

ORDINANCE NO. 1859

(An ordinance amending Section 5.07.100 of the Hood River Municipal Code regarding application to City-owned property and standby fire and emergency medical coverage)

WHEREAS, Chapter 5.07 of the Hood River Municipal Code authorizes and regulates special events in the City.

WHEREAS, Chapter 5.07 does not contain a requirement for standby fire and emergency medical coverage to protect public safety;

WHEREAS, the requirement below for standby fire and emergency medical watch is in addition to and does not supercede Uniform Fire Code Section 2501.18, which also addresses standby fire watch;

WHEREAS, it is necessary for the protection of public health, safety and welfare to require persons hosting special events to contract with the City for standby fire and/or emergency medical coverage;

WHEREAS, the severability clause in Section 5.07.100 is unnecessary because the Hood River Municipal Code contains a severability clause of general application to the entire code at Section 1.01.100;

WHEREAS, Chapter 5.07 does not apply to City owned property, yet many City properties are used for special events;

WHEREAS, the same concerns for health, safety and welfare that apply to special events on non-City owned property apply to special events on City property;

WHEREAS, the use of City-owned properties for special events are an expense to the City and it is appropriate for the City to charge users of City-owned property for special events to cover the associated expenses.

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Section 5.07.010 of the Hood River Municipal Code is amended as follows:

5.07.010 Title. The provisions of this chapter are intended to authorize and regulate

Section 3: Use of Right of Way/Construction and Location.

- (1) Grantee shall comply with Hood River Municipal Code (HRMC) Chapter 13.36 prior to commencing any construction, installation, extension, removal, relocation, or maintenance of any Electric Facilities in the Right of Way or any public place. Prior to commencing all such work in any public place, Grantee shall first obtain permission from the City to do so and shall comply with all permitting requirements the City may impose on such work, use or occupation.
- (2) The location of the proposed construction, installation, extension, removal, relocation, or maintenance of Grantee's Electric Facilities is subject to approval by the City Engineer and shall not be undertaken in such a way so as to interfere unreasonably with the use by the City and the public of the Right of Way, any public place, or any other public improvement.
- (3) Grantee or its contractor may prune all trees and vegetation which overhang a public Right-of-Way, property or place, whether such trees or vegetation originate within or outside said Right-of-Way, property or place, in such manner and to such extent as will prevent the branches or limbs or other parts of such trees or vegetation from growing within limits specified in the "Oregon Public Utility Commission Staff Policy on Tree and Power Line Clearances" and consistent with ORS 758.280-758.286. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. Prior to removal of any trees planted in the Right-of-Way, Grantee shall obtain written approval from the City, which approval may be withheld by the City in its discretion. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic.

Section 4. Duration.

- (1) This franchise is granted for a period of **five (5)** years from and after the effective date of this ordinance, provided that Grantee has provided unconditional written acceptance in accordance with Section 20. This franchise shall expire on the last day of the **5** year period unless extended or modified by the parties in writing.
- (2) Either party, by written notice delivered not less than 90 days, nor more than one year, in advance of the termination date of this Agreement, may request renewal, extension or modification of the Agreement.

Section 5. Franchise Not Exclusive.

- (1) This franchise is not exclusive, and shall not be construed as a limitation on the City in:
 - (a) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.

- (b) Constructing, installing, maintaining or operating any City-owned public utility.
- (2) This franchise is subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Right of Way or public places. Nothing in this franchise shall be deemed to grant, convey, create, or vest in Grantee a real property interest in land, including any fee, leasehold interest, or easement.

Section 6. Public Works and Improvements Not Affected by Franchise.

- (1) The City reserves the right to:
 - (a) Construct, install, maintain and operate any public improvement, work or facility in, over or under any Right of Way or public place;
 - (b) Perform or authorize or direct the performance of any work that the City may find desirable or convenient in, over or under any Right of Way or public place;
 - (c) Vacate, alter or close any Right of way or public place, provided that the City shall make available to Grantee with alternative Right of Way for the location of its facilities or provide for the preservation of Grantee's rights of use, replacement and maintenance. If Grantee's Electric Facilities must be relocated from a vacated Right of Way, the petitioners of the vacation shall bear the cost of relocation of the Electric Facilities.
 - (d) Control or prevent the use of any public place by Grantee and require payment of additional compensation for the use of the public place in any amount the parties agree is reasonable.
 - (e) Exercise any non-regulatory power that the City currently holds, or may hereafter be authorized or granted by the laws of the State of Oregon or the City Charter, except where that power may be preempted or superseded by the constitutions of the United States or the State of Oregon.
 - (f) Exercise any regulatory power that is abandoned by the Oregon Public Utility Commission, not vested exclusively by law in any other state regulatory body, and that can be lawfully exercised by the City.
- (2) Whenever the City shall perform or cause or permit to be performed any work in any Right of Way where such work may disturb or interfere with Grantee's Electric Facilities, the City shall, or require its permittee, to notify, in writing, Grantee sufficiently in advance of the contemplated work to enable Grantee to take those measures, including relocation or removal, as may be deemed necessary to protect its Electric Facilities, at its own expense.

