



AGENDA CITY COUNCIL

91136 N Willamette Street

541-682-7852 | coburgoregon.org

Tuesday, November 12, 2024 at 6:00 PM

CALL THE CITY COUNCIL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

MAYOR COMMENTS

AGENDA REVIEW

PUBLIC COMMENT *(Sign up before the meeting. Limit 3 minutes.)*

CONSENT AGENDA *(Councilors may remove an item from the "Consent" agenda for discussion by requesting such action prior to consideration.)*

- [1.](#) Minutes October 8, 2024 City Council
- [2.](#) New Liquor License, Mimosas LLC at 91115 N Willamette

ORDINANCES, RESOLUTIONS AND CONTRACTS

- [3.](#) **Second Reading**
ORDINANCE A-100-D AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP, REPEALING ORDINANCE NO A-100-C AND PROVIDING FOR AN EFFECTIVE DATE
- [4.](#) **Second Reading**
ORDINANCE A-230-A AN ORDINANCE GRANTING A FRANCHISE TO USE RIGHTS OF WAY WITHIN THE CITY OF COBURG TO ASTOUND BROADBAND LLC REPEALING ORDINANCE A-230 AND SETTING AN EFFECTIVE DATE

ADMINISTRATIVE INFORMATION REPORTS

5. 2024 General Election Update
- [6.](#) Water System Lead and Copper Service Line Inventory
- [7.](#) Federal Emergency Management Agency Compliance Measure Update
8. Finance Department Quarterly Report
9. Administration Monthly Report

COUNCIL COMMENTS | LIAISON UPDATES

UPCOMING AGENDA ITEMS

Rate Adjustment Resolutions for Water, Sewer and Transportation Utility Fee
Coburg Election Results
Capital Improvement Plan
Council Rules

FUTURE MEETINGS (*Meetings start at 6 PM unless noted.*)

November 13	Heritage Committee
November 19	Park Tree Committee
November 20	Planning Commission
November 26	City Council Work Session
November 28 & 29	City Hall Closed - Thanksgiving
December 10	City Council

ADJOURNMENT

The City of Coburg will make reasonable accommodations for people with disabilities. Please notify City Recorder 72 hours in advance at 541-682-7852 or sammy.egbert@ci.coburg.or.us

All Council meetings are recorded and retained as required by ORS 166-200-0235.



MINUTES

City Council Meeting

October 8, 2024 at 6:00 P.M.
Coburg City Hall
91136 N Willamette Street

MEMBERS PRESENT: Mayor Bell, Claire Smith, Cathy Engebretson, John Fox, John Lehmann, Alan Wells, Jaymason Bouwman

MEMBERS ABSENT: none

GUESTS/STAFF PRESENT: Adam Hanks, City Administrator; Sammy Egbert, City Recorder; Brian Harmon, Public Works Director; Larry Larson, Coburg Police Chief; Greg Peck, Finance Director; Megan Winner, Planning Director; David "Dabeat" Nietow Wenzell, RARE Member

RECORDED BY: Madison Balcom, Administrative Assistant

CALL TO ORDER

Mayor Bell called the City Council meeting to order at 6:01pm.

PLEDGE OF ALLEGIANCE

Mayor Bell led the Pledge of Allegiance.

ROLL CALL

City Recorder, Sammy Egbert called roll. A quorum was present.

MAYOR COMMENTS

Mayor Bell mentioned;

- The welcoming of the new RARE member that is joining City Staff to help with Water Quality work and mandates, funded by DEQ.
- 3 City Staff are leaving; 2 Public Works (Burke Hansen and Ty Wilson), 1 Police (Jeremiah Rupe).
- Introduction of special guest Mr. Meyers, who is on the upcoming ballot for City Council.

AGENDA REVIEW

They added the Monthly City Administration Report as item 5, and the Police Department Quarterly Report as item 6.

PUBLIC COMMENT

There were no request(s) made to publically speak. There were no written statement(s) received.

CONSENT AGENDA

1. September 10, 2024 City Council Minutes
2. September 24, 2024 City Council Special Meeting Minutes

MOTION: Councilor Bouwman moved, seconded by Councilor Wells to approve the Consent Agenda as presented.

The motion passed — 6:0.

ORDINANCES, RESOLUTIONS AND CONTRACTS

3. Public Hearing | First Reading

ORDINANCE A-100-D AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP, REPEALING ORDINANCE NO A-100-C AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Bell opened the Public Hearing at 6:07pm, and held the first reading of Ordinance A-100-D.

Mr. Hanks gave a staff report on Ordinance A-100-D, explaining the details of the franchise agreement and Ordinance presented. This agreement has a franchise fee rate of 7.5% and a seven-year term.

Mr. Lehmann asked which fund the franchise fee revenues will go into. Mr. Hanks said all franchise fee revenue goes into the general fund.

Mr. Fox asked about how the fee rate is set. Mr. Hanks said the franchise fee rates can differ in other jurisdictions, and that the average or typical rate is around 5%, so this proposed rate is a little higher.

Ms. Bell closed the public hearing at 6:17pm.

MOTION: Councilor Engebretson moved, seconded by Councilor Fox to move Ordinance A-100-D on to the second reading on November 12, 2024 as presented.

The motion passed — 6:0.

4. Public Hearing | First Reading

ORDINANCE A-230-A AN ORDINANCE GRANTING A FRANCHISE TO USE RIGHTS OF WAY WITHIN THE CITY OF COBURG TO ASTOUND BROADBAND LLC REPEALING ORDINANCE A-230 AND SETTING AN EFFECTIVE DATE

Mayor Bell opened the Public Hearing at 6:18pm, and held the first reading of Ordinance A-230-A.

Mr. Hanks gave a staff report on Ordinance A-230-A, explaining the details of this franchise agreement and Ordinance presented. This one includes an annual fee increase from \$400 to \$600, new provision for an annual 3% fee increase, retention of provision to charge 5% of gross revenue within Coburg city limits, and a ten-year term.

Mr. Wells asked where geographically they use the City's right of ways. Mr. Hanks said it is in the Bottom Loop area, which is in our city limits, but that portion is maintained by the county.

Ms. Bell closed the public hearing at 6:24pm.

MOTION: Councilor Smith moved, seconded by Councilor Bouwman to move Ordinance A-230-A on to the second reading on November 12, 2024 as presented.

The motion passed — 6:0.

ADMINISTRATIVE INFORMATION REPORTS

5. City Administration Monthly Report

Mr. Hanks gave a quick overview and update on the Police Department and Public Works staff departures. Hanks went over how they plan to utilize the appropriations they have to meet the existing workloads and requirements in the Public Works Department with two less staff members.

Ms. Bell thanked those who are leaving for their hard work and dedication to the City thus far, and wished them well on their next adventures. Mr. Bouwman thanked them, as well as the whole Public Works Department for all they do for and around Coburg.

Mr. Hanks then moved on to the Pavilion Park update mentioned in the Administration report, the Coburg Countryman newsletter that has gone out, external funding updates on not receiving two grants the city applied for, Loop path #4 project update, and the Coburg Creek Neighborhood Pop Up Meeting that Mayor Bell and some City Staff attended, that went really well.

Mr. Fox asked about the noise complaint. Mr. Hanks and Mr. Larson explained the process they've taken to go about addressing it and what has come out of it recently.

6. Police Department Quarterly Report

Mr. Larson, Coburg Police Chief, gave a quick overview of the quarterly police report, which covers the second quarter of fiscal year 2024-25. The report splits everything into 7 different categories.

Mr. Lehmann asked some questions regarding the traffic stops, citation percentage, and whether they stop more residents or non-residents, which Mr. Larson answered.

Mr. Larson mentioned the new and upcoming home security program for residents, in which they will call and make an appointment with an officer to come out and do a security check where they will go over all security components of their property.

COUNCIL COMMENTS | LIAISON UPDATES

Ms. Smith gave her liaison report for the Park and Tree Committee. She mentioned that they had talked about the major maintenance activities and plan for the parks, in which a park would get a major maintenance update every 3 years, to help spread out certain projects along with time and

money used. They also talked about the volunteering process, and tried to smooth and balance out the process, making sure everyone is on the same page with the guidelines and parameters. She added that the next park work party is on October 21st at 9am at Pavilion Park.

Mr. Lehmann had a liaison report for Planning Commission. At the last meeting Planning Commission approved a sign replacement at Coburg Community Charter School. One question that was brought up is if Council had any restrictions or authority over the content on the signs. Mr. Hanks said no, they cannot regulate content.

Mayor Bell went over the meeting schedule for the rest of the month and partly into November.

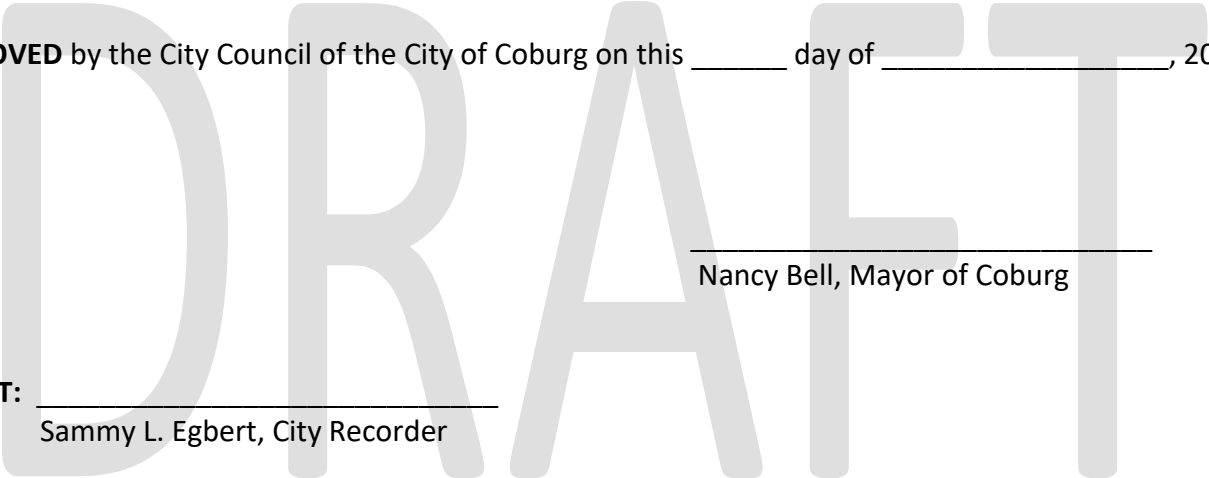
ADJOURNMENT

Mayor Bell adjourned the meeting at 7:31 pm.

APPROVED by the City Council of the City of Coburg on this _____ day of _____, 2024.

Nancy Bell, Mayor of Coburg

ATTEST: _____
Sammy L. Egbert, City Recorder





OLCC Liqueore Licencse Application for 91115 N Willamette Street, Mimosas, LLC

Meeting Date	Staff Contact	Email
November 12, 2024	Sammy Egbert, City Recorder	Sammy.egbert@ci.coburg.or.us

SUMMARY AND REQUESTED COUNCIL ACTION

City Provide Oregon Liquor and Cannabis Commission an acknowledgment of an application for a new ownership, commercial full on-premises liquor license.

Suggested Motion

Approval of the consent agenda means that the City Council has reviewed a liquor license application for 91115 N Willamette Street and is neutral on OCLC’s decision to grant or deny Mimosas LLC Liquor License.

BACKGROUND

A new liquor license application was received on October 31, 2024, from Mimosas at 91115 N Willamette Street, Coburg, Oregon 97408.

ORS 471.164 requires applicants to acquire a recommendation that the license be granted or denied from the City Council. The Oregon Liquor and Cannabis Commission (OLCC) may take the recommendation that the license be granted or denied into consideration.

The applicant paid the City fee of \$100 to process this application. The application was sent to City Adminsitrator, Adam Hanks, and the Police department for review. Staff had no questions or concerns at his time.

Businesses in the City of Coburg who have liquor licenses are required by OLCC to renew with the City annually. This allows for City Council to address concerns that may arise during the year.

NEXT STEPS

Upon Council approval, Mayor Bell will sign the OLCC application and staff will return it to the applicant.

ATTACHMENTS

1. Mimosas, LLC application
2. OLCC License denial criteria



OREGON LIQUOR & CANNABIS COMMISSION Local Government Recommendation – Liquor License

Section 1 – Submission - To be completed by Applicant:

License Information

Legal Entity/Individual Applicant Name(s): Mimosas, LLC

Proposed Trade Name: Mimosas

Premises Address: 91115 N Willamette St

Ste:

City: Coburg

County: Lane

Zip: 97408

Application Type: New License Application Change of Ownership Change of Location

License Type: Full On-Premises Sales

Additional Location for an Existing License

Application Contact Information

Contact Name: Tamara Cook

Phone:

Mailing Address: 91115 N Willamette St

City: Coburg

State: OR

Zip: 97408

Email Address: mimosascoburg@gmail.com

Business Details

Please check all that apply to your proposed business operations at this location:

- Manufacturing/Production at this location
- Retail Off-Premises Sales at this location
- Retail On-Premises Sales & Consumption at this location

If there will be On-Premises Consumption at this location:

- Indoor Consumption
- Outdoor Consumption
- Malt Beverage/Wine/Cider Consumption
- Distilled Spirits Consumption
- Proposing to Allow Minors

Section 1 Continued on next page



OREGON LIQUOR & CANNABIS COMMISSION

Local Government Recommendation – Liquor License

Section 1 Continued – Submission - To be completed by Applicant:

Applicant Name/Legal Entity Name: Mimosas, LLC

Proposed Trade Name: Mimosas

IMPORTANT: You MUST submit this form to the local government PRIOR to submitting to OLCC. Section 2 must be completed for this form to be accepted with your CAMP application.

