every day moving to wireless applications, promoting a robust high-capacity wireless communications network is more important than ever.

Wireless communications are a critical component in today's medical field as well, allowing for improved health services, particularly for the most vulnerable members of our communities. Smart pill bottles and cases can help patients and their caregivers track medication usage, ensuring medications are taken on time and correctly. This supports increased medical compliance, provides more consistent care, and enables preventative care, keeping patients in their homes longer and reducing the number of emergency visits to the doctor's office or hospital. Wireless-connected glucose monitors, blood-pressure cuffs, and EKG machines can track a

[22] www.nena.org/?page=911Statistics
[23] https://www.911.gov/issues/911-stats-and-data/
[24] https://5gclimate.ctia.org/#:~:text=5G%20%2B%20Climate%20Change&text=These%20networks%20are%20unleashing%20new,million%20cars%20off%20the%20road.
[25] National Center for Health Statistics, National Health Interview Survey Early Release Programs, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2023, released June 2024.

patient's vital signs and catch an issue before it turns into an emergency. Pacemakers and sleep apnea monitors can be tracked remotely. Routine eye exams can be conducted with a wireless device connected to a smartphone, bringing solutions to many that would otherwise go unsupported.

Wireless technology is essential for those who work remotely or take remote classes through school. Wireless service also allows for improvements in home energy efficiency and home security. More and more, wireless technologies are revolutionizing how people live, work, and stay connected to the people who matter most.

Please support our industry's efforts to bring vital services and investment to this community by instituting policies that remove barriers to investment and support investment in wireless infrastructure. We specifically ask that you address the concerns raised above and in particular that the City set a fee structure for wireless facilities in the ROW that is costs based, does not charge both operators and providers for the same infrastructure, and that does not charge wireless communications providers based on a percentage of gross revenue. We are grateful for this opportunity to provide our collective perspective and insights into this matter.

Sincerely,

Kathy Putt	Annissa Reed
External Affairs – PNW	Director, State and Local Affairs
Crown Castle	CTIA – The Wireless Association

cc. Stephanie Hastings, Management Analyst, shastings@westlinnoregon.gov

WPG WIRELESS POLICY GROUP LLC

May 6, 2025

Mayor Rory Bialostosky
City Council
City of West Linn
22500 Salama Road
West Linn, OR 97068

Sent via email to: *citycouncil@westlinnoregon.gov*

Re: New Chapter 10 of West Linn Municipal Code & Fee Resolution
Follow-up Comments on behalf of AT&T

Dear Mayor Bialostosky and Councilors,

On behalf of New Cingular Wireless PCS, LLC ("AT&T"), I write to follow up on AT&T's previous comments on proposed new Chapter 10 and its associated right-of-way "use" fee provisions.

We now understand that the City intends to charge wireless providers percentage of revenue right-of-way ("ROW") usage fees ***even when the provider does not own/operate*** utility facilities in the ROW. To confirm, AT&T provides wireless communication services in the City, but it neither owns nor operates facilities located in the City's ROW.

As outlined in detail in this letter, charging ROW usage fees to a provider that neither owns nor operates facilities in the ROW is contrary to federal and state law. If the City chooses to adopt this ordinance and fee resolution as now proposed and attempt to collect such fees, you can expect AT&T to decline to pay them.

To be clear, AT&T does not generally object to Chapter 10's codification of requirements previously addressed through a franchise agreement. But the proposed new code does far more than codify typical terms of a franchise agreement. Instead, Chapter 10 and the related fee resolution seek to collect additional revenue for activity for which a franchise agreement is never required. It is now clear that the City intends to charge ROW fees based on any relationship to the ROW, however tenuous, and charge multiple providers fees for the same impact to the ROW. Again, this is contrary to federal and state law.

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Response to Recently Stated Rationale for Percentage of Revenue Fees

We understand the City's outside counsel's position to be that federal law requires municipalities to provide a level playing field for providers, suggesting that the City ***must*** charge wireless providers a percentage of revenue fees. We believe this was a reference to the requirements in 47 U.S.C. § 253(c) to impose ROW fees on a "competitively neutral and nondiscriminatory basis," but federal courts have expressly rejected this justification for charging wireless providers that are not actually using the ROW, such as follows:

> **3. Competitive Neutrality**: Dallas also argues that it must impose its franchise obligations on Teligent in order to satisfy the requirement in § 253(c) that it act in a "competitively neutral and nondiscriminatory" manner. The provision simply mandates, however, that when a city imposes fees for the use of the rights-of-way, or imposes conditions on that use, it does so in a way that is competitively neutral and nondiscriminatory. The statute does not require that the City treat all providers of local telephone service identically, regardless of whether or not they use the rights-of-way, or how much of the rights-of-way they use. Because Teligent will not use the City's rights-of-way at all [because Teligent would only lease capacity from a franchised carrier], the City's regulatory power is not implicated, and its duty to be competitively neutral is not invoked.[1]

In other words, the first question is whether the provider is actually using the ROW (because it owns/operates equipment physically located in the ROW). Only if a provider is actually using the ROW must the City be competitively neutral and nondiscriminatory in imposing ROW usage fees, with respect to other providers that are also actually using the ROW.

The AT&T v. Eugene Case Is Not Determinative

The City's outside counsel has also cited *AT&T Communications v. City of Eugene*, 177 Or. App. 379 (2001) *rev. den.*, 334 Or. 491 (2002), in support of charging wireless providers percentage of revenue ROW usage fees even when the provider does not own/operate a utility facility in the ROW, but nothing in this case supports imposing a license/ROW usage fee in such circumstances. To the contrary, in *AT&T v. Eugene*, the ROW license fee in question applied only to a utility that proposed to "construct, place or locate any facility in, upon, beneath, over or across any public right-of-way,"[2] and no party suggested that AT&T's wireless facilities located outside of the ROW used the ROW under Eugene's code. There is no suggestion in the case that merely indirect use (via third-party

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[1] *AT&T Commc'ns of the Southwest, Inc. v. City of Dallas* 52 F.Supp.2d 756, 762 (N.D. Tex. 1998)("*City of Dallas II*")(emphasis added)(citations omitted).
[2] *Id*. at 383, 385.

backhaul) provides a nexus to impose license/ROW usage fees. And Eugene does not attempt to collect percentage of revenue license/ROW use fees from wireless providers, even when such wireless providers are physically occupying the ROW with wireless facilities attached to utility poles.[3]

In *AT&T v. Eugene*, the court did uphold the city's 2% utility "registration" fee, which applies to all service providers regardless of where their facilities are located in the city, similar to Portland's "Utility License Fee"[4] charged for the privilege of doing business in Portland.[5] But this is not a ROW use fee, such as proposed here, which is clear from the discussion in *AT&T v. Eugene*, which distinguished between the city's license fee (imposed for ROW use) and its registration fee.[6] In AT&T's view, registration fees like Eugene's are now preempted by the State's Corporate Activity Tax.[7] Of note, the City's outside counsel is not defending the City's proposed new fee as a "registration" fee.