Section 7: Service Standards.

- (1) The Grantee shall maintain and operate an adequate and safe system for the distribution of electric energy in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service cause by act of God, unavoidable accident or other circumstances beyond the control of the Grantee or through no fault of its own.
- (2) Grantee shall comply with those rules lawfully prescribed by the Oregon Public Utility Commission with respect to rates to be charged and the conditions, quality, character and standards of service finished.

Section 8: Safety Standards and Work Specifications.

- (1) Grantee's Electric Facilities shall be constructed and maintained in good order and condition, in a safe manner, and in accordance with standard engineering practice and all lawful governmental regulations.
- (2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 9: Street Excavations and Restorations; Moving Buildings.

- (1) Grantee shall comply with the HRMC, in particular Chapter 13.36, with respect to work in the Right of Way.
- (2) Whenever it becomes necessary to temporarily rearrange, remove, lower or raise Grantee's aerial Electric Facilities to permit the passage of a building, machinery, or other object, Grantee shall perform the rearrangement upon receipt of written notice from the persons desiring to move the building, machinery or object. The rearrangement shall not be required unless the City Building Official has approved the structural relocation. The costs incurred by Grantee in making the rearrangements to its aerial Electric Facilities shall be borne by the persons requesting rearrangement, unless the aerial Electric Facilities are placed or maintained in violation of the applicable PUC rules and regulations and thereby interfere with the movement.

Section 10: Relocation of Facilities; Overhead to Underground Conversion.

- (1) Whenever the City determines that it is necessary to change the location of any Electric Facilities located in a Right of Way or public place, the Grantee shall, at its own expense, remove, relocate, and/or alter the Electric Facilities within a reasonable time after receiving written notice to do so from the City. The cost of such removal, relocation and/or alteration of the Electric Facilities shall be paid by the Grantee, but when the removal, relocation, and/or alteration is required for the convenience or benefit of any person, governmental agency or instrumentality other

than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from that person, agency or instrumentality. The City shall provide the Grantee with timely notice of any anticipated requirement to remove, relocate or alter its Electric Facilities and shall cooperate with the Grantee in the matter of assigning or allocating the associated costs.

- (2) If Grantee fails to relocate, remove or alter any Electric Facilities as requested by the City by the date established by the City, the City may cause the Electric Facilities to be removed by qualified contractors at Grantee's sole expense. Upon receipt of demand for payment from the City, Grantee shall promptly reimburse the City for the costs the City incurred.
- (3) Grantee shall remove and replace overhead Electric Facilities underground at the request of the City. Cost responsibility shall be allocated in accordance with all applicable Oregon Administrative Rules and a schedule agreed upon by the City and Grantee. The City shall require that each customer served from the existing overhead Electric Facilities shall make all facility changes to the customer's premises in accordance with Grantee's policies and standards necessary to receive service from the underground facilities as soon as they become available.

Section 11: Co-Location.

In consideration for granting this franchise, Grantee grants the right and privilege without payment or charge to the City, but at the City's expense, with prior notice and approval of Grantee, to place and maintain wires, control boxes, and any other necessary equipment as the City may require for fire, police, emergency or other municipal purposes, on Grantee's Facilities placed by Grantee in the Right of Way or public places, whether above or underground. All such installations shall be made in a manner so as not to interfere with Grantee's electric energy service and in conformance with good electrical practice, Grantee's standards, and local, state and federal regulations. When safety is an issue, PacifiCorp shall not be required to share locations with water or sewer utilities. The City shall not sell or lease its rights under this subsection to any third parties. The City shall hold Grantee harmless from all claims or liability for damage that arises out of the City's use of Grantee's Electric Facilities under this subsection.

Section 12: Compensation.

- (1) As compensation for the benefits and privileges of this franchise granted by this ordinance, the Grantee shall pay to the City a franchise fee in the amount equal to **five percent (5%)** of Gross Revenue. Grantee may offset against such compensation the amount of any license, permit or other fees paid to the City in connection with the Grantee's use of the Right of Way when the fee or charge is imposed upon Grantee alone or not under an ordinance or resolution applicable to others in addition to Grantee.
- (2) When direct access is implemented by Grantee in accordance with state law and regulations adopted by the PUC, if the City so directs, instead of calculating the franchise fee in accordance with Section 1 of this section, Grantee shall calculate the

franchise fee using volume-based methodologies in accordance with PUC regulations.

- (3) The compensation required by this section shall be due and payable quarterly, and shall be paid to the City by the 45th day following the end of each quarter or each calendar year. Within sixty (60) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last quarter for which compensation has been paid.
- (4) The Grantee shall furnish to the City with each payment of compensation required by this section a statement showing the amount of Gross Revenue for the period covered by the payment. The compensation for the period covered by the statement shall be computed on the basis of the reported Gross Revenue. If Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due to City shall be paid by Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from Grantee.
- (5) Acceptance by the City of any payment due under this section shall not be deemed as an accord that the amount paid is the correct amount, nor shall any acceptance of payment be construed as a release of any claim the City may have for additional funds or as a waiver by the City of any breach of this franchise.