Section 2 – Acceptance - To be completed by Local Government:

Local Government Recommendation Proof of Acceptance

After accepting this form, please return a copy to the applicant with received and accepted information

City or County Name: City of Coburg

Optional Date Received Stamp

Date Application Received: 10/31/24

OCT 31 2024

Received by: Sara Athey

Received by City of Coburg

Section 3 – Recommendation - To be completed by Local Government:

- Recommend this license be granted
- Recommend this license be denied (Please include documentation that meets OAR 845-005-0308)
- No Recommendation/Neutral

Name of Reviewing Official:

Title:

Date:

Signature:

After providing your recommendation and signature, please return this form to the applicant.



OREGON LIQUOR & CANNABIS COMMISSION BUSINESS INFORMATION – LIQUOR LICENSE

Applicant Name	Mimosas, LLC
Trade Name	Mimosas
Premises Street Address	91115 N Willamette St Coburg OR, 97408
License Type	Full On-Premises Sales, Commercial

Business Contact	Tamara Cook
Mailing Address	91115 N Willamette St Coburg OR, 97408
Phone Number	
Email Address	

Operating Hours

<u>Day of Week</u>	<u>Open Time</u>	<u>Closed Time</u>	<u>Seasonal Variation</u>	<u>Explanation</u>
Monday	7:00am	7:00pm	Yes <input type="checkbox"/>	
Tuesday	closed	closed		
Wednesday	closed	closed		
Thursday	7:00am	3:00pm	<input type="checkbox"/>	Not open to the public or by appointment only
Friday	7:00am	3:00pm		
Saturday	8:00am	4:00pm		
Sunday	8:00am	4:00pm		

Seating

Restaurant Seating: 40 Outdoor Seating: 30 Other Seating: _____

No On-Premises Consumption

ENTERTAINMENT

Check all that apply:

- | | |
|--|---|
| <input type="checkbox"/> Live Music | <input type="checkbox"/> Video Lottery Machines |
| <input checked="" type="checkbox"/> Recorded Music | <input type="checkbox"/> Nude Dancing |
| <input type="checkbox"/> DJ Music | <input type="checkbox"/> Live Entertainment |
| <input type="checkbox"/> Dancing | <input type="checkbox"/> Minor Entertainers |
| <input type="checkbox"/> Karaoke | <input type="checkbox"/> Minor Entertainers in an Area Prohibited to Minors
**Need prior OLCC approval |
| <input type="checkbox"/> Coin-operated Games | |
| <input type="checkbox"/> Social Gaming | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Pool Tables | |



OREGON LIQUOR & CANNABIS COMMISSION
ENTITY STRUCTURE REQUEST FORM

Application Information:

Applicant Name (Entity) Mimosas, LLC	Entity Type (LLC, Corp, LP, LLP) Limited Liability Company (LLC) <input type="checkbox"/>
Business Tradename Mimosas	

Limited Liability Company: Please list contact information for all 20% or more members and any managers of the entity below.

Corporation: Please list contact information for all officers, directors with 3% or more voting stock and individuals or entities holding 20% or more of the issued stock below.

*If an entity has 20% or more membership, or owns 20% or more stock in an entity applicant, they must submit an additional form with their entity structure information.

Entity Structure & Contact Information:

Name of Member/Manager, or Officer/Director/Stockholder *	Title	Ownership %	
Tamara Cook	Member (20% or more ownership) <input type="checkbox"/>	100%	
Mailing Address: 91115 N Willamette St	City: Coburg	State: OR	Zip: 97408
Email: mimosascoburg@gmail.com	Phone:		

Name of Member/Manager, or Officer/Director/Stockholder *	Title	Ownership %	
	Choose One or Type Multiple Title(s)		
Mailing Address:	City:	State:	Zip:
Email:	Phone:		

Name of Member/Manager, or Officer/Director/Stockholder *	Title	Ownership %	
	Choose One or Type Multiple Titles		
Mailing Address:	City:	State:	Zip:
Email:	Phone:		

Name of Member/Manager, or Officer/Director/Stockholder *	Title	Ownership %	
	Choose One or Type Multiple Titles		
Mailing Address:	City:	State:	Zip:
Email:	Phone:		

Name of Member/Manager, or Officer/Director/Stockholder *	Title	Ownership %	
	Choose One or Type Multiple Titles		
Mailing Address:	City:	State:	Zip:
Email:	Phone:		

Name of Member/Manager, or Officer/Director/Stockholder *	Title	Ownership %	
	Choose One or Type Multiple Titles		
Mailing Address:	City:	State:	Zip:
Email:	Phone:		

If you need additional space for your entity structure, please attach additional documentation with the membership and contact information of the persons/entities we are requesting.



OREGON LIQUOR & CANNABIS COMMISSION FLOOR PLAN FORM

Item 2.

Your floor plan must be submitted on this form

Mimosas, LLC

Mimosas

Applicant Name

Trade Name (dba)



OLCC USE ONLY
MINOR POSTING ASSIGNMENT(S)

Date:

Initials:

LIQUOR LICENSE APPLICATION

Page 2 of 4

APPLICANT INFORMATION

Identify the applicants applying for the license. This is the entity (example: corporation or LLC) or individual(s) applying for the license. Please add an additional page if more space is needed.

Name of entity or individual applicant #1:

Mimosas, LLC

Name of entity or individual applicant #2:

Name of entity or individual applicant #3:

Name of entity or individual applicant #4:

BUSINESS INFORMATION

Trade Name of the Business (name customers will see):

Mimosas

Premises street address (The physical location of the business and where the liquor license will be posted):

91115 N Willamette St

City:

Coburg

Zip Code:

97408

County:

Lane

Business phone number:

541 632-8880

Business email:

mimosascoburg@gmail.com

Business mailing address (where we will send any items by mail as described in OAR 845-004-0065[1]):

91115 N Willamette St

City:

Coburg

State:

Oregon

Zip Code:

97408

Does the business address currently have an OLCC liquor license? Yes NoDoes the business address currently have an OLCC marijuana license? Yes No

APPLICATION CONTACT INFORMATION – Provide the point of contact for this application. If this individual is not an applicant or licensee, the Authorized Representative Form must be completed and submitted with this application.

Application Contact Name:

Tamara Cook

Phone number:

Email:

mimosascoburg@gmail.com

Applicant Signature(s): Each individual listed in the applicant information box on page 2 (entity or individuals applying for the license) must sign the application.

If an applicant listed in the applicant information box on page 2 is an entity (such as a corporation or limited liability company), at least one member or officer of the entity must sign the application.

• Each applicant listed in the "Application Information" section of this form has read and understands OAR 845-006-0362 and attests that:

1. Upon licensure, each licensee is responsible for the conduct of others on the licensed premises, including in outdoor areas.
2. The licensed premises will be controlled to promote public safety and prevent problems and violations, with particular emphasis on preventing minors from obtaining or consuming alcoholic beverages, preventing over-service of alcoholic beverages, preventing open containers of alcoholic beverages from leaving the licensed premises unless allowed by OLCC rules, and preventing noisy, disorderly, and unlawful activity on the licensed premises.

I attest that all answers on all forms and documents, and all information provided to the OLCC as a part of this application, are true and complete.

Tamara Cook

10/30/2024

Applicant name

Signature

Date

Applicant name

Signature

Date

Applicant name

Signature

Date

Applicant name

Signature

Date

Applicant/Licensee Representative(s): If you would like to designate a person/entity to act on your behalf you must complete the Authorized Representative Form. You may submit the form with the application or anytime thereafter. The form must be received by the OLCC before the representative can receive or submit information for the applicant.

Please note that applicants/licensees are responsible for all information provided, even if an authorized representative submits additional forms on behalf of the applicant.

REASONS WE MAY DENY OR RESTRICT A LICENSE
ORS 471.313(4)(5), OAR 845-005-0320, 845-005-0321, 845-005-0322
845-005-0325, 845-005-0326(4)(5) or 845-005-0355

The following is a list of problems relating to the **APPLICANT** or **BUSINESS** that OLCC **can** consider to refuse or restrict a license:

1. Applicant has a habit of using alcohol or drugs to excess
2. Applicant makes a false statement to OLCC (must be related to a refusal basis)
3. Applicant has been convicted of local, state or federal laws that are substantially related to the fitness of holding a liquor license
4. Applicant has demonstrated poor moral character
5. Applicant has a poor record of compliance when previously licensed by OLCC
6. Applicant is not the legitimate owner of the business
7. The business has a history of serious and persistent problems at this location.

The problems can include:

- Obtrusive or excessive noise, music or sound vibrations
- Public drunkenness
- Fights or altercations
- Harassment
- Unlawful drug sales
- Alcohol or related litter

OLCC is **not** able to consider the following issues when deciding to renew a liquor license:

- Lack of parking
- Increase in traffic
- Too many licenses in a specific area (saturation)
- Entertainment type - nude dancing, gambling, live bands, etc.
- Increased noise
- Zoning issues

Visit www.oregon.gov/olcc/ to see the full text of ORS and OAR referenced above. In order for an unfavorable recommendation from a local government to be valid, the grounds must be found in the license refusal bases of ORS 471.313(4), 471.313(5), OAR 845-005-0320, 845-005-0321, 845-005-0322, 845-005-0325 or 845-005-0326(4)(5) or the license restriction bases of OAR 845-005-0355, and must be supported by reliable factual information.



PacifiCorp Franchise Agreement

Ordinance A-100-D – Granting a Franchise to use Rights of Way within the City of Coburg

Meeting Date	Staff Contact	Email
November 12, 2024	Adam Hanks, City Administrator	Adam.Hanks@ci.coburg.or.us

SUMMARY AND REQUESTED COUNCIL ACTION

The City of Coburg has a number of franchise agreements with utilities that utilize City rights of way to provide services to residents and businesses of Coburg. PacifiCorp is requesting a renewal of its existing electric utility franchise agreement. Authority, limitations, compensation and operating and reporting requirements for this right are defined and described in Ordinance A-100-D were presented to Council for first reading in the public hearing held October 8, 2024. Final ordinance review and approval will be scheduled for second reading at the November 12, 2024 Council meeting public hearing.

Suggested Motion

I move to approve second reading of Ordinance A-100-D “An Ordinance granting an electric utility franchise and general utility easement to PacifiCorp, repealing Ordinance A-100-C and providing for an effective date” as presented and direct staff to execute the agreement.

BACKGROUND

PacifiCorp operates in Oregon as Pacific Power and provides electric utility services to residents and businesses within the City of Coburg and utilizes City rights of way to do so with both overhead and underground infrastructure to serve its customers.

The current franchise agreement approved via Ordinance A-100-C by City Council on July 9, 2013 has expired and Ordinance A-100-D has been developed for Council review to continue the granting of authority to utilize the City of Coburg rights of way for a period of seven years.

Changes proposed include:

- Reduction from a ten year term to a seven year term
- Acceptance by PacifiCorp within 60 days rather than 30 days
- Clarification of customer reporting requirements for City review/audit/tracking
- Tree removal notification/communication clarifications

The prior and proposed ordinance language has been reviewed by both City staff and City contract legal services for legal compliance and current best practice.

RECOMMENDATION

Staff recommends Council approve and adopt Ordinance A-100-D as presented.

BUDGET / FINANCIAL IMPACT

Franchise fees are a significant revenue stream for the City of Coburg and support activities, programs and services within the City’s general fund. The franchise fee proposed within this draft ordinance remains consistent with the prior rate of 7.5%. Total franchise fee revenues have been estimated for the 2024-25 fiscal year as \$279,300, up from just under \$260,000 in FY23-24.

The PacifiCorp share of total franchise fee revenues is between 50-60% of total franchise revenues annually depending somewhat on weather (heat/cold). The potential rate increases currently proposed to the Oregon Public Utilities Commission (PUC) will likely move the total allocation higher if approved and implemented.

PUBLIC INVOLVEMENT

A public hearing on this ordinance was held on October 8, 2024. No public testimony was provided to Council at that time, nor did Council recommend amendments to the ordinance language presented at that hearing.

NEXT STEPS

Upon Council approval, staff will coordinate with PacifiCorp for acceptance and execution of the agreement.

ATTACHMENTS

1. Draft Ordinance A-100-D – An Ordinance Granting an Electric Utility Franchise and General Utility Easement to PacifiCorp
2. Ordinance A-100-C – With the proposed edits.

ORDINANCE A-100-D

AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP, REPEALING ORDINANCE NO A-100-C AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, PacifiCorp d.b.a. Pacific Power, is duly authorized by the Oregon Public Utility Commission to provide electric power and energy within the City of Coburg (the “City”);

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City. Public ways means the space above and below the streets, alleys, roads, highways, sidewalks, and bridges;

WHEREAS, the City has authority to regulate the use of the public ways within the City and to establish the terms by which PacifiCorp shall use and occupy the public ways;

WHEREAS, this agreement sets forth the terms and conditions by which PacifiCorp shall use the public ways within the City;

WHEREAS, After public notice, public hearing, and Council deliberations,

THE CITY OF COBURG ORDAINS AS FOLLOWS:

SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as “Electric Facilities”) in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as “Public Ways”) within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for seven (7) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance by PacifiCorp. Within sixty (60) days after the passage of this ordinance by the City, PacifiCorp shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides water or sewer service to City residences; provided, however, that such use shall not unreasonably interfere with PacifiCorp's Electric Facilities or PacifiCorp's rights granted herein.