Summary of Applicable Law

- The City's proposed fees:
    - Prohibit or have the effect of prohibiting telecommunications services under the Telecommunications Act of 1996. 47 U.S.C. § 253(a).
        - The City's attempted extension of ROW usage fees to AT&T's wireless services is not saved by 47 U.S.C. § 253(c) because AT&T owns/operates no facilities in the public ROW. Federal case law and interpretations of similar fee ordinances and franchise agreements conclude that:
            - Imposition of ROW fees requires physical occupation of the ROW;[8] and

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[3] Eugene Code Section 3.410(5)("So long as it registers with the city as required by section 3.405 and pays the annual registration fee required by section 3.415(1) as well as other applicable fees, an operator is not required to obtain a license under this section or pay an annual license fee under section 3.415(2) if the operator's only use of the public right-of-way is to place wireless transmitting or receiving facilities above the ground on existing poles or similar structures in the right-of-way and the operator does not install or use lines, wires or cables.")

[4] Portland City Code Chapter 7.14.

[5] See discussion of Portland's Utility License Fee below. Wireless providers are exempt from Portland's ULF pursuant to an administrative rule. UTL-3.05.

[6] *Id*. at 382.

[7] See discussion below.

[8] *AT&T Commc'ns of the Southwest, Inc. v. City of Dallas*, 8 F.Supp.2d 582 (N.D.Tex.1998)("*City of* Dallas I"); *City of Dallas II*, at 761; *AT&T Commc'ns of the Southwest, Inc. v. City of Dallas*, 52 F.Supp.2d 763 (N.D. Tex. 1999), *vacated and remanded on other grounds*, 243 F.3d 928 (5th Cir. 2001)("*City of Dallas III*").

- Fees charged to "non-facilities-based" providers violate 47 U.S.C. § 253.[9]

- Are contrary to Oregon case law restricting ROW usage fees imposed through codified ROW licenses imposed in lieu of franchise agreements (privilege taxes for use of the ROW) to "actual use."[10]
- Are preempted and barred by ORS 317A.158 (the 2019 Corporate Activity Tax).

Our Understanding of the City's Claims of "Use" of the ROW

We understand the City's counsel to maintain that a wireless service provider "uses" the ROW when it is a backhaul customer via fiber owned and operated by another service provider. To confirm, AT&T has not installed any fiber facilities within the City's ROW to connect to its wireless facilities located on private property. Further, even if AT&T were to install small wireless facilities in the City's ROW, AT&T's practice in this region has been to contract with a licensed, third-party fiber provider to bring fiber service to its wireless facilities. In other words, for its wireless facilities AT&T is the fiber provider's customer, not a provider of communications service via fiber. The fiber provider will remain the owner and operator of the fiber lines, and as such will be responsible for obtaining its own licenses, permits, and approvals from the City for installation and operation of fiber lines within the City's ROW, as well as paying any relevant fees for its actual usage of the City's ROW.

The League of Oregon Cities' 2023 Telecom Toolkit

In 2023, the League of Oregon Cities published an updated Telecom Toolkit and model ordinance for its members. Prepared by the Telecom Law Firm, PC, the 2023 model Master Utility Right-of-Way Ordinance imposes fees, identified therein as "privilege taxes," only on those service providers that "actually use" the ROW.[11] This language mirrors the privilege tax authorized by state law in ORS 221.515(1). (Note that the state privilege tax does not apply to wireless providers.[12])

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[9] *AT&T Commc'ns of the Southwest, Inc. v. City of Austin*, 40 F.Supp.2d 852 (W.D. Tex. 1998), *vacated on other grounds*, 235 F.3d 241 (5th Cir. 2000). *See* findings of fact on motion for preliminary injunction in 975 F. Supp. 928, 938 (W.D. Tex. 1997).

[10] *Qwest Corp. v. City of Portland*, 275 Or. App. 874, 888-89, 365 P.3d 1157 (2015), *rev. den.*, 360 Or. 465 384 P.3d 152 (2016); League of Oregon Cities, *Oregon Municipal Handbook*, Chapter 17, p. 25 (2025).

[11] See Section 14(A) of model ordinance (emphasis added).

[12] See definitions in ORS 221.515(4), ORS 133.721 ("telecommunications carrier" and "telecommunications service"), and ORS 759.005 ("telecommunications service" and "telecommunications utility" excluding radio common carriers).

In explaining the scope of the then-new model ordinance, the 2023 Toolkit explains:

> The MUROW does not cover utilities that do not use the ROW (such as telecommunications service resellers or VOIP providers that lease capacity over lines and facilities owned and operated by other telecommunications carriers). Likewise, this template does not authorize their facilities outside the ROW (such as data centers or other equipment that may be placed on private property adjacent to the facilities in the ROW). Any authorizations, taxes or fees imposed on those excluded utilities and/or facilities would need to be addressed by a separate ordinance.[13]

By focusing on "actual use," the 2023 Telecom Toolkit and model ordinance are more consistent with federal limitations on local authority in 47 U.S.C. § 253. See detailed discussion below.

The 2023 Toolkit does not provide advice for a city intending to charge or tax utilities that do not actually use the ROW, but a new local tax based on commercial activity would be preempted by ORS 317A.158. See discussion below.

Oregon State Case Law Addressing "Actual Use" of the ROW

In one Oregon case, the court did consider "use" of the ROW by communications service providers, distinguishing between "actual use" and "indirect use."[14] At issue there was the City of Portland's Utility License Fee ("ULF"), which is a tax charged for the privilege of doing business in Portland (rather than a privilege tax imposed for the use of Portland's ROW). Qwest argued that the ULF was truly a privilege tax for the use of the ROW, and in support of that argument, it claimed that certain resellers were "using" the ROW even though they had no facilities in the ROW. In rejecting Qwest's argument, the court characterized the resellers' use as merely "indirect" use, concluding that "to the extent that they do 'use' the city's rights-of-way, they do so indirectly by either purchasing service from another utility and reselling it or by providing service to a customer who has existing Internet access."[15]

Based on the decision in *Qwest v. Portland*, the League of Oregon Cities advises in its *Oregon Municipal Handbook* that "[u]nder Oregon law, entities that do not actually use the right-of-way may not be charged a privilege tax [for the privilege of using the ROW]."[16]

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[13] 2023 Telecom Toolkit, p. 12 (emphasis added).
[14] *Qwest Corp. v. City of Portland*, 275 Or. App. at 888-89.
[15] *Id*.
[16] League of Oregon Cities, *Oregon Municipal Handbook*, Chapter 17, p. 25 (2025).

Portland was able to charge the "indirect" users of the ROW the ULF because it was a tax charged for the privilege of doing business in Portland regardless of where a provider's facilities were located. More recently, new local taxes like the ULF are preempted by ORS 317.158. See discussion below.

Federal Telecom Act Limitations on ROW Fees – "Use" of the ROW

Section 253 of the Telecom Act bars local governments from imposing requirements that would prohibit or have the effect of prohibiting the ability of an entity to provide telecommunications service, although under § 253(c) local governments are allowed to charge telecommunications providers fair and reasonable compensation for "use" of the ROW.