Section 13: Books of Account and Reports.

Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 12 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time to time. The City may also require Grantee to provide an audit report prepared at Grantee's expense or an audit report prepared by an independent accounting firm prepared at the City's expense, but not more than once per calendar year. The City may require periodic reports from Grantee relating to its operations and revenues within the City.

Section 14: Supplying Maps Upon Request.

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. Upon reasonable notice, authorized representatives of the City may inspect the maps and data any time during business hours at an office of the Grantee. Grantee and the City may determine that the location of certain Electric Facilities should be confidential as the public interest may require. In such a case, Grantee is under no obligation to provide records of the location of these facilities to the City and the City shall treat any public record disclosing the location of these facilities as confidential, subject to the provisions of state law and the Oregon Public Records Law. The City shall limit access to any such confidential record to trustworthy employees of the City with a need to know the information set out in the record. The City shall store any such confidential record in a secure and private place and avoid making and distributing copies of the record.

Section 15. Annexation

(1) Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

(2) Notice of Annexation. When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to the Grantee: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center
P.O. Box 400
Portland, Oregon 97202-0400

With a copy to:

PacifiCorp
Attn: Office of the General Counsel
825 N E Multnomah
Portland, OR97232

Section 16. Confidential and Proprietary Information.

When requested by Grantee, and subject to the provisions of state law and the Oregon Public Records Law, the City shall treat as confidential any public record or information provided by Grantee and designated by Grantee as confidential.

Section 17. Indemnification and Insurance.

(1) Grantee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise granted under this ordinance, but not arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees.

(2) Grantee shall maintain automobile, comprehensive general liability and property damage insurance that protects Grantee and the City, as well as the City's officers, agents, and employees, from the claims referred to in Section 16(1). The insurance shall provide coverage in the amounts set forth in Resolution 99-15, and any amendments thereto. The insurance policies may provide for self-retention or deductibles in reasonable amounts. 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 during the term of this franchise.

- (3) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this section shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.
- (4) The insurance policy shall provide that the insurance shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City Manager. If the insurance is canceled or materially altered within the term of this franchise, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this franchise.

Section 18: Assignment of Franchise.

This franchise shall not be assigned or transferred without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed, provided the franchise is transferred or assigned to an entity that controls, is controlled by, or is under the common control of the Grantee. If the City consents to an assignment or transfer of the franchise, the transfer or assignment shall not be effective until the assignee or transferee has complied with the requirements in Section 20 and filed a signed acceptance of the terms of this franchise. Notwithstanding anything in this franchise to the contrary, Grantee may mortgage this franchise, together with its Electric Facilities and properties within the City, in order to secure any legal bond issue or other indebtedness of Grantee, with no requirement that the trustees accept this franchise.

Section 19: Termination of Franchise for Cause.

The City may terminate this franchise as provided in this section, subject to Grantee's right to a court review of the reasonableness of such action, upon the willful failure of the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under or pursuant to this ordinance. The City shall provide Grantee written notice of any such failure and the Grantee shall have sixty (60) days from receipt of notice to cure the failure, or if the failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing the failure. If Grantee does not cure the failure within the sixty day period, or does not commence and diligently pursue curing the failure to the City's satisfaction within the 60 day period, then the City Council may declare the franchise terminated.

Section 20: Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of

transient vending and special events on all property within the City of Hood River ~~except property owned or leased by the city~~. To that purpose, there is added to the Hood River Municipal Code Chapter 5.07 entitled “Transient Merchants and Special Events,” and those sections and subsections set forth below.

Section 5.07.020 of the Hood River Municipal Code is amended as follows:

5.07.020 Purpose and Scope.

* * *

C. These regulation shall ~~not~~ apply to activities on city-owned and leased property.

* * *

Section 5.07.100 of the Hood River Municipal Code is amended as follows:

5.07.100 ~~Severability~~ Standby Fire and Emergency Medical Watch for Special Events. Invalidation of a section or part of a section of this chapter shall not affect the validity of the remaining sections or parts of sections. Whenever in the opinion of the Fire Chief, or their designee, it is necessary for public safety at a special event, the Fire Chief, or their designee, may require the special event licensee to contract with the City for standby fire and emergency medical watch through the City’s Fire Department. The licensee shall be responsible for paying the City’s fee for such coverage and the licensee shall execute a contract for the services as a condition to receiving the special event license.

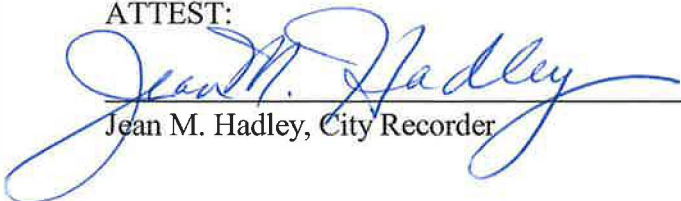
Read for the first time: 6-14, 2004.

Read for the second time and passed: 6-14, 2004, to become effective thirty (30) days hence.

Signed 6-15, 2004.


Paul G. Cummings, Mayor

ATTEST:


Jean M. Hadley, City Recorder