SECTION 5. City Regulatory Authority. In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

SECTION 6. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of PacifiCorp's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and PacifiCorp with respect to such claim, demand or lien, permit PacifiCorp to assume the defense of such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by PacifiCorp, PacifiCorp shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

SECTION 7. Annexation.

7.1 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.

7.2 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 PacifiCorp: (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, Suite 2000
Portland, Oregon 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp as a result of an annexation of territory to the City shall become effective on the effective date of the annexation provided notice is given to PacifiCorp in accordance with ORS 222.005, as amended from time to time.

SECTION 8. Planning, Design, Construction and Installation of Company Facilities.

8.1 All Electric Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

8.2 Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs.

8.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

8.4 If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (at its own cost and expense and in a manner approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

8.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by PacifiCorp.

8.7 PacifiCorp shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

8.8 Before commencing any street improvements or other work within a Public Way that may affect PacifiCorp's Electric Facilities, the City shall give written notice to PacifiCorp.

8.9 No structures, buildings or signs shall be erected below PacifiCorp's facilities or in a location that prevents PacifiCorp from accessing or maintaining its facilities.

8.10 PacifiCorp shall provide the City with a report of all new services created within City boundaries on an annual basis during the term of this Franchise or otherwise within sixty (60) days of City's written request, which may not be made more than once annually. The City shall provide written confirmation of the accuracy of the report and/or any corrections thereto to PacifiCorp within a reasonable time following receipt of the report.

SECTION 9. Relocation of Electric Facilities.

9.1 The City reserves the right to require PacifiCorp to relocate overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence the overhead relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to Company all right it may have to recover the

cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement. In cases of capital improvement projects undertaken by the City, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect the costs associated with conversion from overhead to underground distribution facilities consistent with OAR 860-022-0046, the Oregon Public Utility Commission rule on forced conversions.

9.2 PacifiCorp shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development. In such event, the City shall require the developer to pay PacifiCorp for such relocation costs as part of its approval procedures.

SECTION 10. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to PacifiCorp:

PacifiCorp
Attn: Property Management/Right-of-Way Department
830 Old Salem Road
Albany, Oregon 97321

SECTION 11. Vegetation Management. PacifiCorp or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. 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. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets. Prior to the cutting down or removing of any landscape tree greater than 6' feet in height located on public right of way by PacifiCorp or its contractor, PacifiCorp must provide prior written notification to the City with the reason(s) for removal, and approximate schedule for removal.

SECTION 12. Compensation.

12.1 In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to the City from and after the effective date of the acceptance of this franchise, seven and one-half percent (7.5%) of its gross revenues derived from within the corporate limits of City. The term "gross revenues" as used herein means revenues received from electric utility

operations within the city less related net uncollectibles. Gross revenues shall include revenues from the use, rental, or lease of the PacifiCorp's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use. All amounts paid under this Section 12 shall be subject to review by the City; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies PacifiCorp of its intent to conduct a review shall be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by state law. The City shall provide PacifiCorp with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to PacifiCorp.

12.2 The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from PacifiCorp with respect to PacifiCorp's electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting there from the amount of said franchise fee paid hereunder.

SECTION 13. Renewal. At least 120 days prior to the expiration of this Franchise, PacifiCorp and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. PacifiCorp shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 14. No Waiver. Neither the City nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 15. Transfer of Franchise. PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

SECTION 16. Amendment. At any time during the term of this Franchise, the City, through its City Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith

in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment.

SECTION 17. Non-Contestability-Breach of Contract.

17.1 Neither the City nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall PacifiCorp be precluded from seeking relief from the Courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

17.2 In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this Franchise, the City, or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

SECTION 18. Notices. Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Customer and Community Affairs Vice President, Pacific Power, 825 NE Multnomah, Lloyd Center Tower Suite 2000, Portland, Oregon 97232, and such other office as PacifiCorp may advise the City of by written notice.

SECTION 19. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 20. Choice of Forum. Any litigation between the City and PacifiCorp arising under or regarding this agreement shall occur, if in the state courts, in the Lane County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Eugene.

SECTION 21. Choice of Law. This contract shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon’s choice of law rules would otherwise require application of the law of a different state.

SECTION 22. Waiver of Jury Trial. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived, unless to do so would result in the inefficient use of the courts’ and the parties’ resources.

SECTION 23. Repeal. Ordinance A-100-C, adopted July 13, 2013 the previous franchise agreement with PacifiCorp, is hereby repealed.

SECTION 24. Effective Date. This ordinance shall become effective upon written acceptance by PacifiCorp.

ADOPTED by the City Council of the City of Coburg this ___ day of _____, 2024, by a vote of _____ for and _____ against.

APPROVED by the Mayor of the City of Coburg this ___ day of _____, 2024.

Nancy Bell, Mayor

ATTEST: _____
Sammy L. Egbert, City Recorder

~~t~~ORDINANCE ~~NO~~ A-100-~~DC~~

AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP, REPEALING ORDINANCE NO A-100-~~CB~~ AND PROVIDING FOR AN EFFECTIVE DATE ~~AND PROVIDING FOR AN EFFECTIVE DATE~~

WHEREAS, PacifiCorp d.b.a. Pacific Power, is duly authorized by the Oregon Public Utility Commission to provide electric power and energy within the City of Coburg (the "City");

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City. Public ways means the space above and below the streets, alleys, roads, highways, sidewalks, and bridges;

WHEREAS, the City has authority to regulate the use of the public ways within the City and to establish the terms by which PacifiCorp shall use and occupy the public ways;

WHEREAS, this agreement sets forth the terms and conditions by which PacifiCorp shall use the public ways within the City;

WHEREAS, After public notice, public hearing, and Council deliberations,

NOW, THEREFORE, THE CITY OF COBURG ORDAINS AS FOLLOWS:

SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Electric Facilities") in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as "Public Ways") within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for ~~ten (10)~~ seven (7) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance by PacifiCorp. Within ~~sixtythree (630)~~ sixtythree (630) days after the passage of this ordinance by the City, PacifiCorp shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides water or sewerage service to City residences; provided, however, that such use shall not unreasonably interfere with PacifiCorp's Electric Facilities or PacifiCorp's rights granted herein.

SECTION 5. City Regulatory Authority. In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

SECTION 6. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of PacifiCorp's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and PacifiCorp with respect to such claim, demand or lien, permit PacifiCorp to assume the defense of such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by PacifiCorp, PacifiCorp shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

SECTION 7. Annexation.

7.1 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.

7.2 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 PacifiCorp: (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, Suite 2000
 Portland, Oregon 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp as a result of an annexation of territory to the City shall become effective on the effective date of the annexation provided notice is given to PacifiCorp in accordance with ORS 222.005, as amended from time to time.

SECTION 8. Planning, Design, Construction and Installation of Company Facilities.

8.1 All Electric Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

8.2 Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs.

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8.4 If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (at its own cost and expense and in a manner approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

8.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes;

provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by PacifiCorp.

8.7 PacifiCorp shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

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8.10 PacifiCorp shall provide the City with a report of all new services created within City boundaries on an annual basis during the term of this Franchise or otherwise within sixty (60) days of City's written request, which may not be made more than once annually. The City shall provide written confirmation of the accuracy of the report and/or any corrections thereto to PacifiCorp within a reasonable time following receipt of the report.

SECTION 9. Relocation of Electric Facilities.

9.1 The City reserves the right to require PacifiCorp to relocate overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence the overhead relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement. In cases of capital improvement projects undertaken by the City, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect the

costs associated with conversion from overhead to underground distribution facilities consistent with OAR 860-022-0046, the Oregon Public Utility Commission rule on forced conversions.

9.2 PacifiCorp shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development. In such event, the City shall require the developer to pay PacifiCorp for such relocation costs as part of its approval procedures.

SECTION 10. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to PacifiCorp:

PacifiCorp
 Attn: Property Management/Right-of-Way Department
 830 Old Salem Road 25 N.E. Multnomah, Suite 1700
 Albany, Oregon Portland, Oregon 97321232

SECTION 11. Vegetation Management. PacifiCorp or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. 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. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets. Prior to the cutting down or removing of any landscape tree greater than 6' feet in height located on public right of way by PacifiCorp or its contractor, PacifiCorp must provide prior written notification to the City with the reason(s) for removal, and approximate schedule for removal.

SECTION 12. Compensation.

12.1 In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to the City from and after the effective date of the acceptance of this franchise, seven and one-half percent (7.5%) of its gross revenues derived from within the corporate limits of City. The term "gross revenues" as used herein means revenues received from electric utility operations within the city less related net uncollectibles. Gross revenues shall include revenues from the use, rental, or lease of the PacifiCorp's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of

bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use. All amounts paid under this Section 12 shall be subject to review by the City; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies PacifiCorp of its intent to conduct a review shall be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by state law. The City shall provide PacifiCorp with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to PacifiCorp.

12.2 The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from PacifiCorp with respect to PacifiCorp's electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting there from the amount of said franchise fee paid hereunder.

SECTION 13. Renewal. At least 120 days prior to the expiration of this Franchise, PacifiCorp and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. PacifiCorp shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 14. No Waiver. Neither the City nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 15. Transfer of Franchise. PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

SECTION 16. Amendment. At any time during the term of this Franchise, the City, through its City Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment.

SECTION 17. Non-Contestability--Breach of Contract.

17.1 Neither the City nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall PacifiCorp be precluded from seeking relief from the Courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

17.2 In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this Franchise, the City, or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

SECTION 18. Notices. Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Customer and Community Affairs Vice President, Pacific Power, 825 NE Multnomah, Lloyd Center Tower Suite 2000, Portland, Oregon 97232, and such other office as PacifiCorp may advise the City of by written notice.

SECTION 19. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 20. Choice of Forum. Any litigation between the City and PacifiCorp arising under or regarding this agreement shall occur, if in the state courts, in the Lane County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Eugene.

SECTION 21. Choice of Law. This contract shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

SECTION 22. Waiver of Jury Trial. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly

arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived, unless to do so would result in the inefficient use of the courts' and the parties' resources.

SECTION 23. Repeal. Ordinance A-100-CB, adopted July 13, 2013 the previous franchise agreement with PacifiCorp, is hereby repealed.

SECTION 24. Effective Date. This ordinance shall become effective upon written acceptance by PacifiCorp. As provided in Section 3, this ordinance shall become effective upon acceptance by PacifiCorp.

ADOPTED by the City Council of the City of Coburg this _____ day of _____, 2024, by a vote of _____ for and _____ against.

APPROVED by the Mayor of the City of Coburg this _____ day of _____, 2024.

Nancy Bell, Mayor

ATTEST: _____

Sammy L. Egbert, City Recorder

~~by ACCEPTANCE BY AUTHORIZED REPRESENTATIVE OF PACIFICORP~~

Name: _____
Title: _____
Address: _____

Phone: _____
Email: _____



Astound Broadband LLC Franchise Agreement

Ordinance A-230-A – Granting a Franchise to use Rights of Way within the City of Coburg

Meeting Date	Staff Contact	Email
November 12, 2024	Adam Hanks, City Administrator	Adam.Hanks@ci.coburg.or.us

SUMMARY AND REQUESTED COUNCIL ACTION

The City of Coburg has a number of franchise agreements with utilities that utilize City rights of way to provide services to residents and businesses of Coburg. Astound Broadband is requesting a renewal of its existing telecommunications franchise agreement. Authority, limitations, compensation and operating and reporting requirements for this right are defined and described in Ordinance A-230-A were presented to Council for first reading in a public hearing at the October 8, 2024 Council meeting. Final ordinance review and approval occurs via second reading at the November 12, 2024 Council meeting public hearing.

Suggested Motion

I move to approve second reading of Ordinance A-230-A “An ordinance granting a franchise to use rights of way within the City of Coburg to Astound Broadband LLC repealing ordinance A-230 and setting an effective date” and direct staff to execute the agreement.

BACKGROUND

Astound Broadband LCC received its initial franchise ordinance approval from the Coburg City Council in September of 2024 to facilitate its immediate operational need of utilizing a small portion of City right of way to provide a hard connection between its network equipment and nearby cell towers it operates on.

The current franchise agreement approved via Ordinance A-230 by City Council on September 30, 2014 has expired and Ordinance A-230-A has been developed for Council review to continue the granting of authority to utilize the City of Coburg rights of way for a period of ten years.

Franchise Provision Highlights:

- Increase of annual fee from \$400 to \$600.
- New provision for annual 3% fee increase

- Retention of provision to charge 5% of gross revenue within Coburg city limits, whichever is greater should Astound provide retail services within Coburg City limits in the future (none currently)
- Ten-year term
- Quarterly Payments

The prior and proposed ordinance language has been reviewed by both City staff and City contract legal services for legal compliance and current best practice.

RECOMMENDATION

Staff recommends Council approve and adopt Ordinance A-230-A as presented.