For purposes of both local franchise agreement requirements and fees, "use" of the ROW under § 253(c) ***requires physical occupation of the ROW***:

> All of the legislative history surrounding the adoption of § 253(c), and the cases that have since been decided on the issue, have interpreted the provision to apply to physical occupation of a city's rights-of-way.[17]

In *City of Dallas II*, Teligent, Inc., ("Teligent"), sought to provide telephone service via microwave transmission and wireless base stations located on private property, outside of the public ROW.[18] Teligent's service was to be provided as follows:

> Signals will be transmitted from the base station antennae to the switch either through the air via microwave or through wires in conduits leased from another local telecommunications carrier. These wires may be located in City rights-of-way, but they will not be owned by Teligent, but by another carrier that has a franchise from the City[.][19]

There, Teligent "would not construct, own, install or maintain any facilities in the City's public rights-of-way."[20]

Dallas argued that Teligent nevertheless "used" the ROW:

> City states that there is no specific language in any of these statutes that limits "use" to mean "occupy" or "construct, own, install, or maintain." Rather, it argues, the term should be interpreted broadly [... because ...]

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[17] *City of Dallas II*, 52 F.Supp.2d at 761.
[18] Id. at 758.
[19] Id.
[20] Id. at 758-59.

> Teligent admits that it may transmit calls from a base station to its switch using "capacity leased from a franchised carrier that owns facilities, some of which are likely to be located in the public rights-of-way."[21]

But the court was "unpersuaded that transmitting microwaves through the air, or leasing the facilities of other providers constitutes 'use' of Dallas's rights-of-way."[22]

"Use" of the ROW under the Telecom Act thus requires something more than reliance upon facilities owned and operated by a third party. In *AT&T Communications of the Southwest, Inc. v. City of Austin,*[23] where AT&T would only purchase and resell the services of another provider, the court held:

> The City's unsupported assertion that a non-facilities-based provider is "using" the City's public rights-of-way is wholly unpersuasive. In fact, it is a metaphysical interpretation of the term "use" that defies logic and common sense. [...] In enacting the Ordinance, the City overstepped its bounds.[24]

Later in the proceedings, in response to the city's renewed argument that AT&T "used" the ROW because its signals consisting of electrons and light waves traveled through fiber optic lines in the ROW, the judge in *City of Austin* called the city's arguments "border[ing] on the absurd"[25] and its proposed interpretation of "use" as "bizarre."[26]

Under federal statutes and case law, the City may not charge AT&T a ROW "use" fee.

Telecom Act Limitations on ROW Fees – Small Wireless Facilities

In 2018, the Federal Communications Commission ("FCC") addressed the limits imposed by Sections 253 and 332 of the Telecom Act[27] on a local jurisdiction's regulation of small wireless facility deployment.[28] The FCC concluded that ROW access fees and other fees

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[21] Id. at 761.
[22] Id. at 761-62.
[23] 975 F. Supp. 928 at 938.
[24] *Austin*, at 942-43. *See also Chicago v. FCC*, 199 F.3d 424 (7th Cir. 1999)(denying petitions for review of the FCC's Declaratory Ruling in *In the Matter of Entertainment Connections, Inc.,* 13 FCC Rcd. 14277 (1998).
[25] *AT&T v. Austin*, 40 F.Supp.2d 852, 856 (W.D. Tex. 1998).
[26] Id. ("The Court once again rejects the City's bizarre definition of the term 'use.'").
[27] 47 U.S.C. §§ 253, 337.
[28] *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Report and Order, 33 FCC Rcd 9088, FCC 18-133 (2018), *affirmed in part and vacated in part*, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 594 U.S. ___, 141 S.Ct. 2855 (June 28, 2021)(No. 20-1354) ("2018 FCC Order").

violate Sections 253 or 332(c)(7) unless three conditions are met: (1) the fees are a reasonable approximation of the local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.[29]

The FCC explained "that an appropriate yardstick for 'fair and reasonable compensation,' and therefore an indicator of whether a fee violates Section 253(c), is whether it recovers a reasonable approximation of a state or local government's objectively reasonable costs of… maintaining the ROW… or processing an application or permit."[30] The FCC continued, "fees are only permitted to the extent they represent a reasonable approximation of the local government's objectively reasonable costs…"[31] otherwise, the fees violate Sections 253 and 332. ROW fees must be "*related to and caused by*" the location of a small wireless facility and reflect the facility's "*degree of actual use* of the public rights-of-way."[32] The 2018 FCC Order set a presumptively reasonable recurring fee for small wireless facilities located in the right-of-way of $270 per year, per facility.[33]

Moreover, the courts have specifically recognized that "gross revenue fees generally are not based on the costs associated with an entity's use of the ROW, and where that is the case, are preempted under Section 253(a)."[34]

The City is adopting a per-facility fee for small wireless facilities in the ROW. If AT&T were to build small wireless facilities in the ROW, the additional extension of the 7% ROW usage fee for communications service to small wireless facilities, which would be the practical effect of the City's proposed enforcement of new Chapter 51, would be unlawful.

If it were the case that a city could impose percentage of revenue ROW fees due to backhaul provided by a fiber company, then the contested and involved process leading to the FCC's 2018 Order setting per-facility, presumptively reasonable ROW fees for small wireless facilities, as well as the subsequent litigation ending in certiorari being denied by the U.S. Supreme Court, would have been merely academic. The analysis throughout the FCC's process and challenges by various municipalities was based on a fundamental premise that the municipalities could not otherwise charge a percentage of revenue ROW use fee to small wireless facilities for the same impact on the ROW.

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[29] 2018 FCC Order, ¶ 50.
[30] 2018 FCC Order, ¶ 72 (citations omitted).
[31] Id., ¶ 32, footnote 71.
[32] Id. at footnote 131 (emphasis added).
[33] 2018 FCC Order, ¶ 79.
[34] Id., ¶ 70 (citations omitted).

Telecom Act Limitations on ROW Fees – Duplicative Fees

In the end, the City intends to collect duplicative fees for the same impact on the ROW, which is contrary to federal law. Even where a strict cost-based rule may not necessarily apply (such as it does for small wireless facilities), fees imposed under § 253(c) must be related to "use" of the ROW. For a more recent example, where a city attempted to collect duplicative ROW fees from a passive owner of facilities in the ROW after a change in corporate structure, the FCC ruled that the city may collect fees from the operator ***only***.[35]

Similarly, here, the City's ROW usage fees are already due from the fiber/wireline providers with which AT&T has agreements as a customer/purchaser, and there is no basis for collecting duplicative fees.

Oregon's 2019 Preemption of New Local Taxes

Without a direct link to actual usage of the ROW, any new percentage of revenue fees the City attempts to impose on AT&T's wireless services would be new local taxes preempted by Oregon's Corporate Activity Tax ("CAT").

The state's CAT was enacted in 2019, along with a preemption of local taxes and fees based on commercial activity.

The relevant statute provides as follows:

> **(1)** Except as expressly authorized by this section, the authority to impose, in this state, a tax upon the commercial activity of an entity is vested solely in the Legislative Assembly. A city, county, district or other political subdivision or municipal corporation of this state may not impose, by ordinance or other law, a tax upon commercial activity or upon receipts from grocery sales.
> **(2)** Subsection (1) of this section does not apply:
> **(a)** To any tax, or to subsequent amendments of the provisions of any tax, if the ordinance or other law imposing the tax is in effect and operative on April 1, 2019, or is adopted by initiative or referendum petition at an election held prior to March 1, 2019; or
> **(b)** To the imposition of privilege taxes not measured by commercial activity, franchise fees or right-of-way fees. [2019 c.122 §67; 2019 c.579 §55][36]

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[35] *Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC, Petition for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act of 1934,* WC Docket 20-46, 35 FCC Rcd 12811 (2020).
[36] ORS 317A.158 (Local Taxes Preempted).