BUDGET / FINANCIAL IMPACT

Franchise fees are a significant revenue stream (\$279,000 estimated for FY25) for the City of Coburg and support activities, programs and services within the City’s general fund. The franchise fee proposed within this draft ordinance contains a slight increase in expected revenues, but remains in line with the current limited utilization by Astound of the City’s rights of way.

PUBLIC INVOLVEMENT

A public hearing on this ordinance was held on October 8, 2024. No public testimony was provided to Council at that time, nor did Council recommend amendments to the ordinance language presented at that hearing.

NEXT STEPS

Upon Council approval, staff will coordinate with Astound Broadband for acceptance and execution of the agreement.

ATTACHMENTS

1. Draft Ordinance A-230-A – An Ordinance Granting an Electric Utility Franchise and General Utility Easement to Astound Broadband
2. Ordinance A-230 – With the proposed edits.

ORDINANCE A-230-A

AN ORDINANCE GRANTING A FRANCHISE TO USE RIGHTS OF WAY WITHIN THE CITY OF COBURG TO ASTOUND BROADBAND LLC REPEALING ORDINANCE A-230 AND SETTING AN EFFECTIVE DATE

WHEREAS, Astound Broadband, LLC is a Washington limited liability company that is a registered business in Oregon and holds a Certificate of Authority to Provide Telecommunications Service from the Public Utilities Commission of Oregon and Domestic and International Section 214 authorizations from the Federal Communications Commission (FCC); and

WHEREAS, Astound Broadband, LLC desires to construct fiber optic distribution facilities within the City of Coburg, within the public right-of-way, to provide service to potential customers, including facilities to existing cell phone towers; and

WHEREAS, the CITY of COBURG, OREGON hereinafter referred to as the "Grantor" has determined that Astound Broadband, LLC, hereinafter referred to as the "Grantee," is qualified for a franchise to use and occupy the rights of way within the City of Coburg; and

WHEREAS, City of Coburg adopted ordinance A-230 on September 13, 2014 granting a franchise to Astound Brodband, LLC. The franchise became effective on November 1, 2014 and expired August 1, 2024 as stated in Ordinance A-230 section 14.7.

WHEREAS, Council wishto continue in a Franchise agreement with the Grantee for the construction and operation of a telecommunications system on the terms set forth herein.

THE CITY OF COBURG ORDAINS AS FOLLOWS:

SECTION 1. Definitions. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in this Section, unless the context clearly indicates a different definition. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Council" shall mean the governing body of the City of Coburg.
- B. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct, operate and maintain a Telecommunications System along the Public Ways within all or a specified area in the Service Area.

- C. "Gross Revenue" shall mean any and all revenue, of any kind, nature or form, without deduction for expense; all inflows or enhancements of assets or settlements of its liabilities (or a combination of both) of whatsoever kind and nature derived by the Grantee, less uncollectables, and, any affiliates, subsidiaries or parent of the Grantee on account of goods or for Telecommunications Services from the Grantee's ongoing operations delivered within the City of Coburg. Gross revenue shall include any and all subsidies, discounts, rebates or other considerations or forbearances by the Grantee associated with the delivery of such goods and services within the City of Coburg. Gross Revenues shall not include any revenues from activities exempted from local fees by state or Federal law.
- D. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- E. "Service Area" shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exception in Section 6 hereto.
- F. "State" shall mean the State of OREGON.
- G. "Street", "Rights-of-Way" or "Public Way" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, and similar Public Ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or property dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Telecommunications System.
- H. "Subscriber" shall mean any Person lawfully receiving Telecommunications Service from the Grantee.
- I. "Telecommunications Service" shall mean any service provided to a subscriber within the City limits of the City of Coburg that is delivered by means of the Telecommunications System.
- J. "Telecommunications System" shall mean a system of fiber optic cable and other wiring and service vaults and other equipment installed in the public rights of way within the City of Coburg by Grantee.

SECTION 2. Grant of Franchise

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Telecommunications System.

2.2 Police Powers and Conflicts with Franchise. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance. In the event of any conflict with other ordinances, the ordinance with the most specificity and most directly related to public health and safety shall prevail. Grantor shall administer the Franchise in a reasonable, uniform, and non-discriminatory manner.

SECTION 3. Franchise Term and Renewal

3.1 Term. The Term of this Franchise is for ten years from the signed date of acceptance by Grantee, unless terminated pursuant to the provisions of Section 13.

3.2 Acceptance by Astound. Within thirty (30) days after the passage of this ordinance by the City, Astound Broadband LLC, shall file an unqualified written acceptance thereof with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

3.3 Procedures for Renewal. If Grantee desires to renew the franchise, then at least six months but no more than nine months prior to the end of the franchise, Grantee shall notify Grantor of its desire for renewal, and shall propose any alteration in the terms of the franchise that it might wish. Grantor shall consider the proposed renewal, but shall be entitled to make a decision on the renewal based on its determination of the best interests of the residents of Coburg.

SECTION 4. Indemnification and Insurance

4.1 Indemnification. The Grantee shall defend the Grantor, its officers, boards, commissions, agents, and employees from all claims for injury to any Person or property caused by, or alleged to be the result of the negligence or fault of Grantee in the construction or operation of the Telecommunications System and, in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence or fault of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the installation and operation of the Telecommunications System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee

and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder, except that if such settlement or compromise might obligate Grantor, Grantee shall obtain Grantor’s written consent to the settlement or compromise, which Grantor may not unreasonably withhold. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent or indemnify the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor, its officers, boards, commissions, agents, or employees. This obligation of indemnification shall survive the termination of the Franchise.

4.2 Insurance.

a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos.	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

SECTION 5. Service Obligations

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, users, or general citizens on the basis of race, color, religion, national origin, age or sex.

SECTION 6. Installation Requirements

6.1 Installation. All installations shall be done in compliance with applicable laws and regulations and only after obtaining all required permits from the State of Oregon, Lane County and the City of Coburg.

6.2 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching to allow Grantor to provide notice of Grantee's work to other interested parties. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee.

6.3 Annexation. After Grantee initiates telecommunications services to any subscriber in Coburg, in the event the Grantor modifies the potential Service Area by annexation or any other means, the Grantor shall provide at least sixty (60) day prior notice to the Grantee. The Grantor shall also notify Grantee of all new street address assignments or changes within the Service Area. Said notice shall be in writing to the address set forth below by U.S. certified mail, return receipt requested. Grantor shall provide address files and maps in sufficient detail and in an acceptable digital format. Grantee shall begin to collect Franchise Fees from Subscribers in any annexed area within one hundred and twenty (120) days of such notice and address information as described above. Grantee shall not be obligated to collect and remit Franchise Fees until such notice and information has been received by Grantee.

Grantee shall provide Grantor thirty (30) days written notice of address changes affecting this subsection pursuant to section 14.4.

SECTION 7. Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the Oregon Building Codes and with all applicable local laws.

7.2 Construction Standards and Requirements. All of the Grantee's plant and equipment, including but not limited to any antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, fiber optic cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Safety. The Grantee shall, at all time, employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

SECTION 8. Conditions on Street Occupancy

8.1 General Conditions. Subject to State regulations concerning pole attachments, Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor and other owners of the right of way occupied by Grantee.

8.2 Underground Construction. Grantee may install aerial facilities, except that the facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. When the existing aerial facilities of similarly situated entities are required to be placed underground by the Grantor in accordance with ORS 758.210 through 758.270, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities. Grantee's acceptance of any reimbursement by the Grantor or an agency of Grantor under the previous sentence does not limit Grantee's rights under ORS 758.245 and ORS 758.250, except that Grantee may not accept any reimbursement in excess of its costs to place facilities underground.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Telecommunications System in the Service Area.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair, at Grantees sole expense. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any Public Way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such Public Way.

8.5 Restoration of Public Ways. Grantee shall, at its own expense, restore any damage or disturbance caused to the Public Way as a result of its operation, construction, or maintenance of the Telecommunications System to a condition reasonably comparable to the condition of the Public Way immediately prior to such damage or disturbance.

8.6 Removal in Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the reasonable judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence or willful misconduct by the Grantor.

8.7 Tree Trimming. Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities. Trimming shall be done in a manner consistent with good arborist practices.

8.8 Relocation for the Grantor. The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily relocate, or temporarily remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. In the event of a permanent relocation or disconnection request, Grantor shall advise Grantee in writing prior to the end of Grantee's current budget cycle. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor Rights-of-Way are responsible for the costs related to the relocation of their facilities.

8.9 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, relocate in or temporarily remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is give reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

8.10 Reimbursement of Costs. If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

SECTION 9. Service Requirements

9.1 Phone Service. The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases or other substantive service changes.

SECTION 10. Compensation for Right of Way use: Franchise Fees

10.1 Amount of Fee. Grantor's initial use of the rights of way in Coburg will be along Bottom Loop Road, crossing Van Duyn Street, and along Coburg Road North. As compensation for the use of those portions of City Right-of-Way, Grantee shall pay to Grantor a franchise fee ("Franchise Fee") equal to \$600 annually with an annual 3% increase. In the event that Grantee expands its presence in the City of Coburg and offers any services within the City of Coburg, Grantee shall pay to Grantor as compensation for use of the City Right of Way, an additional franchise fee of five percent 5% of Gross Revenue.

10.2 Reserved for Future Expansion.

10.3 Franchise fee payments not in lieu of other payments. Payment of franchise fees required in this Section 10 shall be in addition to taxes or fees of general applicability owed to the Grantor, or any other jurisdiction, by the Grantee.

10.4 Payment. Payment of the Franchise Fee due the Grantor shall be calculated on an annual basis, beginning with the first day of the Effective Month. Grantee agrees to pay pro rata Franchise Fees within forty-five (45) days of the close of each calendar quarter, transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the Franchise Fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise. The payment of Franchise Fees shall be either accompanied by or closely followed by a statement of said payment, reflecting the applicable charges, and the revenue from subscribers and the gross revenue calculations. Grantee shall provide, annually, a statement certified by Grantee's representative as to the accuracy of the Franchise Fee payments. Grantor may have access, upon reasonable request and at Grantee's business offices during normal business hours, to Grantee's books and accounts for an audit or other review of Grantee's revenues to affirm the accuracy of Grantee's payments. Such review shall be done at Grantor's expense, unless such a review finds a discrepancy of greater than five percent (substantial discrepancy) between the amount determined to be owed and any amounts paid within the twenty-four months prior to the date of the initiation of the review, or Grantee unreasonably refuses Grantor's agents access to Grantee's accounts. In case of either a substantial discrepancy in franchise fees, or a refusal to cooperate in the review, Grantee shall be responsible for all of Grantor's costs for the review, including attorney fees at trial and on appeal.

10.5 No Waiver. No acceptance of any payment by the Grantor shall be construed as a release or as a waiver of any claim the Grantor may have for additional sums payable under this Franchise.

10.6 Limitation on Recovery. In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, the Grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the Grantor's primary depository bank during the period such unpaid amount is owed. The period of limitation for recovery of interest on any Franchise Fee payable hereunder shall be twenty-four months from the date on which payment by the Grantee was due.

SECTION 11. Transfer of Franchise

11.1 Franchise Transfer. The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, and such consent shall not be unreasonably withheld or delayed once Grantor is satisfied that the party to whom the Franchise is being transferred has sufficient technical and financial capacity to comply with the requirements of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Telecommunications System to secure indebtedness. Grantee's lease of some of the components of the Telecommunication System to third parties shall not constitute a transfer, as long as Grantee retains ownership and responsibility for maintenance of the Telecommunications system. Grantor's consent to any requested transfer shall be deemed given on the thirtieth day after receipt of Grantee's request, unless, within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If Grantor requests additional information under the previous sentence, Grantor's consent to a requested transfer shall be deemed given on the thirtieth day after Grantor's receipt of the additional information from Grantee, unless Grantor, within thirty days of the receipt of the additional information provides reasons for needing additional time, including the need for more information. Except where Grantor can show Grantee's failure to provide an adequate response to Grantor's questions, Grantor shall be deemed to approve the transfer on the ninetieth day for which Grantor has the original request and any subsequent responses before it. In this calculation of ninety days, the time for Grantee to respond to requests for information shall not be included.

SECTION 12. Records, Reports and Maps

12.1 Inspection of Records. Subject to confidentiality restrictions under federal or state law, Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice to examine during normal business hours and on a nondisruptive basis any and all records that are legally permissible for release and that are reasonably necessary to

ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records as required by law, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. The Grantor, its agents, employees, representatives or any other Person who has access to records provided by the Grantee shall sign Grantee's nondisclosure agreement prior to records review.

SECTION 13. Default and Termination or Revocation

13.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor may first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, or Grantor has reason to conclude that such discussions would be fruitless, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

13.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

13.3 Enforcement. Subject to applicable Federal and State law, in the event the Grantor determines that the Grantee is in default of any provision of the Franchise, and the default is not contested or cured within the times provided in Section 13.2, the Grantor may:

- a. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- b. Commence an action at law for monetary damages or seek other equitable relief; or
- c. In the case of a substantial default of a material provision of the Franchise, revoke the Franchise itself in accordance with Section 13.4 below.

13.4 Revocation.

- a. Prior to revocation of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice of intent to revoke may be combined with a notice of default if the Grantor is satisfied that there has been a pattern of noncompliance. If Grantor does not provide notice of intent to revoke with the notice of default, Grantor shall provide an additional notice of intent to revoke. Any notice of intent to revoke shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, The City Council of Coburg shall hold a public hearing on the question of revocation. Grantor shall give Grantee at least thirty (30) days' notice of the time and place of such a public hearing. Grantor shall be entitled to appear at the public hearing and present evidence and arguments concerning its failure to comply with the Franchise and the proposed revocation. If, at the close of the hearing, or at a later time after deliberations, the Council determines that Grantor's original determination of default was correct, and that Grantee has failed to cure the default, or offer a credible plan for cure, Grantor may revoke the Franchise.
- b. Upon revocation or termination of the Franchise, Grantee shall remove its Telecommunications System from the Streets of the Grantor, or provide Grantor written notice that it is electing to abandon the System in place. Upon receipt of notice of intent to abandon the System, or the passage of sixty (60) days after the notice of revocation has been sent to Grantee, Grantor may, at its sole discretion, take ownership of the abandoned system, or remove the system and bill Grantee for the out-of-pocket expense of removal, or any combination of the two options. The obligation to pay for such expenses shall survive the termination of this Franchise.

13.5 Termination. This Franchise will terminate upon the occurrence of any of the following events:

- a. The term of the franchise has passed without a renewal agreed to by both parties, acting within their sole discretion.
- b. Grantee files a voluntary petition in any United States Bankruptcy Court, or is named as defaulting party in any involuntary petition filed in Bankruptcy Court.
- c. Grantor completes the steps for revocation set forth in this section.

SECTION 14. Miscellaneous Provisions

14.1 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Telecommunications System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

14.2 Minor Violations. The parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers. Such determination shall be within the sole reasonable determination of the Grantor.

14.3 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

14.4 Notices. Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested or by nationally or internationally recognized courier service such as Federal Express.

As set forth above, notice served upon the Grantor shall be delivered or sent to:

Attn: City Administrator
 City of Coburg
 P.O. Box 8306
 Coburg, OR 97408

And every notice served upon Grantee shall be delivered or sent to:

Astound Broadband
 Attn: James Penney
 401 Kirkland Parkplace, Suite 500
 Kirkland, WA 98033

Each Party shall be responsible to promptly notify the other in writing of any change of address.

14.5 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

14.6 Administration of Franchise. Any changes, modifications or amendments to this Franchise must be made in writing, adopted as an amendment to this Ordinance, and accepted by the Grantee before the amendment becomes effective.

14.7 Effective Date. This ordinance shall become effective upon written acceptance by Astound Broadband.

14.8 Repeal. Ordinance A-230, Granting a ten year franchise 2014 to 2024 to Astound to use right of way adopted on September 30, 2024

ADOPTED by the City Council of the City of Coburg this 12th day of November 2024, by a vote of _____ for and _____ against.

APPROVED by the Mayor of the City of Coburg this ___ day of _____, 2024.

Nancy Bell, Mayor

ATTEST: _____
Sammy L. Egbert, City Recorder

ORDINANCE A-230-A

AN ORDINANCE GRANTING A FRANCHISE TO USE RIGHTS OF WAY WITHIN THE CITY OF COBURG TO ASTOUND BROADBAND LLC REPEALING ORDINANCE A-230 AND SETTING AN EFFECTIVE DATE

WHEREAS, Astound Broadband, LLC is a Washington limited liability company that is a registered business in Oregon and holds a Certificate of Authority to Provide Telecommunications Service from the Public Utilities Commission of Oregon and Domestic and International Section 214 authorizations from the Federal Communications Commission (FCC); and

WHEREAS, Astound Broadband, LLC desires to construct fiber optic distribution facilities within the City of Coburg, within the public right-of-way, to provide service to potential customers, including facilities to existing cell phone towers; and

WHEREAS, the CITY of COBURG, OREGON hereinafter referred to as the "Grantor" has determined that Astound Broadband, LLC, hereinafter referred to as the "Grantee," is qualified for a franchise to use and occupy the rights of way within the City of Coburg; and

WHEREAS, City of Coburg adopted ordinance A-230 on September 13, 2014 granting a franchise to Astound Brodband, LLC.grantorThe franchise became effective on November 1, 2014 and expired August 1, 2024 as stated in Ordinance A-230 section 14.7.

WHEREAS, Council wishhas determined that it is appropriate to continueadopt this in a Franchise agreement with the Grantee for the construction and operation of a telecommunications system on the terms set forth herein.

THE CITY OF COBURG ORDAINS AS FOLLOWS:

SECTION 1. Definitions. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in this Section, unless the context clearly indicates a different definition. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Council" shall mean the governing body of the City of Coburg.
- B. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct, operate and maintain a Telecommunications System along the Public Ways within all or a specified area in the Service Area.

- C. "Gross Revenue" shall mean any and all revenue, of any kind, nature or form, without deduction for expense; all inflows or enhancements of assets or settlements of its liabilities (or a combination of both) of whatsoever kind and nature derived by the Grantee, less uncollectables, and, any affiliates, subsidiaries or parent of the Grantee on account of goods or for Telecommunications Services from the Grantee's ongoing operations delivered within the City of Coburg. Gross revenue shall include any and all subsidies, discounts, rebates or other considerations or forbearances by the Grantee associated with the delivery of such goods and services within the City of Coburg. Gross Revenues shall not include any revenues from activities exempted from local fees by state or Federal law.
- D. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- E. "Service Area" shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exception in Section 6 hereto.
- F. "State" shall mean the State of OREGON.
- G. "Street", "Rights-of-Way" or "Public Way" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, and similar Public Ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or property dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Telecommunications System.
- H. "Subscriber" shall mean any Person lawfully receiving Telecommunications Service from the Grantee.
- I. "Telecommunications Service" shall mean any service provided to a subscriber within the City limits of the City of Coburg that is delivered by means of the Telecommunications System.
- J. "Telecommunications System" shall mean a system of fiber optic cable and other wiring and service vaults and other equipment installed in the public rights of way within the City of Coburg by Grantee.

SECTION 2. Grant of Franchise

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Telecommunications System.

2.2 Police Powers and Conflicts with Franchise. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance. In the event of any conflict with other ordinances, the ordinance with the most specificity and most directly related to public health and safety shall prevail. Grantor shall administer the Franchise in a reasonable, uniform, and non-discriminatory manner.

SECTION 3. Franchise Term and Renewal

3.1 Term. The Term of this Franchise ~~is shall be~~ for ten years from the signed date of acceptance by Grantee, ~~commencing on the Effective Date of this Franchise as set forth in subsection 14.8,~~ unless terminated pursuant to the provisions of Section 13.

3.2 Acceptance by Astound. Within thirty (30) days after the passage of this ordinance by the City, Astound Broadband LLC, shall file an unqualified written acceptance thereof m with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

3.32 Procedures for Renewal. If Grantee desires to renew the franchise, then at least six months but no more than nine months prior to the end of the franchise, Grantee shall notify Grantor of its desire for renewal, and shall propose any alteration in the terms of the franchise that it might wish. Grantor shall consider the proposed renewal, but shall be entitled to make a decision on the renewal based on its determination of the best interests of the residents of Coburg.

SECTION 4. Indemnification and Insurance

4.1 Indemnification. The Grantee shall defend the Grantor, its officers, boards, commissions, agents, and employees from all claims for injury to any Person or property caused by, or alleged to be the result of the negligence or fault of Grantee in the construction or operation of the Telecommunications System and, in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence or fault of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the installation and operation of the Telecommunications System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising

hereunder, except that if such settlement or compromise might obligate Grantor, Grantee shall obtain Grantor’s written consent to the settlement or compromise, which Grantor may not unreasonably withhold. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent or indemnify the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor, its officers, boards, commissions, agents, or employees. This obligation of indemnification shall survive the termination of the Franchise.

4.2 Insurance.

- a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos.	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

SECTION 5. Service Obligations

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, users, or general citizens on the basis of race, color, religion, national origin, age or sex.

SECTION 6. Installation Requirements

6.1 Installation. All installations shall be done in compliance with applicable laws and regulations and only after obtaining all required permits from the State of Oregon, Lane County and the City of Coburg.

6.2 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching to allow Grantor to provide notice of Grantee's work to other interested parties. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee.

6.3 Annexation. After Grantee initiates telecommunications services to any subscriber in Coburg, in the event the Grantor modifies the potential Service Area by annexation or any other means, the Grantor shall provide at least sixty (60) day prior notice to the Grantee. The Grantor shall also notify Grantee of all new street address assignments or changes within the Service Area. Said notice shall be in writing to the address set forth below by U.S. certified mail, return receipt requested. Grantor shall provide address files and maps in sufficient detail and in an acceptable digital format. Grantee shall begin to collect Franchise Fees from Subscribers in any annexed area within one hundred and twenty (120) days of such notice and address information as described above. Grantee shall not be obligated to collect and remit Franchise Fees until such notice and information has been received by Grantee.

Grantee shall provide Grantor thirty (30) days written notice of address changes affecting this subsection pursuant to section 14.4.

SECTION 7. Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the Oregon Building Codes and with all applicable local laws.

7.2 Construction Standards and Requirements. All of the Grantee's plant and equipment, including but not limited to any antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, fiber optic cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Safety. The Grantee shall, at all time, employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

SECTION 8. Conditions on Street Occupancy

8.1 General Conditions. Subject to State regulations concerning pole attachments, Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor and other owners of the right of way occupied by Grantee.

8.2 Underground Construction. Grantee may install aerial facilities, except that the facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. ~~At such time as~~ When the existing aerial facilities of similarly situated entities are required to be placed underground by the Grantor in accordance with ORS 758.210 through 758.270, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities. Grantee's acceptance of any reimbursement by the Grantor or an agency of Grantor under the previous sentence does not limit Grantee's rights under ORS 758.245 and ORS 758.250, except that Grantee may not accept any reimbursement in excess of its costs to place facilities underground.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Telecommunications System in the Service Area.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair, at Grantees sole expense. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any Public Way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such Public Way.

8.5 Restoration of Public Ways. Grantee shall, at its own expense, restore any damage or disturbance caused to the Public Way as a result of its operation, construction, or maintenance of the Telecommunications System to a condition reasonably comparable to the condition of the Public Way immediately prior to such damage or disturbance.

8.6 Removal in Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the reasonable judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence or willful misconduct by the Grantor.

8.7 Tree Trimming. Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities. Trimming shall be done in a manner consistent with good arborist practices.

8.8 Relocation for the Grantor. The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily relocate, or temporarily remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. In the event of a permanent relocation or disconnection request, Grantor shall advise Grantee in writing prior to the end of Grantee's current budget cycle. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor Rights-of-Way are responsible for the costs related to the relocation of their facilities.

8.9 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, relocate in or temporarily remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is give reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

8.10 Reimbursement of Costs. If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

SECTION 9. Service Requirements

9.1 Phone Service. The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases or other substantive service changes.

SECTION 10. Compensation for Right of Way use: Franchise Fees

10.1 Amount of Fee. Grantor's initial use of the rights of way in Coburg will be along Bottom Loop Road, crossing Van Duyn Street, and along Coburg Road North. As compensation for the use of those portions of City Right-of-Way, Grantee shall pay to Grantor a franchise fee ("Franchise Fee") equal to \$6400 annually with an annual 3% increase. In the event that Grantee expands its presence in the City of Coburg and offers any services within the City of Coburg, Grantee shall pay to Grantor as compensation for use of the City Right of Way, an additional franchise fee of five percent 5% of Gross Revenue.

10.2 Reserved for Future Expansion.

10.3 Franchise fee payments not in lieu of other payments. Payment of franchise fees required in this Section 10 shall be in addition to taxes or fees of general applicability owed to the Grantor, or any other jurisdiction, by the Grantee.

10.4 Payment. Payment of the Franchise Fee due the Grantor shall be calculated on an annual basis, beginning with the first day of the Effective Month. Grantee agrees to pay pro rata Franchise Fees within forty-five (45) days of the close of each calendar quarter, transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the Franchise Fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise. The payment of Franchise Fees shall be either accompanied by or closely followed by a statement of said payment, reflecting the applicable charges, and the revenue from subscribers and the gross revenue calculations. Grantee shall provide, annually, a statement certified by Grantee's representative as to the accuracy of the Franchise Fee payments. Grantor may have access, upon reasonable request and at Grantee's business offices during normal business hours, to Grantee's books and accounts for an audit or other review of Grantee's revenues to affirm the accuracy of Grantee's payments. Such review shall be done at Grantor's expense, unless such a review finds a discrepancy of greater than five percent (substantial discrepancy) between the amount determined to be owed and any amounts paid within the twenty-four months prior to the date of the initiation of the review, or Grantee unreasonably refuses Grantor's agents access to Grantee's accounts. In case of either a substantial discrepancy in franchise fees, or a refusal to cooperate in the review, Grantee shall be responsible for all of Grantor's costs for the review, including attorney fees at trial and on appeal.

10.5 No Waiver. No acceptance of any payment by the Grantor shall be construed as a release or as a waiver of any claim the Grantor may have for additional sums payable under this Franchise.

10.6 Limitation on Recovery. In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, the Grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the Grantor's primary depository bank during the period such unpaid amount is owed. The period of limitation for recovery of interest on any Franchise Fee payable hereunder shall be twenty-four months from the date on which payment by the Grantee was due.