This state law precludes new local taxes on commercial activity (*i.e.*, based on gross revenue) except as specified in ORS 317A.158(b), which allows:

- Privilege taxes not measured by corporate activity;
- Franchise fees; and
- Right-of-way fees.

The above analysis confirms that the proposed new percentage of revenue fees cannot be franchise or right-of-way fees as applied to AT&T's wireless services because AT&T is not using the ROW, as required by federal and state law.

While as explained above, a local privilege tax measured by corporate activity, for the privilege of ***doing business in the City***, was upheld in *Qwest Corp. v. City of Portland*,[37] Portland's tax[38] predates the CAT and is excepted by ORS 317A.158(2)(a). A new tax like Portland's ULF is preempted.

The City's proposed 7% ROW "use" fee, with no direct relationship to ROW use, is thus preempted by state law.

In light of these serious questions about the interpretation and applicability of the proposed ordinance and fees, the City should reconsider them in the proper legal framework.

Thank you for your consideration of this information prior to your public hearing.

Sincerely,

Meridee Pabst
meridee.pabst@wirelesspolicy.com

cc: Stephanie Hastings, Management Analyst
Lauren Breithaupt, Finance Director
Kaylie Klein, City Attorney

[37] 275 Or. App. 874.
[38] Portland's ULF does not apply to wireless service providers. Portland Administrative Rule UTL-3.05.

RESOLUTION 2025-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST LINN REVISING FEES AND CHARGES AS SHOWN IN ATTACHMENT A AND UPDATING THE MASTER FEES AND CHARGES DOCUMENT OF THE CITY OF WEST LINN

WHEREAS, it is the policy of the City of West Linn to require the discernment and recovery of certain City costs from fees and charges levied in providing City services, products and regulations; and

WHEREAS, the City Manager shall periodically cause a review of City fees and charges to recover the percentage of City costs in providing City services, products and regulations and recommend adjustments to the City Council; and

WHEREAS, the City Manager has caused a review of all City fees and charges, has received guidance, and has determined the cost for such fees and charges; and

WHEREAS, adoption of Ordinance 1759 repeal & replacement of Chapter 10 of the West Linn Municipal Code requires changes to the fee structure of utility licenses, registration, and right-of-way usage fees.

NOW, THEREFORE, THE CITY OF WEST LINN RESOLVES AS FOLLOWS: The City of West Linn "Master Fees and Charges" document, included as Attachment A to this resolution, is hereby adopted.

This resolution was PASSED and ADOPTED this 14th day of July, 2025 and takes effect August 13, 2025.

_____
RORY BIALOSTOSKY, MAYOR

ATTEST:

_____
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

_____
CITY ATTORNEY

8. Public Works Fees

8.1.	**Public Works Construction Permit**	**Fee/Deposit**	
	Flat permit fee	$ 116	
	Construction services deposit	500	Pursuant to City Code Section 3.255
	Required deposit if street is cut	$500 plus $50 per lineal foot of street cut	

8.2.	**Public Improvement Permit**	**Fee/Deposit**
	Flat permit fee	$ 116
	Construction services deposit	6% of estimated construction costs

Pursuant to City Code Section 3.255 and West Linn Community Development Code 91.010(2)

8.3.	**Blasting Permits**	**Fee**
	Blasting permit fee	$ 1,932
		Pursuant to City Code Section 5.785
		Plus $2.00 per cubic yard of material

8.4.	**Erosion Control**	**Fee**
	Erosion Control Permit Application and Inspection Fees - under 1/2 Acre ($175 - Application and $350 - first year annual fee)	$ 578
	Erosion Control Application Fees - over 1/2 Acre but under 1 acre ($440 - Application and $580 - first year annual fee)	$ 1,124
	Erosion Control Application Fees - over 1 acre (Over 5 acres - DEQ 1200C also is required) ($940 - Application and $1,060 - first year annual fee. Every 1 acre or portion there of over 5 acres inspection fees increase $95)	$ 2,095

One charge per plan review/inspection; additional charge for each inspection.

8.5.	**Building Site Cleanup Deposits**	**Deposit**	
	Building site cleanup deposit	$ 350	Pursuant to City Code Section 8.11

8.6.	**Vacations**	**Fee**
	Easement	$ 1,932

8.7.	**Building Relocation Through Public Right-Of-Way (ROW)**	**Fee**
	Flat permit fee	$ 1,932

Pursuant to Section 8.255 of the West Linn Municipal Code

8.8.	**Asbuilts**	**Fee**
	Reconciliation of development project asbuilts if not provided in ESRI file format	Hourly billing rate per Section 1.3

8.9.	**Right-of-Way Use Permits**	**Fee**
	Flat permit fee	$ 116
	Small Cell Permit Application	$ 500 up to 5 sites, $100 per additional attachment

8.10.	**Third party development review services**	**Fee**
	Pass through charge from third party to developer	Third party fees plus 15% to cover City administrative costs

Reconciliation of development project asbuilts per approved hourly billing rate in Section 1.3 if not provided

8.11. Grading Plan Review Fee

Cubic Yards (CY):	Fee for first 10,000 Cubic Yards		Plus fee for each additional CY over 10,000 Cubic Yards
0 to 50	No fee, no permit required		n/a
51 to 100	$ 58		n/a
101 to 1,000	89	(for 1st 100 CY)	n/a
1,001 to 10,000	116	(for 1st 1,000 CY)	n/a
10,001 to 100,000	116	(for 1st 10,000 CY)	$58 (each additional 10,000 CY)
100,001 to 200,000	620	(for 1st 100,000 CY)	27 (each additional 10,000 CY)
Over 200,000	924	(for 1st 200,000 CY)	17 (each additional 10,000 CY)

8.12. Grading Permit Fee

Cubic Yards (CY):	Fee for first 1,000 of Cubic Yards		Plus fee for each additional CY over 1,000 (or fraction thereof)
0 to 50	No fee, no permit required		n/a
51 to 100	$ 89		n/a
101 to 1,000	89	(for 1st 100 CY)	$ 42 (each additional 100 CY)
1,001 to 10,000	446	(for 1st 1,000 CY)	37 (each additional 1,000 CY)
10,001 to 100,000	751	(for 1st 10,000 CY)	158 (each additional 10,000 CY)
Over 100,000	2,111	(for 1st 100,000 CY)	84 (each additional 10,000 CY)

8.13. Public Works Review and Inspection	**Fee**
General review associated with residential permit	$ 609
All others, see Public Works Department fee schedule.	
Inspection fees per West Linn Hourly Fee Schedule, see Section 1.3	
Stormwater Management Facility Review and Inspection	$ 263

8.14. Dye Test		**Fee**
Residential		$ 95
Commercial	Charged an hourly rate (see Section 1.3. for hourly rate information).	