SECTION 11. Transfer of Franchise

11.1 Franchise Transfer. The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, and such consent shall not be unreasonably withheld or delayed once Grantor is satisfied that the party to whom the Franchise is being transferred has sufficient technical and financial capacity to comply with the requirements of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Telecommunications System to secure indebtedness. Grantee's lease of some of the components of the Telecommunication System to third parties shall not constitute a transfer, as long as Grantee retains ownership and responsibility for maintenance of the Telecommunications system. Grantor's consent to any requested transfer shall be deemed given on the thirtieth day after receipt of Grantee's request, unless, within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If Grantor requests additional information under the previous sentence, Grantor's consent to a requested transfer shall be deemed given on the thirtieth day after Grantor's receipt of the additional information from Grantee, unless Grantor, within thirty days of the receipt of the additional information provides reasons for needing additional time, including the need for more information. Except where Grantor can show Grantee's failure to provide an adequate response to Grantor's questions, Grantor shall be deemed to approve the transfer on the ninetieth day for which Grantor has the original request and any subsequent responses before it. In this calculation of ninety days, the time for Grantee to respond to requests for information shall not be included.

SECTION 12. Records, Reports and Maps

12.1 Inspection of Records. Subject to confidentiality restrictions under federal or state law, Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice to examine during normal business hours and on a nondisruptive basis any and all records that are legally permissible for release and that are reasonably necessary to

ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records as required by law, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. The Grantor, its agents, employees, representatives or any other Person who has access to records provided by the Grantee shall sign Grantee's nondisclosure agreement prior to records review.

SECTION 13. Default and Termination or Revocation

13.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor may first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, or Grantor has reason to conclude that such discussions would be fruitless, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

13.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

13.3 Enforcement. Subject to applicable Federal and State law, in the event the Grantor determines that the Grantee is in default of any provision of the Franchise, and the default is not contested or cured within the times provided in Section 13.2, the Grantor may:

- a. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- b. Commence an action at law for monetary damages or seek other equitable relief; or
- c. In the case of a substantial default of a material provision of the Franchise, revoke the Franchise itself in accordance with Section 13.4 below.

13.4 Revocation.

- a. Prior to revocation of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of noncompliance by the Grantee,

including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice of intent to revoke may be combined with a notice of default if the Grantor is satisfied that there has been a pattern of noncompliance. If Grantor does not provide notice of intent to revoke with the notice of default, Grantor shall provide an additional notice of intent to revoke. Any notice of intent to revoke shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, The City Council of Coburg shall hold a public hearing on the question of revocation. Grantor shall give Grantee at least thirty (30) days' notice of the time and place of such a public hearing. Grantor shall be entitled to appear at the public hearing and present evidence and arguments concerning its failure to comply with the Franchise and the proposed revocation. If, at the close of the hearing, or at a later time after deliberations, the Council determines that Grantor's original determination of default was correct, and that Grantee has failed to cure the default, or offer a credible plan for cure, Grantor may revoke the Franchise.

- b. Upon revocation or termination of the Franchise, Grantee shall remove its Telecommunications System from the Streets of the Grantor, or provide Grantor written notice that it is electing to abandon the System in place. Upon receipt of notice of intent to abandon the System, or the passage of sixty (60) days after the notice of revocation has been sent to Grantee, Grantor may, at its sole discretion, take ownership of the abandoned system, or remove the system and bill Grantee for the out-of-pocket expense of removal, or any combination of the two options. The obligation to pay for such expenses shall survive the termination of this Franchise.

13.5 Termination. This Franchise will terminate upon the occurrence of any of the following events:

- a. The term of the franchise has passed without a renewal agreed to by both parties, acting within their sole discretion.
- b. Grantee files a voluntary petition in any United States Bankruptcy Court, or is named as defaulting party in any involuntary petition filed in Bankruptcy Court.
- c. Grantor completes the steps for revocation set forth in this section.

SECTION 14. Miscellaneous Provisions

14.1 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or

monitor their utility poles to which Grantee's Telecommunications System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

14.2 Minor Violations. The parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers. Such determination shall be within the sole reasonable determination of the Grantor.

14.3 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

14.4 Notices. Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested or by nationally or internationally recognized courier service such as Federal Express.

As set forth above, notice served upon the Grantor shall be delivered or sent to:
 Attn: City Administrator
 City of Coburg
 P.O. Box 8306
 Coburg, OR 97408

And every notice served upon Grantee shall be delivered or sent to:
 Astound Broadband
 Attn: James Penney
 401 Kirkland Parkplace, Suite 500
 Kirkland, WA 98033

Each Party shall be responsible to promptly notify the other in writing of any change of address.

14.5 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

14.6 Administration of Franchise. Any changes, modifications or amendments to this Franchise must be made in writing, adopted as an amendment to this Ordinance, and accepted by the Grantee before the amendment becomes effective.

14.7 Effective Date. ~~This ordinance shall become effective upon written acceptance by Astound Broadband. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise, unless the Grantee's signature is not affixed within thirty (30) days of the adoption of this Ordinance. The Effective Month shall be the first day of the Month wherein Grantee accepts this Franchise. This Franchise shall expire on August 1, 2024 unless extended by the mutual agreement of the parties, or terminated earlier pursuant to Section 13 of this franchise.~~

14.8 Repeal. Ordinance A-230, Granting a ten year franchise 2014 to 2024 to Astound to use right of way tadopted on September 30, 2024

ADOPTED by the City Council of the City of Coburg this 12th day of November 2024, by a vote of _____ for and _____ against.

APPROVED by the Mayor of the City of Coburg this ___ day of _____, 2024.

Nancy Bell, Mayor

ATTEST: _____
Sammy L. Egbert, City Recorder

COUNCIL MEMO



MEETING DATE: November 12th, 2024
STAFF: Brian Harmon, Public Works Director

Coburg Public Works Water System Lead & Copper Service Line Inventory

BACKGROUND

In Oregon Drinking Water Systems are regulated through the Oregon Health Authority with rules from the Environmental Protection Agency (EPA). In 2021 EPA developed revisions to the Lead and Copper Rule (see attached Fact Sheet for details). The 2021 revisions mandated an inventory of all water service lines in the City’s water distribution delivery system with an objective to identify, document and report on the type of pipe material for all service lines smaller than 2” in size (anything over 2” cannot have lead in it).

Several different inventory and documentation options were provided to verify compliance. The City of Coburg Public Works staff chose the option of conducting a physical inventory of each meter box to identify the pipe material both entering and exiting the meter box. This multi-week process resulted in on-site field identification of over 620 service lines recording pipe material types including galvanized pipe, PVC, Copper, and steel. Consistent with most municipal water systems in Oregon, no lead pipe material was identified in Coburg’s water distribution delivery system. The inventory results were reported to EPA through the Oregon Health Authority and have been accepted.

BUDGET / FINANCIAL IMPACT

Because no lead piping was found in the City’s system, no specific financial impact to the City exists other than the staff time already incurred to inventory, summarize, document and submit the required compliance report.

PUBLIC COMMUNICATION/ENGAGEMENT

Consistent with the compliance reporting requirements, the results of the inventory will be published on the City website.

NEXT STEPS

Public Works staff will maintain adherence to the new rules and ensure that rule revisions are addressed as prescribed by OHA and EPA.

ATTACHMENTS

1. EPA Fact Sheet – October 2024



2021 LCRR Requirements that Are Retained in the Final Lead and Copper Rule Improvements and Compliance Dates

October 2024

This fact sheet describes the requirements of the 2021 Lead and Copper Rule Revisions (LCRR) that EPA did not change in the final Lead and Copper Rule Improvements (LCRI) that systems must comply with starting October 16, 2024¹, clarify what requirements water systems must follow between October 16, 2024 and the LCRI compliance date, and describe the final LCRI compliance date requirements.

When must water systems comply with the LCRI?

Water systems must comply with the requirements of the LCRI three years after the date the final rule is published.

What requirements must water systems comply with between October 16, 2024, and the LCRI compliance date?

The Lead and Copper Rule (LCR) is the National Primary Drinking Water Regulation first promulgated in 1991 that requires actions by public water systems to reduce levels of lead and copper in drinking water. On January 15, 2021, EPA promulgated the LCRR. In October 2024, EPA published the final LCRI to significantly reduce exposure to lead through drinking water. The final LCRI builds on the 2021 LCRR and the original LCR and supersedes the 2021 LCRR.

The LCRI requirements replace most of the 2021 LCRR requirements and requires water systems to continue to comply with the LCR with the exception of certain 2021 LCRR requirements between the 2021 LCRR's October 16, 2024 compliance date and the LCRI compliance date. Specifically, in the LCRI, EPA retains the October 16, 2024 compliance date for the initial service line inventory, notification of service line material, Tier 1 public notification of a lead action level exceedance, and associated reporting requirements as listed in Tables 1 and 2 (water system requirements and State requirements that apply as a condition of primacy, respectively) below for water systems and States², respectively. Table 1 also clarifies the lead health effects language that must be used between October 16, 2024 and the LCRI compliance date. With these limited exceptions, water systems will comply with the LCR (as codified in the July 2020 Code of Federal Regulations) for all other rule provisions and transition directly to the LCRI at the LCRI compliance date.

¹ The 2021 LCRR requirements described are the same as those described in EPA's April 2024 [LCRR Implementation Fact Sheet](#).

² As part of this fact sheet, "State" refers to the agency of the state, Tribal, or territorial government that has jurisdiction over public water systems consistent with the definition of "State" in 40 CFR 141.2. During any period when a state or Tribal government does not have primary enforcement responsibility pursuant to section 1413 of SDWA, the term "State" means the relevant Regional Administrator of EPA.

Table 1: 2021 LCRR Water Systems Requirements Systems Must Comply with October 16, 2024 through the LCRI Compliance Date

System Requirements	Compliance Date	Code of Federal Regulations (CFR) Section
Initial Inventory and Associated Reporting		
Initial inventory development (includes making inventory publicly accessible).	October 16, 2024	40 CFR 141.84(a)(1) through 141.84(a)(10) (excluding 141.84(a)(6) and (a)(7))
Submission of initial inventory to the State	October 16, 2024	40 CFR 141.90(e)(1)
Failure to submit initial inventory to the State by October 16, 2024, requires Tier 3 Public Notification (PN).	Starting October 16, 2024	40 CFR Appendix A to Subpart Q of Part 141 I.C.1 (excludes Tier 3 notification for 141.90 except 141.90(e)(1), (e)(13), and (f)(4))
Notification of Service Line Material and Associated Reporting		
Notification of known or potential service lines containing lead within 30 days of completion of the inventory (initial) and repeat notification on an annual basis until the entire service connection is no longer lead, galvanized requiring replacement, or unknown. For new customers, water systems must also provide the notice at the time of service initiation.	Within 30 days of completion of the inventory and then annually	40 CFR 141.85(e)
Provide revised lead health effects language in public education materials to ensure consistent notification messaging with PN requirements (as referenced in 40 CFR 141.85(e)).	Starting October 16, 2024	40 CFR 141.85(e)(3) requires health information meeting the requirements of 40 CFR 141.85(a)(1)(ii)
Annual reporting to the State by July 1 that the system provided notification and delivered lead service line information materials to affected consumers with lead, galvanized requiring replacement, or unknown service lines for the previous calendar year. Water systems must provide a copy of the notification and information materials to the State.	July 1, 2025, and then annually	40 CFR 141.90(e)(13), 40 CFR 141.90(f)(4)
Failure to certify to the State that the system notified persons served at service connections of a known or potential service line containing lead requires Tier 3 PN.	Starting October 16, 2024	40 CFR Appendix A to Subpart Q of Part 141 I.C.1 (excludes Tier 3 for 141.90 except 141.90(e)(1), (e)(13), and (f)(4))
Other Public Education Materials¹		
Provide 2021 LCRR revised lead health effects language in public education materials (including public education after a lead action level exceedance) to ensure consistent messaging with	Starting October 16, 2024	40 CFR 141.85(a)(1)(ii)

System Requirements	Compliance Date	Code of Federal Regulations (CFR) Section
notification of service line material and PN requirements.		
Public Notification² and Associated Reporting		
Exceedance of the lead action level as specified in § 141.80(c) requires Tier 1 PN provided to persons served by the water system no later than 24 hours after the system learns of the exceedance.	Starting October 16, 2024	40 CFR 141.201(a)(3)(vi) (In Table 1 to § 141.201), 40 CFR 141.202(a)(10) (In Table 1 to § 141.202), 40 CFR Appendix A to Subpart Q of Part 141 C.2
A copy of the Tier 1 PN for lead action level exceedance must be sent to the head of the primacy agency and EPA Administrator no later than 24 hours after the system learns of the exceedance.	Starting October 16, 2024	40 CFR 141.201(c)(3), 40 CFR 141.31(d)(2)
Provide revised lead health effects language as required in Tier 1 PN for lead action level exceedance and Tier 2 and 3 PN for violations.	Starting October 16, 2024	40 CFR Appendix B (D.23) to Subpart Q of Part 141

¹ While discussed in the April 2024 LCRR Implementation Fact Sheet, a row was added to the table to ensure systems know the LCRR health effects language is required starting October 16, 2024 through the LCRI compliance date, upon which the LCRI health effects language is required.