~~**8.15. Utility License Fees**~~	~~**Fee**~~
~~Utility License Fee (Annual)~~	~~$ 175~~

~~Utility Service~~	~~Annual Right of Way Usage Fee~~
~~Electric~~	~~3.5% of gross revenue (+1.5% privilege tax)~~
~~Natural Gas~~	~~5% of gross revenue~~
~~Cable~~	~~5% of gross revenue~~
~~Communications~~	~~7% of gross revenue~~
~~Water~~	~~$0~~
~~Stormwater~~	~~0~~
~~Wastewater~~	~~0~~
~~Other utilities that do not earn gross revenue within the City~~	~~0~~

8.15 Utility Right-Of-Way Use Fees (Effective August 13, 2025)	**Fee**
Right-Of-Way Utility Provider Registration (Annual)	$ 50
Right-Of-Way Utility License (5 Year License)	$ 250

Utility Providers	Right-Of-Way Usage Fee
Electric	5% gross revenue
Natural Gas	5% gross revenue
Communications	7% gross revenue
Water	0% gross revenue
Stormwater	0% gross revenue
Wastewater	0% gross revenue

Utility Operators	Right-Of-Way Usage Fee
Electric	5% gross revenue
Natural Gas	5% gross revenue
Cable	5% gross revenue per the cable franchise agreement and Cable Act
Communications	7% gross revenue, provided that Operators whose only facilities in the right-of-way are Small Wireless Facilities as defined in 47 C.F.R. 1.6002 mounted on structures within the right-of-way, and with no facilities strung between such structures or otherwise within, under, or above the right-of-way, shall pay an attachment fee of $270 per attachment.
Water	0% gross revenue
Stormwater	0% gross revenue
Wastewater	0% gross revenue
Utility Operators With No Revenue From Customers In The City	$ 2.75 per linear foot or $5,629 per year, whichever is greater

Gross revenue means any revenue received or derived from all sources from utility facilities and/or utility services within the city limits by the utility; including revenue from the use, rental or lease of operating facilities of the utility and from the provision of services by the utility. There shall be no deduction for the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery cost, taxes or other expense. Gross revenue does not include revenue paid directly by the United States of America or its agencies.

8.16. Fees in Lieu of Construction	**Fee**
Transportation Frontage Improvements	$425/Linear Foot Based on historical costs to construct facility per linear foot of frontage.

To: West Linn City Council

From: Nellie deVries, Executive Director, Clackamas County Business Alliance

Date: July 8, 2025

Re: Proposed amendments to Chapter 10 of the West Linn Municipal Code: Utility License and Use of the Right-of-Way

---

The Clackamas County Business Alliance (CCBA) is a non-profit association of business, community and government members that are committed to the economic strength of Clackamas County. CCBA directly affects policy making by leveraging the strengths of the public and private sectors to ensure the economic vitality of Clackamas County.

As you know, wireless and telecommunications infrastructure is the core of key services including healthcare, banking, education, government services (including public safety), and access to employment opportunities.

CCBA understands the city's joint need for both revenue and these critical services and asks that whatever amendments the city considers to Chapter 10 of the West Linn Municipal Code, do not discourage further investment in the region. Businesses across the state are still struggling in the aftermath of Covid. Therefore, anything the public sector can do to help grow businesses of any kind is welcome. CCBA asks that the City and service providers work together to ensure that a reasonable agreement is reached that works for everyone.

Thank you for the opportunity to provide testimony and for your consideration.

Sincerely,

Nellie F. deVries

Nellie deVries
Executive Director
Clackamas County Business Alliance

FREE GEEK

Including everyone in our digital future

1731 SE 10th Ave. Portland, OR 97214
503-232-9350
info@freegeek.org
www.freegeek.org

To: City of West Linn City Council

RE: Bill 2025-07-14-06: Utility License and the use of Right-of-Way

My name is Juan Muro, Executive Director at Free Geek. Free Geek is a nonprofit organization with a mission to sustainably reuse technology, enable digital access and provide education to empower individuals to reach their full potential. Free Geek opened its doors to the Oregon community on Earth Day of 2000.

Every year we serve 15,000 individuals across Oregon by providing them with digital tools like education, no or low cost computers and other hardware, support with subscriptions to broadband and 1:1 support through digital navigators. The goal is digital adoption.

Many of our panthers include, Home Forward, Hacienda CDC, Latino Network, Multnomah County Library, IRCO, AIRCO, NAYA, Rosewood Initiative, OSCI, Guerreras Latina, City of Portland, City of Fairview, City of Gresham and many more.

We want to see everyone in Oregon subscribe to our digital era and the main way to do that is to make sure that everyone has a connection enabled device, affordable and strong broadband and full understanding of how to use the internet and digital tools safely and productively.

We are not an independent service provider (ISP) but we work with providers serving Oregon in ensuring that community members we serve have access and options to the service they want, need and could afford. Additionally, we partner with many of these service providers on device distribution and community events that elevate our initiative for digital adoption.

It is essential that digital inclusion practitioners, government leaders, technologists, libraries, school and community based organizations work together so we can provide our communities with choices regarding their broadband needs.

More that 80% of the people we served tell us that affordable and reliable internet service are most important when choosing their provider but have limited options for affordable subscriptions. Whether it's fiber or wireless, when the cost of doing business goes up for any provider we see the impact of that on the communities we serve.

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We respectfully ask the city to consider a fee structure for operators and providers that has minimal impact for our community members who need affordable options for broadband. We are concerned that the proposed fees will negatively impact the choices individuals and families have for affordable broadband options.

Thank you,

Juan Manuel Muro, Jr.
Executive Director, Free Geek.

July 8, 2025

City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: Written Testimony–Wireless Telecommunications Code Language

Dear Mayor Bialostosky, Members of City Council, and City Manager Williams:

My name is Skip Newberry, and I serve as President & CEO of the Technology Association of Oregon. TAO represents nearly 500 tech companies in Oregon, ranging from early stage startups to some of the largest tech companies in the world, as well as many of Oregon's iconic businesses that are striving to remain competitive and relevant through technology. Our mission is to create an inclusive, world-class innovation economy in the region. I also serve as the Honorary Consul to Estonia for Oregon. More below on why that's relevant.

Wireless and telecommunications infrastructure is the backbone of today's technology applications, which provide critical services to residents and businesses. Such services include healthcare, banking, education, government services (including public safety), and access to employment opportunities.

When talking about digital equity and ensuring that everyone has access to the information, services and resources necessary to thrive in today's world, it all starts with telecommunications infrastructure. Without ubiquitous telecommunications infrastructure, devices cannot connect to the Internet, and software applications will not work.

Most countries around the world recognize this and have been working hard to attract and incentivize investment in telecom infrastructure. This was the first step that Estonia–a tiny country in the Baltics with a population of 1.2 million–took in the early 2000s as it sought to modernize the delivery of services after securing independence from the Soviet Union. By 2016 *Wired Magazine* recognized Estonia as the most advanced digital society in the world. Last year Estonia achieved the milestone of offering 100% of government services digitally. Today, it is on the third version of a nationwide AI strategy, is pioneering the use of AI technologies in education, and is either first or second in Europe for reading, math and science outcomes at the K-12 level.

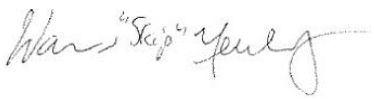
In Oregon, we are dead last in the U.S. when it comes to computer science offerings at the K-12 level and last or close to last in reading, math and science outcomes. We are losing businesses and residents, and many cite the high cost of living and of doing business. This includes a combination of taxes and the time and cost spent trying to navigate complex regulations.

Estonia does not have the lowest taxes in Europe, but in recent years it has attracted over 125,000 startups and small businesses from around the world who have registered in Estonia due to Estonia's streamlined digital business services. While telecommunications infrastructure won't reform our tax system, it can support the kinds of technology that will streamline residents' ability to access services and comply with regulations. To be sure, some cities in the U.S. are already using AI agents to help residents navigate byzantine websites and government databases spanning multiple jurisdictions. Instead of redoing dozens of websites at great cost, these cities have instead turned to AI agents as personalized navigators for residents and businesses.

The proliferation of AI technology has the potential to radically transform how we live and work. And there will be winners and losers. The winners will have access to AI tools and training, and these things require ubiquitous telecommunications infrastructure. Datacenters that power AI will move increasingly to the edge–they will be in all sorts of devices and structures. This is only possible with telecommunications infrastructure everywhere. Achieving digital equity and economic development goals is not possible today without taking practical steps to attract investment in and deploy telecommunications infrastructure.

For these reasons, we respectfully ask that the City determine its right-of-way fee structure for wireless facilities that: does not charge both infrastructure owners and wireless providers for the same infrastructure located in the right of way; is cost based; does not charge wireless communications providers based on a percentage of gross revenue; and does not charge both operators and providers for the same infrastructure. Thank you for your consideration.

Sincerely,



Skip Newberry
President & CEO, TAO

Taxpayers Association of Oregon
Since 1999 • OregonWatchdog.com
OregonWatchdog@Gmail.com (503) 603-9009 P.O. Box 23573, Tigard, OR 97281

Mayor Rory Bialostosky
Councilor Mary Baumgardner
Councilor Carol Bryck
Councilor Kevin Bonnington
Councilor Leo Groner

City of West Linn
22500 Salamo Rd.
West Linn, OR 97068

NO NEW STEALTH CELL-PHONE TAXES!
PEOPLE HATE HIGHER TAXES ON THEIR PHONE.

RE: Proposed Right of Way Fee and Privilege Tax (Resolution 2025-07)

West Linn is considering updates to its municipal code that will increase the cost of wireless telecommunications services for local residents through imposition of taxes on phantom uses of the public right of way and a new privilege tax cell phone service. This makes it a stealth tax. We hope that you will reject the proposal.

As wireless communications carriers have noted, they, like other businesses in the city, purchase access to broadband via wireline providers. Lacking infrastructure in the public right of way, wireless providers are merely customers of the broadband providers – who already pay a tax on the infrastructure. There is no justification to also tax wireless providers for infrastructure that they do not own and whose use is already taxed.

The proposed code change also functions as a privilege tax – taxing wireless telecommunications providers based on a percentage of their gross revenue – while not receiving any goods or service related to the fee. This clearly conflicts with Oregon's Corporate Activities Tax preemption on such taxes.

Ultimately these type of fees are passed on the consumers in the form of higher costs for the services covered by the proposed tax. Families are still reeling from record inflation over the past five years. With everything from food, fuel and a variety of other services already costing local residents more, now hardly seems like the right time to add another costly and regressive tax. There is no practical reason or justification for these new taxes other than to boost the city's revenues. The City Council should reject this proposal.

Sincerely,

Jason Williams

Jason Williams
Executive Director & Founder (1999)

Utility License and Use of the Right-Of-Way

WLMC Chapter 10

Where We're At

October 2023: Council requested staff review of WLMC Ch 10

- 2021 Ordinance 1723 added Ch 10 to the WLMC
  - Moved management of ROW Utility use from Franchise to License based program.
- Staff have identified proposed revisions to the related to:
  - Improvement management of the Right-Of-Way
  - Additional protections for City and Utilities
  - Capture of lost revenue & potential additional revenue options

Proposed Revisions Process Timeline

- **June 2024 – August 2024:** Reviewed Utility Use of the Right-Of-Way code of surrounding municipalities
- **August 2024 – October 2024:** Draft revised Utility Use of the Right-Of-Way code, review internally with Public Works and Planning departments
- **October 2024 – February 2024:** Review and finalize draft with outside counsel
- **March 2025:** Proposed revisions presented for public comment

How revisions were drafted

- Analyzed existing codes of surrounding comparable communities
  - Oregon City, Tigard, Tualatin, Gladstone, Milwaukie, Lake Oswego, Beaverton, and Gresham.
  - Identified consistencies in language, borrowed common language to fill current gaps
  - Reviewed inconsistencies, proposed language based on outside legal council recommendation to fill gaps

Goal: develop code that is consistent with surrounding municipalities while optimizing management and protections of the Right-Of-Way.

Where We're At

April 2025: Staff presented proposed revisions to WLMC Ch 10 Utility Use of the Right-Of-Way

- Public Comment received leading up to, during, and after April Work Session
- Staff have discussed public comments from wireless utility providers with outside council

Need for Revisions

- Current code does not provide a comparable level of clarification and protection provided under a franchise agreement
- Gaps in code language may present challenges in managing the right-of-way in the best interest of the City.
- Clarification around remittance and audits needed to ensure revenue is not lost as franchises transition to licenses.

Proposed Revisions

- Expanded definitions for clarification
- Utility Provider registration
- Utility License clarification around rights granted, term, and conditions.
- Clarification around construction, location, relocation, and removal of facilities
- Add language to address leased capacity, maintenance, and vacation of ROW
- Clarify fees, payments, and penalties; revise penalty structure.
- Clarify records & reporting requirements, add audit language.
- Add insurance & indemnification language.
- Add Confidentiality language
- Add severability & preemption language
- Clarification around violations.

Where We're At

Tonight: Staff presents alternative version of proposed revisions to WLMC Ch 10 Utility Use of the Right-Of-Way

- ORD 1759_1: Original proposed revisions from April Work Session
- ORD 1759_2: Proposed revisions with additional language added to exempt wireless providers who do not own facilities in the right-of-way (outside of small cell facilities).

Council may choose to adopt the version of the ordinance they feel will best serve the interests of the City.

Non-Owner Wireless Exemption

ORD 1759_2 adds the following language to the proposed revisions:

10.100 Fees, Payment and Penalties.

(5) Exceptions.

(b) A utility provider that does not own any utility facilities in the rights-of-way shall not be subject to any right-of-way usage fees for the provision of wireless communications services to customers in the City.

Under this exemption, wireless providers who do not own facilities in the right-of-way would not be subject the right-of-way usage fees listed in the MFC document.