² From October 16, 2024 through the LCRI compliance date, Tier 1 PN is triggered by a lead action level exceedance of 0.015 mg/L. Starting on the LCRI compliance date, Tier 1 PN is required if a system exceeds the new lead action level of 0.010 mg/L.

Table 2: 2021 LCRR State Requirements States Must Comply with October 16, 2024 through the LCRI Compliance Date

State Requirements	Compliance Date	Code of Federal Regulations (CFR) Sections
Initial Inventory and Associated Reporting		
States reporting to EPA: For each public water system, the number of lead, galvanized requiring replacement, and lead status unknown service lines in its distribution system, reported separately.	States receive information in Q4 2024 and report this information by the end of Q1 2025 (3/31/25) for the initial inventory.	40 CFR 142.15(c)(4)(iii)(D)
Quarterly reports to the Administrator include any system violations for failure to submit initial inventory to the State.	States receive information in Q4 2024 and report this information by the end of Q1 2025 (3/31/25) for the initial inventory.	40 CFR 142.15(a)(1)
Notification of Service Line Material and Associated Reporting		
Quarterly reports to the Administrator include any system violations for failure to certify notifications.	States receive information in Q4 2024 report this information	40 CFR 142.15(a)(1)

	by the end of Q1 2025 (3/31/25).	
Public Notification and Associated Reporting		
Quarterly reports to the Administrator include any system violations for failure to conduct Tier 1 PN.	States receive information in Q4 2024 report this information by the end of Q1 2025 (3/31/25).	40 CFR 142.15(a)(1)
Reporting of 90 th percentile lead concentrations where the State calculates a water system’s 90 th percentile concentrations: The State provides the results of the 90 th percentile lead calculations, in writing, to the water system within 15 days of the end of the tap sampling period.	Within 15 days of the end of tap sampling periods.	40 CFR 141.90(h)(3)

What are water systems required to submit by the LCRI compliance date?

In addition to preparing to comply with all the LCRI requirements, water systems must submit the following to the State by the LCRI compliance date:

- All water systems must submit a baseline inventory or statement that they have no lead, galvanized requiring replacement or unknown service lines.
- All water systems with at least one lead, galvanized requiring replacement, or unknown service line must submit a service line replacement plan.
- All community water systems must submit a list of the schools and licensed child care facilities they serve or provide certification that they do not serve any.
- If a water system wishes to obtain a waiver from the inventory validation requirements, they must also submit a written request to the State demonstrating that they have conducted an inventory validation that is at least as stringent as the LCRI inventory validation requirements by the LCRI compliance date.

Please see the Service Line Replacement and the Lead in Schools and Child Care Facilities fact sheets for more information about these requirements.

Disclaimer: This document is being provided for informational purposes only to assist members of the public, States, Tribes, and/or public water systems in understanding the Lead and Copper Rule Improvements (LCRI). It includes descriptions of regulatory requirements. In the event that there are any differences, conflicts, or errors between this document and the LCRI, States, Tribes, and/or public water systems should refer to the LCRI. This document does not impose any legally binding requirements on the EPA, States, Tribes, or the regulated community. Further, this document does not confer legal rights or impose legal obligations on any member of the public. In the event of a conflict between the discussion in this fact sheet and any statute or promulgated regulation, the statute and any promulgated regulations are controlling.



COUNCIL MEMO

MEETING DATE: November 12th, 2024

STAFF: Megan Winner, Planning Director

Federal Emergency Management Agency (FEMA) Pre-Implementation Compliance Measure (PICM) Update and Next Steps

BACKGROUND

After multiple lawsuits from environmental advocacy groups dating back to 2009, in July 2024 FEMA announced that all National Flood Insurance Program (NFIP) participating communities must select a pre-implementation compliance measure (PICM) by December 1, 2024 to address floodplain development to protect habitats for a variety of species or lose eligibility to participate in NFIP. There are three PICM pathway options that communities can choose from:

1. Adopt the FEMA model floodplain ordinance or
2. Review each application for development in the floodplain on a permit-by-permit basis.
3. Prohibit all development in the floodplain

If no option is selected, communities will default to the permit-by-permit review basis which requires a habitat assessment and mitigation plan documenting that the proposed development in the Special Flood Hazard Area will achieve "no net loss" of habitat. FEMA is expected to provide final implementation measures in the future but is requiring PICM compliance in the interim.

Due to the time constraints imposed by the required deadline and the importance of upholding Oregon land use law, Governor Kotek has requested a delay in the PICM proceedings. However, as of yet, FEMA has not provided an extension or pause. Therefore, NFIP participating communities in Oregon (approximately 89% of Oregon, 239 communities) must inform FEMA of which PICM pathway it will pursue by the December 1 deadline. If pursuing the model ordinance, communities have until July 2025 to adopt the ordinance to provide time for the adoption process. Staff recommend reporting the model ordinance pathway to compliance (pathway #1) to FEMA now to provide time to allow for information and discussion on amending the existing floodplain regulations in the Coburg Zoning Code Ordinance A-200-L. Council will then be in a position to determine whether moving forward with the model ordinance is in the best interest of the community or if remaining with the permit by permit basis (pathway #2) is preferred as the final, long term compliance pathway.

BUDGET / FINANCIAL IMPACT

Planning Director and City Administrator time has been the only costs incurred to date on this matter. Additional staff time by both positions will be required to prepare materials for a future meeting, likely a joint session with Council and Planning Commission to review the model ordinance, compare it with existing floodplain related regulations in the City's current development code and move forward a

recommendation for final Council review and decision at a future Council meeting. Additionally, staff time will be required to gather materials as part of the new FEMA annual reporting requirements being imposed as part of the PICM regulations.

PUBLIC COMMUNICATION/ENGAGEMENT

Future discussions, recommendations and final decisions on this matter will all occur within public meetings and follow all required state and local land use requirements as well as Council rules and Oregon Revised Statutes regarding consideration of land use ordinance adoption.

NEXT STEPS

Planning and Administration staff will continue to monitor how jurisdictions are moving forward on this matter and will assemble materials in preparation for a joint Council and Planning Commission meeting in February or March of 2025 unless alterations to the regulatory framework or process are identified prior to that time. In any event, Council will continue to receive updates as the process moves forward.

ATTACHMENTS

1. DLCD – PICM FAQ



Frequently Asked Questions about Pre-Implementation Compliance Measures

October 4, 2024

Disclaimer: This FAQ is general guidance based on the information available to DLCDC staff at this time. It is not a DLCDC decision. It is not legal advice for any specific situation. Cities and counties should consult their legal counsel for advice on specific decisions.

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What are “Pre-Implementation Compliance Measures”?

In July 2024, the Federal Emergency Management Agency (FEMA) sent a letter to cities and counties in Oregon instructing them to make short term changes to how the city or county regulates development

in flood hazard areas. FEMA describes these short-term actions as “pre-implementation” because they are occurring before FEMA fully implements long-term changes to the National Flood Insurance Program (NFIP) to comply with the Endangered Species Act.

What led up to PICM?

In 2009, environmental advocacy organizations sued the Federal Emergency Management Agency (FEMA) alleging that FEMA violated the Endangered Species Act by not consulting with National Marine Fisheries Services (NMFS) about how the National Flood Insurance Program (NFIP) could jeopardize threatened species. FEMA resolved the lawsuit by formally consulting with NMFS to review the impact of the NFIP. In April 2016, NMFS issued its [Biological Opinion](#) (BiOp) that concludes that the NFIP in Oregon jeopardizes the survival of several threatened species, including salmon, sturgeon, eulachon, and orcas. The BiOp contained a reasonable and prudent alternative (RPA) with recommendations from NMFS to FEMA on how to avoid jeopardizing the threatened species. In October 2021, FEMA issued a draft implementation plan on how to reduce the negative impacts of the NFIP on threatened species.

In 2023, FEMA started reviewing the draft implementation plan using a National Environmental Policy Act (NEPA) process, which is still underway. Under the NEPA process FEMA will analyze whether there are additional alternatives or changes to the 2021 draft implementation plan to consider.

In September 2023, environmental advocacy organizations filed a lawsuit alleging that FEMA has been too slow to implement the BiOp. Plaintiffs included the [Center for Biological Diversity](#), the [Northwest Environmental Defense Center](#), [Willamette Riverkeeper](#), and [The Conservation Angler](#). See also coverage in the [Oregonian](#).

In July 2024, FEMA announced a new program of pre-implementation compliance measures (PICM or short-term measures) for the BiOp, separate from the NEPA full implementation (long-term measures) process. FEMA hosted four [PICM webinars](#) in July and August, and is planning additional outreach to assist NFIP communities in the fall of 2024. Some of the PICM pathways are included in the 2016 BiOp under RPA, element 2.

FEMA now has two separate, but similar processes: NEPA evaluation of the full implementation plan, and interim action through PICM. FEMA’s webpage [“Endangered Species Act Integration in Oregon”](#) contains information about both processes, but does not clearly distinguish between the two processes.

What is the role of the Oregon Department of Land Conservation and Development in PICM?

FEMA and the state provide funds to the Oregon Department of Land Conservation and Development (DLCD) for staff to help cities and counties participate in the NFIP. DLCD floodplain staff do not set program policies and cannot make decisions on behalf of FEMA. As FEMA provides more information about what they are requiring through PICM, DLCD floodplain staff will try to explain the program to cities and counties.

Frequently Asked Questions about Pre-Implementation Compliance Measures

While the floodplain staff at DLCD have a coordinating role communicating with FEMA, cities and counties are always free to communicate directly with FEMA staff. In this role, DLCD staff provided feedback on the full implementation plan (long-term measures) through the NEPA process. DLCD staff provided information about how the land use planning system in Oregon would affect the full implementation plan. DLCD did not have an opportunity to play a similar role while FEMA developed PICM.

On September 26, 2024, Governor Tina Kotek sent a [letter to FEMA](#) expressing concerns about PICM, similar to concerns raised in a [letter from members of congress](#) in August. DLCD will work with FEMA to address the governor's concerns.

What does a city or county need to do now?

FEMA is requiring cities and counties to select one of three PICM short-term paths by December 1, 2024:

- Pathway 1: Adopt the [PICM model floodplain management ordinance](#) that considers impacts to fish habitat and requires mitigation to a no net loss standard.
- Pathway 2: Review individual development proposals and require permit-by-permit habitat mitigation to achieve no net loss using "Floodplain Habitat Assessment and Mitigation" guidance from FEMA.
- Pathway 3: Prohibit all new development in the floodplain.

FEMA is also requiring cities and counties to gather additional data on local floodplain permitting starting January 31, 2025, and submit an annual report to FEMA starting January 2026.

If a city or county does not choose a PICM path by December 1, 2024, then FEMA expects the city or county to use Pathway 2 for permit-by-permit habitat assessment and mitigation.

Once local planning staff review the FEMA documents ([PICM model ordinance](#) and [habitat assessment guidance](#)), planning staff may want to discuss the PICM paths with other internal local staff, and their local legal counsel. A starting point could be to determine how much developable land is within the Special Floodplain Hazard Area (SFHA). With that data to inform local decision making, staff might want to report to decision makers and the public explaining the situation and may find this FAQ useful as background. An informational work-session could be helpful to explore options for what may or may not work at the local level. DLCD staff ([regional representatives](#) and [flood hazards staff](#)) are available for technical assistance; however, many questions will need to go to FEMA. Use the dedicated email address: FEMA-R10-MIT-PICM@fema.dhs.gov.

Does Pathway 3 "Prohibit floodplain development" require a moratorium?

No. A city or county has at least two options for prohibiting development in the special flood hazard area: temporary moratorium or permanent rezoning.

Option A: Temporary Moratorium

[ORS 197.520 to 197.540](#) defines a process for a city or county to declare a moratorium to temporarily prevent all development in a specific area. Typically, a city or county would declare a moratorium where there are insufficient public facilities, which would not apply in this case. ORS 197.520(3) allows a different type of moratorium if a city or county demonstrates there is a compelling need based on the findings below:

For urban or urbanizable land:

- That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;
- That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city or county are not unreasonably restricted by the adoption of the moratorium;
- Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;
- That the city or county has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands, and the overall impact of the moratorium on population distribution; and
- That the city or county proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium.

For rural land:

- That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;
- Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;
- That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium; and
- That the city or county proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

Moratoriums are legally complicated. This description is only a summary of the law. A city or county should consult carefully with their legal counsel to determine whether and how a moratorium would work in their specific situation, and to review the applicable timelines for which a moratorium may be in place and circumstances for extending a moratorium.

Option B: Permanent Rezoning

A city or county could permanently rezone the land within the special flood hazard area to a zone that would not permit development. This would not be appropriate for all cities and counties, but could be appropriate if the area in the SFHA is relatively small, unlikely to develop, or publicly owned.

Is a “Measure 56 Notice” required for PICM short-term options?

Most likely yes, but cities and counties should consult with their legal counsel on how the notification requirements apply in the specific local circumstances.

Background on Measure 56 Notices

Cities and counties in Oregon are required to send a notice to landowners before “rezoning” property. This requirement was originally enacted through Ballot Measure 56 in 1998, and is codified in [Oregon Revised Statutes \(ORS\) 227.186](#) for cities and [ORS 215.503](#) for counties. The requirement uses a broad definition of rezoning that includes any change that “limits or prohibits land uses previously allowed.” DLCDC maintains a [webpage on the landowner notification requirement](#).