Changes To Master Fees & Charges

Usage Fees:

- Separate usage fees for providers & operators, gross revenue fees for utility type stay the same.
- Minimum fee for operators in ROW with no gross revenue
- Clarification of Small Cell fee for wireless providers ($270 per attachment)

Registration & Permits:

- Right-Of-Way Provider Registration $50 (Annual)
- Right-Of-Way Utility License $250 (5 years, operators)
- Small Cell permit application: $500 up to 5 sites, $100 per additional attachment

Current Master Fees and Charges

8.15. Utility License Fees

	Fee
Utility License Fee (Annual)	$ 175

Utility Service	Annual Right of Way Usage Fee
Electric	3.5% of gross revenue (+1.5% privilege tax)
Natural Gas	5% of gross revenue
Cable	5% of gross revenue
Communications	7% of gross revenue
Water	$0
Stormwater	0
Wastewater	0
Other utilities that do not earn gross revenue within the City	0

Proposed Master Fees and Charges

8.9. Right-of-Way Use Permits	Fee
Flat permit fee	$ 116
Small Cell Permit Application	$ 500 up to 5 sites, $100 per additional attachment

8.15 Utility Right-Of-Way Use Fees (Effective August 13, 2025)	Fee
Right-Of-Way Utility Provider Registration (Annual)	$ 50
Right-Of-Way Utility License (5 Year License)	$ 250

Utility Providers	Right-Of-Way Usage Fee
Electric	5% gross revenue
Natural Gas	5% gross revenue
Communications	7% gross revenue
Water	0% gross revenue
Stormwater	0% gross revenue
Wastewater	0% gross revenue

Proposed Master Fees and Charges

Utility Operators	Right-Of-Way Usage Fee
Electric	5% gross revenue
Natural Gas	5% gross revenue
Cable	5% gross revenue per the cable franchise agreement and Cable Act
Communications	7% gross revenue, provided that Operators whose only facilities in the right-of-way are Small Wireless Facilities as defined in 47 C.F.R. 1.6002 mounted on structures within the right-of-way, and with no facilities strung between such structures or otherwise within, under, or above the right-of-way, shall pay an attachment fee of $270 per attachment.
Water	0% gross revenue
Stormwater	0% gross revenue
Wastewater	0% gross revenue
Utility Operators With No Revenue From Customers In The City	$ 2.75 per linear foot or $5,629 per year, whichever is greater

Questions

Agenda Bill 2025-07-14-07

Date Prepared:	July 3, 2025
For Meeting Date:	July 14, 2025
To:	Rory Bialostosky, Mayor West Linn City Council
Through:	John Williams, City Manager JRW
From:	Lauren Breithaupt, Finance Director LB
Subject:	Ordinance 1764, Amending WLMC 7.465 to Change Transient Lodging Tax Collection Frequency to Quarterly

Purpose:
The proposed ordinance amends West Linn Municipal Code (WLMC) Section 7.465, Due Date, Returns, and Payments, to revise the collection frequency for transient lodging taxes from monthly to quarterly. This amendment is required for the City to partner with the Oregon Department of Revenue (DOR) for tax collection and administration services.

Question(s) for Council:
Should the City Council approve the changes to the Municipal Code Chapter 7.465?

Public Hearing Required:
None Required.

Background & Discussion:
Currently, WLMC 7.465 states that lodging tax payments are due monthly on the fifteenth day of the month. However, the DOR only processes local transient lodging taxes on a quarterly basis. Therefore, in order to delegate administration of the tax to the state under ORS 305.620 and ORS 320.345, this ordinance change is necessary.
Without this amendment, the DOR will be unable to collect and remit transient lodging tax revenue on the City's behalf, which could lead to inefficiencies or missed opportunities for streamlined revenue collection. The City Council has already approved the Intergovernmental Agreement with the DOR for collection of transient lodging taxes.

Budget Impact:
The exact budget impact depends on total vacation rentals within West Linn and the percentage tax the City decides to tax. Assuming the City continues with a four percent tax and there are 20 vacation rentals, charging $100/night for 50 days of the year, the City would collect $4,000 in revenue. A portion of the funds may be required to be dedicated to tourism. Vacation rentals do generate costs for the City, for example police response to complaints on these properties, therefore fee generation is recommended.

Sustainability Impact:
Not Applicable.

Council Options:

1. Approve the proposed changes to the municipal code.
2. Reject the changes to the municipal code.
3. Request additional information or revisions.

Staff Recommendation:
Staff recommends the approval of the proposed changes.

Potential Motion:
Move to approve the changes to the Municipal Code Chapter 7.465 related to Transient Lodging Tax (TLT) collections.

Attachments:

4. Ordinance 1764

ORDINANCE 1764

AN ORDINANCE RELATING TO THE COLLECTION OF TRANSIENT LODGING TAXES

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~**bold lined through**~~ and additions are **bold underlined**.

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

> Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, the City seeks to collect transient lodging taxes pursuant to applicable state laws, and as administered by the Oregon Department of Revenue; and

WHEREAS, the City may elect to enter into an agreement with the Oregon Department of Revenue for collection of transient lodging taxes due; and

WHEREAS, for collection by the Oregon Department of Revenue to occur, the City's municipal code must clearly indicate that collection of taxes due will occur on a quarterly basis, however, West Linn Municipal Code Section 7.465 currently expresses that collection will occur monthly, on the fifteenth day of the month; and

WHEREAS, without amending WLMC Section 7.465 to indicate quarterly collections, the Oregon Department of Revenue will be unable to administer the transient lodging tax for the City.

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Amendment. West Linn Municipal Code Section 7.465, Due Date, Returns, and Payments, is amended to read as follows:

7.465 Due Date, Returns, and Payments.

(1) All amounts of such taxes collected by any operator are due and payable to the Tax Administrator on a ~~**monthly**~~ **quarterly** basis ~~**on the fifteenth day of the month for the preceding month and are delinquent on the last day of the month in which they are due**~~. ~~**If the last day of the month falls on a holiday or weekend, amounts are delinquent at the close of the first business day that follows.**~~ **Remittances are delinquent if not made by the last day of the month in which they are due.**

(2) ~~**On or before the fifteenth day of the month following each month of collection, operators must submit a completed tax return form to the Tax Administrator, reporting the amount of tax due during the preceding month. The return shall be filed in such form as the Tax Administrator may prescribe by every operator liable for payment of tax.**~~ **Transient**

lodging operators must submit a completed tax return form to the Tax Administrator on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less an administration fee as designated in the intergovernmental agreement with the State of Oregon, where applicable. The return shall be filed in such form as the Tax Administrator may prescribe. The Tax Administrator if they deem it necessary in order to insure payment or facilitate collection by the City of the amount of taxes in any individual case, may require returns and payment of the amount of taxes on other than monthly periods.

(3) Returns shall show the gross rents collected, taxable rents, the total amount of transient lodging tax collected, and the amount of administrative fee retained by the operator. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.

(4) The person required to file the return shall deliver the return, together with the remittance of the amount of transient lodging tax due, to the Tax Administrator at the appropriate office, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(5) For good cause, the Tax Administrator may extend for up to 30 days the time for making any return or payment of transient lodging tax. No further extension shall be granted, except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of transient lodging tax due without proration for a fraction of a month. If a return is not filed and the transient lodging tax and interest due are not paid by the end of the extension granted, then the interest shall become a part of the transient lodging tax for computation of penalties described in Section 7.467.

(6) The operator shall be permitted to deduct as collection expense an administrative fee of five percent of the amount of the transient lodging taxes collected, excluding any interest or penalties, as shown on the return mentioned in subsection (3) of this section.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions of the ordinance were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however

that any Whereas clauses and boilerplate provisions (i.e. Sections 2-5) need not be codified and the City Recorder or the designee is authorized to correct any cross-references and any typographical errors.

SECTION 5. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the _____ day of _____, 2025, and duly PASSED and ADOPTED this _____ day of _____, 2025.

_____
RORY BIALOSTOSKY, MAYOR

ATTEST:

_____
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

_____
CITY ATTORNEY

CITY OF West Linn

Public Comment Form

I wish to speak during Public Comments (comments are limited to three minutes). Topic listed will be reflected in the meeting minutes.

Please specify topic (*required*): Parking CCI

I wish to wait and speak on the agenda item listed below (comments are limited to three minutes).

Please specify agenda item (*required*):

_____

Please print:

Name: Shannen Knight

Phonetic spelling, if difficult to pronounce: _____

Address (Optional): _____

City: _____ State: _____ Zip: _____

Email (Optional): _____ Phone (Optional): _____

Please submit this form to the City Recorder along with copies of any material to be handed out to the Council.

This form is subject to public records laws. If requested, it may be disclosed to another party unless exempt from disclosure under Oregon Public Records Law.

CITY OF West Linn

Public Comment Form

I wish to speak during Public Comments (comments are limited to three minutes). Topic listed will be reflected in the meeting minutes.

Please specify topic (*required*): Public Comment

I wish to wait and speak on the agenda item listed below (comments are limited to three minutes).

Please specify agenda item (*required*):

_____

Please print:

Name: BEAU GENOT, CHAIR CCI

Phonetic spelling, if difficult to pronounce: _____

Address (Optional): _____

City: WEST LINN State: OR Zip: _____

Email (Optional): _____ Phone (Optional): _____

Please submit this form to the City Recorder along with copies of any material to be handed out to the Council.

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CITY OF West Linn

Public Comment Form

I wish to speak during Public Comments (comments are limited to three minutes). Topic listed will be reflected in the meeting minutes.

Please specify topic (*required*): Public Comments

I wish to wait and speak on the agenda item listed below (comments are limited to three minutes).

Please specify agenda item (*required*):

_____

Please print:

Name: Kathie Halicki, WNA President

Phonetic spelling, if difficult to pronounce: _____

Address (Optional): _____

City: _____ State: _____ Zip: _____

Email (Optional): _____ Phone (Optional): _____

Please submit this form to the City Recorder along with copies of any material to be handed out to the Council.

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CITY OF West Linn

Public Comment Form

I wish to speak during Public Comments (comments are limited to three minutes). Topic listed will be reflected in the meeting minutes.

Please specify topic (*required*): Open Letter, Tolling 9/11

I wish to wait and speak on the agenda item listed below (comments are limited to three minutes).

Please specify agenda item (*required*):

_____

Please print:

Name: Dean Suhr

Phonetic spelling, if difficult to pronounce: _____

Address (Optional): _____

City: _____ State: _____ Zip: _____

Email (Optional): _____ Phone (Optional): _____

Please submit this form to the City Recorder along with copies of any material to be handed out to the Council.

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CITY OF West Linn

Public Comment Form

I wish to speak during Public Comments (comments are limited to three minutes). Topic listed will be reflected in the meeting minutes.

Please specify topic (*required*): Wireless facility changes (I represent Verizon)

I wish to wait and speak on the agenda item listed below (comments are limited to three minutes).

Please specify agenda item (*required*):

Bill 2025 07-14-06 - ordinance 1759

Please print:

Name: Troy Gagliano -

Phonetic spelling, if difficult to pronounce: _____

Address (Optional): _____

City: _____ State: _____ Zip: _____

Email (Optional): troy.gagliano@verizon.com Phone (Optional): _____

Please submit this form to the City Recorder along with copies of any material to be handed out to the Council.

This form is subject to public records laws. If requested, it may be disclosed to another party unless exempt from disclosure under Oregon Public Records Law.

CITY OF West Linn

Public Comment Form

I wish to speak during Public Comments (comments are limited to three minutes). Topic listed will be reflected in the meeting minutes.

Please specify topic (*required*): _____

I wish to wait and speak on the agenda item listed below (comments are limited to three minutes).

Please specify agenda item (*required*):

8A Skyline Property

Please print:

Name: Harlan Borow + Darren Gusdorf - Icon Construction

Phonetic spelling, if difficult to pronounce: _____

Address (Optional): 1969 Willamette Falls Dr #260

City: West Linn State: OR Zip: 97067

Email (Optional): Harlan@iconconstruction.net Phone (Optional): 503 713 8627

Please submit this form to the City Recorder along with copies of any material to be handed out to the Council.

This form is subject to public records laws. If requested, it may be disclosed to another party unless exempt from disclosure under Oregon Public Records Law.

CITY OF West Linn

Public Comment Form

I wish to speak during Public Comments (comments are limited to three minutes). Topic listed will be reflected in the meeting minutes.

Please specify topic (*required*): _____

I wish to wait and speak on the agenda item listed below (comments are limited to three minutes).

Please specify agenda item (*required*): Bill 2025-07-14-06 Utility License & ROW use

Please print:

Name: ~~Lelah~~ Lelah Vaga, Wireless Policy Group, Verizon

Phonetic spelling, if difficult to pronounce: Lee-Lah Vah-Gah

Address (Optional): _____

City: Portland State: OR Zip: 97215

Email (Optional): _____ Phone (Optional): _____

Please submit this form to the City Recorder along with copies of any material to be handed out to the Council.

This form is subject to public records laws. If requested, it may be disclosed to another party unless exempt from disclosure under Oregon Public Records Law.

Howard, Teresa

From: City of West Linn <webmaster@westlinnoregon.gov>
Sent: Monday, July 14, 2025 1:30 PM
To: Howard, Teresa
Subject: City of West Linn Website submission: Meeting Request to Speak Signup

Submitted on Monday, July 14, 2025 - 1:29pm

Submitted by anonymous user: 65.102.23.97

Submitted values are:

Full Name Juan Muro
Email Address [redacted]
Cell Phone Number
Home Phone Number [redacted]
Street Address [redacted]
City Portland
State Oregon
Item you would like to speak on Bill 2025-07-14-06: Utility License and the use of Right-of-Way
Board Council
Meeting Date Mon, 07/14/2025

The results of this submission may be viewed at:

https://westlinnoregon.gov/node/45911/submission/89313

Howard, Teresa

From: City of West Linn <webmaster@westlinnoregon.gov>
Sent: Monday, July 14, 2025 6:23 PM
To: Howard, Teresa
Subject: City of West Linn Website submission: Meeting Request to Speak Signup

Submitted on Monday, July 14, 2025 - 6:22pm

Submitted by anonymous user: 24.22.123.12

Submitted values are:

Full Name Skip Newberry
Email Address [redacted]
Cell Phone Number
Home Phone Number [redacted]
Street Address [redacted]
City Portland
State OR
Item you would like to speak on ORD 1759
Board City Council
Meeting Date Sat, 06/14/2025

The results of this submission may be viewed at:

https://westlinnoregon.gov/node/45911/submission/89316