Pathway 1 – Model ordinance

Cities and counties staff should carefully review current zoning and development regulations for property within the SFHA. If properties are zoned for open space or conservation, then the [PICM model ordinance](#) might not further limit uses.

If properties are zoned for residential, commercial or industrial use, the [PICM model ordinance](#) would likely limit those uses, and the Measure 56 notification requirement could apply. Most local floodplain codes require owners to obtain a permit for development in the floodplain. Permit processing varies for each city or county. Oregon’s model floodplain Ordinance (version 2020) meets minimum NFIP standards. However, the updated [PICM model ordinance](#) contains new standards in section 6.0 (highlighted in yellow) which could limit currently allowed uses, in which case the Measure 56 notification requirement would apply.

Pathway 2 – Permit-by-permit habitat assessment and mitigation

Cities and counties should carefully review any existing requirements for habitat mitigation. Most cities and counties do not require mitigation for habitat impacts, so the city or county would be adopting a new ordinance to require assessment and mitigation for development in flood hazard areas. These new development regulations would most likely limit currently allowed uses, and thus the Measure 56 notification requirement would apply.

Pathway 3 – Prohibit floodplain development

If a city or county declares a temporary moratorium under ORS 197.520 to 197.540, then the Measure 56 notification requirements would likely apply because a moratorium would limit or prohibit uses that would otherwise be allowed.

If a city or county rezones land or amends development regulations to permanently prohibit development within the SFHA, then the city or county should carefully review the previous zoning and allowed uses for each parcel. If some properties were previously zoned for open space or conservation, then the prohibition on development is not likely to be a limitation on future use. If some properties are zoned for residential, commercial or industrial use, then the prohibition on development would limit those uses, and thus the Measure 56 notification requirement would apply.

A city or county may not want to completely prohibit all development in the floodplain and may want to think about explicitly adding in activities exempt from the no net loss standards as listed in section 6.3 of the [PICM Model Ordinance](#). Some of the exempt activities include normal maintenance of structures, street repairs, habitat restoration activities, routine agricultural practices, and normal maintenance of above ground utilities and would still require a local floodplain development permit. However, if a city or county wishes to include activities beyond those listed in section 6.3, then the city or county will likely need to adopt the model ordinance or require permit-by-permit habitat mitigation for the uses that are still allowed. It may be simpler to choose pathway 1 (model ordinance) or pathway 2 (permit-by-permit) instead. Cities and counties should communicate with FEMA about any exemptions.

Will the state waive legislative adoption requirements?

Each city or county has its own requirements for adopting an ordinance. The state has no authority to waive those requirements.

[ORS 197.610 through 197.625](#) requires cities and counties to submit notice to DLCDC 35 days before the first hearing to adopt a change to a comprehensive plan or a land use regulation. The statute does not authorize DLCDC to waive this requirement. If it is not possible to send the notice 35 days prior to the hearing, cities and counties should send the notice as soon as possible. The notice can include a draft ordinance that will be revised before adoption. If a city or county does not provide notice 35 days prior to the hearing, this does not invalidate the ordinance. A party that did not appear before the local government in the proceedings would be allowed to appeal the ordinance.

DLCDC has no authority to waive the required Measure 56 notification to landowners that is described above.

What if a city or county cannot complete the ordinance process by December 1, 2024?

Start the process of evaluating the PICM pathways as soon as possible. Keep FEMA informed via their PICM inbox FEMA-R10-MIT-PICM@fema.dhs.gov regarding your PICM path and progress.

Send questions to FEMA early in the process to give them time to respond, and document when replies are received.

Communicate often to FEMA to update them on your status and expected adoption date.

Is the model ordinance clear & objective?

Background on Clear and Objective Standards

Oregon Revised Statutes [197A.400](#) requires cities and counties to:

“adopt and apply only clear and objective standards, conditions and procedures *regulating the development of housing*, including needed housing, on land within an urban growth boundary.”
[emphasis added.]

The legislature amended this statute to include areas within unincorporated communities and rural residential zones. The amendment takes effect on July 1, 2025.

Reviewing Model Ordinances

DLCD plans to review the existing [Oregon Model Flood Hazard Ordinance](#) to identify standards for residential development that may not be clear and objective. Over the past year, DLCD also reviewed an early draft of the model ordinance in the NEPA process for the full implementation of the BiOp. DLCD identified several aspects of that early draft model ordinance that may not be clear and objective and suggested that FEMA revise those aspects. DLCD has not yet determined whether the [PICM Model Ordinance](#) has only clear and objective standards.

What is changing for cities and counties for letters of map revision based on fill?

FEMA has temporarily suspended processing of applications for letters of map revision based on fill (LOMR-F) and conditional letters of map revision based on fill (CLOMR-F) as of **August 1, 2024**. FEMA is doing this to remove any perceived incentive to using fill and to avoid potentially negative effects on habitat for threatened species.

FEMA is not prohibiting fill in the SFHA, rather they are suspending the opportunity for owners or developers to revise floodplain maps to be released from mandatory flood insurance. Therefore, if fill is used for structure elevation and there is a federally backed mortgage on the property, flood insurance will still be required. Cities and counties should continue to enforce their existing floodplain ordinance on regulations regarding placement of fill in flood hazard areas.

[Frequently Asked Questions about Pre-Implementation Compliance Measures](#)

If an applicant asks for a community acknowledgement form (CAF) for a CLOMR-F or LOMR-F for a project not covered in the exceptions below, it would be wise to [contact FEMA](#) before signing.

Exceptions for L/CLOMR-F processing:

- Projects that are undergoing Section 7 consultation via an alternative federal nexus
- LOMR-Fs for already processed CLOMR-Fs
- CLOMRs required for habitat restoration projects

What are the Measure 49 implications to the PICM pathways?

Measure 49 could apply in some situations, but it is unlikely that a city or county would have to pay compensation to a landowner. Cities and counties should consult with their legal counsel to analyze their specific situation.

Background:

[Ballot Measure 49](#) was approved by Oregon voters in 2007. Its initial impact was on property owners who acquired their property before land use regulations were established in the 1970's and 1980's. In many cases, those owners were permitted to build up to three houses, even though the current zoning would not allow new houses.

Measure 49 also applies to future changes in land use regulations. Those provisions are codified in [ORS 195.300 to 195.336](#). If a state or local government enacts a land use regulation that restricts a residential use and reduces the fair market value of a property, then the owner can apply for just compensation. The compensation can be monetary, or a waiver to allow the owner to use the property without applying the new land use regulation. This requirement does not apply if the new regulation is for the protection of public health and safety.

Pathway 1 – Model ordinance

If a property owner applied for just compensation as a result of a city or county adopting the PICM model ordinance, the city or county would process the claim as provided in ORS 195.300 through 314. This includes evaluating the claim to determine whether it is valid, and then deciding whether to waive the regulation or pay monetary compensation.

First, determine whether the claimant owned the property before the city or county adopted the new regulations in the model ordinance.

Next determine whether the new regulations restrict the use of the property for single-family dwellings. The statute does not include a specific definition of “restrict” in this context. If the new ordinance has the effect of completely prohibiting residential use, then it clearly restricts the use. If the new ordinance allows single-family dwellings, but places design standards or conditions of development, these likely do not restrict the use.

Frequently Asked Questions about Pre-Implementation Compliance Measures

Next, determine whether the regulations “restrict or prohibit activities for the protection of public health and safety” as provided in ORS 195.305(3)(b). Many aspects of regulating floodplains are based on safety; however, some of the regulations in the [PICM model ordinance](#) are based on improving fish habitat. This could result in complicated analysis to determine whether the habitat requirements restrict development beyond the restriction already created by regulations based on safety.

Next, review the property appraisals submitted by the claimant to determine whether the property value was actually reduced. Property in a flood hazard area may already have a low value. The property may still have value for agricultural use which would offset the loss due to the regulation.

If a property owner has a valid claim, then the city or county would decide to pay monetary compensation or to waive some regulations. The city or county is not required to waive all regulations, only “to the extent necessary to offset the reduction in the fair market value of the property” ORS 195.310(6)(b). The city or county could still apply regulations based on safety, and could still apply regulations that existed prior to adopting the [PICM model ordinance](#).

Pathway 2 – Permit-by-permit habitat assessment and mitigation

The results would be similar to pathway 1. In most cases the habitat mitigation requirement would not prevent development, and the owner would likely not be entitled to just compensation. If the habitat mitigation requirements did prevent development, then the owner could apply for just compensation. The city or county would use the steps described above to determine whether it is a valid claim, and decide to waive some of the requirements, or pay monetary compensation.

Pathway 3 – Prohibit floodplain development

A temporary moratorium would likely not lead to a claim for just compensation because it is not a new land use regulation. Also, a temporary moratorium is unlikely to significantly affect fair market value because potential buyers know that the moratorium will end.

Rezoning to prohibit all development within the SFHA would likely be a basis for a claim for just compensation, especially for a property entirely within the SFHA. If a property includes area inside and outside the SFHA, and the owner could still develop the same number of dwellings in a different location, then the owner would likely not be able to make a claim for just compensation.

The city or county would use the steps described above to determine whether it is a valid claim, and decide to waive some of the requirements, or pay monetary compensation.

Where can I find additional information or ask questions about PICM?

FEMA has a webpage for [Endangered Species Act Integration in Oregon](#). Email questions to the PICM email address: FEMA-R10-MIT-PICM@fema.dhs.gov.

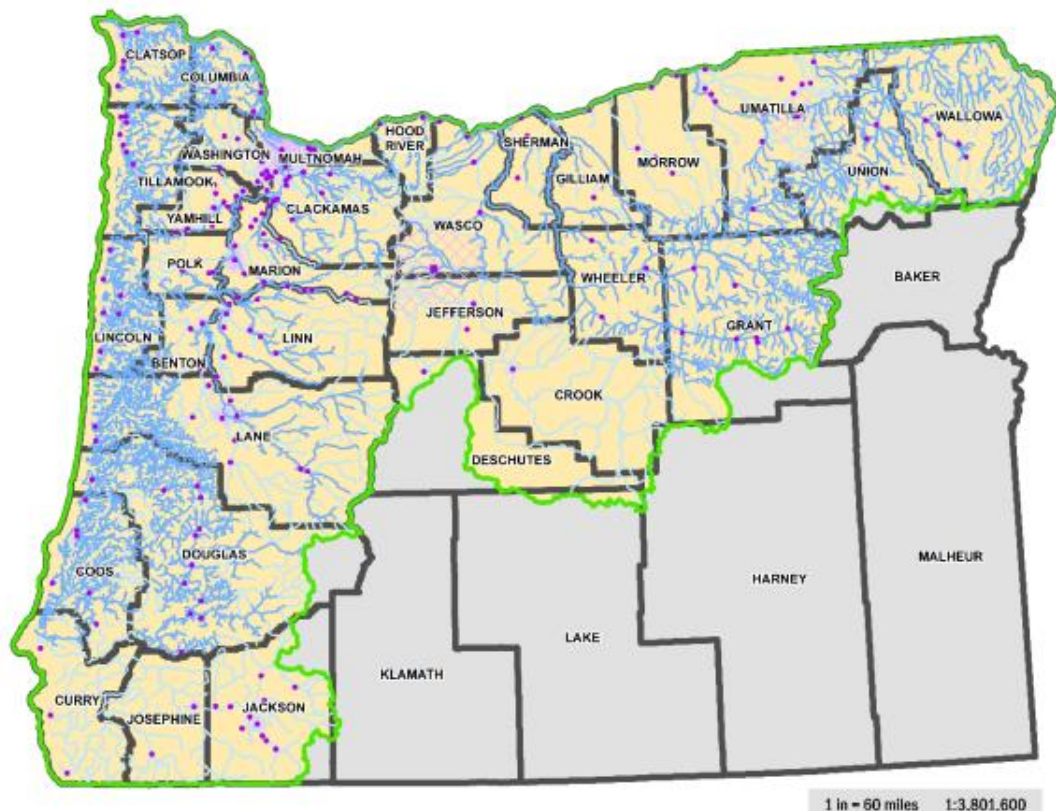
While DLCD staff are not responsible for PICM implementation, we are available to offer technical assistance. Email or call Oregon’s NFIP Coordinator at DLCD, Deanna Wright, deanna.wright@dlcd.oregon.gov, 971-718-7473.

What if a city or county received a PICM letter in error, or did not receive a PICM letter?

Staff may contact FEMA’s PICM inbox at: FEMA-R10-MIT-PICM@fema.dhs.gov to receive the letter, or you may contact DLCD staff. FEMA staff sent the email announcements to the city or county floodplain staff and the letter was mailed to each individual city or county chief elected officer. If you believe your community is outside of the BiOp action area (map instructions below), but you received a PICM letter, please contact FEMA PICM inbox for verification.

What area does the BiOp cover?

Below is a snapshot image of the Oregon NFIP BiOp Action Area:



OREGON NFIP BIOP ACTION AREA

2021.09.28

The BiOp is applicable in Special Flood Hazard Areas (SFHA) within the mapped salmon recovery domains for Oregon communities that participate in the NFIP. The BiOp covers approximately 90 percent of participating Oregon NFIP communities but does not apply to five counties.

[NOAA Fisheries GIS mapping application tool](#)

FEMA has published [directions](#) on how to determine if a proposed development or project area is within the BiOp area.