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VANVACTOR William A

From: GOODWIN Len
Sent: Monday, November 01, 2004 10:57 AM
To: VANVACTOR William A
Subject: Telecommunications Tax

Categories: NoHTML

SUPPLEMENTAL MATERIAL



ordinance
ember draft).pd
Bill:

In looking over Wednesday's agenda, I noticed the discussion of a potential Telecommunications Tax. When I read through the materials, I saw that you had an outdated version of the ordinance proposal that our council will be discussion in work session later this month.

I've attached the current draft, which has been changed to reflect a number of industry comments and concerns. Although the fundamental concepts are the same, there are some changes in the details. Let me know if you would like a more detailed explanation of the changes.

Len Goodwin

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE SPRINGFIELD MUNICIPAL CODE TO PROVIDE FOR LICENSING OF UTILITIES, IMPOSING A PRIVILEGE TAX UPON UTILITIES USING THE PUBLIC WAYS OR TAKING ADVANTAGE OF FACILITIES WHICH USE THE PUBLIC WAYS, AMENDING SECTIONS 4.600 THROUGH 4.716, ADDING SECTIONS 4.800 THROUGH 4.807, AND SETTING AN EFFECTIVE DATE

THE COMMON COUNCIL OF THE CITY OF SPRINGFIELD ORDAINS AS FOLLOWS:

Section 1. Findings.

- A. The Springfield City Charter grants to the City all powers that the constitutions, statutes and common law of the United States and of the State of Oregon now or hereafter expressly or impliedly grant or allow.
- B. Among the powers granted to the City is the power to impose privilege taxes. Such privilege taxes may include taxes for the privilege of conducting business within the City.
- C. Numerous utilities make use, and desire to make use, of the public ways of the City for the purpose of providing to citizens of the City and others services, including, without limitation, electricity, heat, natural gas, water, conveyance of sewage and storm drainage, telephone, cable television, and other information and telecommunications services.
- D. Utilities also seek to provide services which require, for their effective delivery, connection to, interaction with, or other use of facilities placed in the public ways by others.
- E. The City desires to facilitate making available to citizens such services by permitting use of the public ways for such purposes, so long as such use does not unduly burden or interfere with the principal purpose of the public ways, that is to facilitate the free movement of persons and goods in commerce.
- F. The City holds these public ways in trust for all of its citizens, and has a fiduciary responsibility to assure that any use of such public ways, other than for the movement of persons and goods in commerce, is not permitted or authorized unless there is recovered fair and reasonable compensation for the use of such public ways.
- G. The State of Oregon has established limits on the amount of compensation that the City is authorize to receive in consideration of allowing certain uses of the public ways. In particular ORS 221.515 limits the amount of compensation the City may receive from certain defined telecommunications carriers, and Section 221.450 limits the amount of compensation the City may receive from certain other utilities if not franchised.
- H. The Council finds and determines that the amounts specified in these provisions of statute constitute fair and reasonable compensation for the use of the public ways in the City.
- I. The power of the City to levy taxes for the privilege of conducting business within the City limits is a power separate and independent from the limitations on the power of taxation set forth in ORS 221.450 or 221.515.

Section 2. Sections 4.600 through 4.716 of the Springfield Municipal Code, as amended, are further amended to read as follows:

UTILITY LICENSE

4.600 **Definitions.** Terms used in this Chapter shall have the following meanings:

- (1) Affiliate: A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.
- (2) Cable Acts: The Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by The Telecommunications Act of 1996 and as hereafter amended.
- (3) Cable operator: An entity providing or offering to provide "cable service" within the City as that term is defined in the Cable Acts.
- (4) Cable service: Shall have the same meaning as defined in the Cable Acts.
- (5) Excess capacity: The volume or capacity in any existing or future duct, conduit, maintenance hole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities, including that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Public Utility Commission, to allow its use by a telecommunications carrier for a pole attachment.
- (6) FCC or Federal Communications Commission: The Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.
- (7) Licensee: Any entity granted a license hereunder.
- (8) Overhead facilities: Utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.
- (9) Person: Any individual or entity engaging in activities regulated by this Chapter.
- (10) Public street: Any highway, street, alley or other public right-of-way dedicated for motor vehicle travel under the jurisdiction and control of the City.
- (11) Public Utility easement: Any easement granted to the City, acquired, established, dedicated or devoted for access for public utility facilities for construction, operations, and maintenance purposes.
- (12) Public way: Includes all public streets owned by the City and public utility easements granted to the City, as those terms are defined herein, but only to the extent of the City's right, title, interest or authority to grant permission to occupy and use such streets and easements.
- (13) Tax Administrator: the Finance Director of the City or designee.
- (14) Telecommunications carrier: Includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service.
- (15) Telecommunications facilities or system: The plant, equipment and property including, but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and

other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications service.

(16) Telecommunications provider: Includes every person who provides telecommunications service over telecommunications facilities.

(17) Telecommunications service: The providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming or any other information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

(18) Underground facilities: Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead facilities.

(19) Usable space: The total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Public Utility Commission.

(20) Utility: any public utility as defined in ORS 757.005(1), any telecommunications utility as defined in ORS 759.005(1), and telecommunications carrier, telecommunications provider or other entity providing telecommunications services.

(21) Utility facilities: The plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the City and used or to be used for the purpose of providing utility services. The term shall include all such things owned by the utility and all such things as the utility shall have a property interest in, including things held by the utility or on its behalf under a lease, rental agreement or indefeasible right of use for a term of years.

(22) Utility services: All services provided by a utility to customers located within the city limits of the City of Springfield or provided to customers wherever located using facilities physically located within the city limits of the City of Springfield.

4.602 Utility License. A utility license shall be required of any utility who desires to provide service to persons in the City or to persons or areas outside the City using facilities located in the City. No utility shall provide services within the City nor shall such utility provide services outside the City using facilities located within the City unless licensed as provided herein. Any violation of the provisions of this article shall be a misdemeanor punishable in accordance with Chapter V of this Code. Carriers who utilize facilities of another licensed carrier for the distribution of their services shall be required to have a separate license. The purpose of licensing under this Article is to:

- (1) provide the City with accurate and current information concerning the utilities who offer utility services within the City, or that own or operate utility facilities within the City;
- (2) assist the City in enforcement of this Chapter;
- (3) assist the City in the collection and enforcement of any municipal taxes, franchise fees, license, permit or other fees or charges that may be due the City;

(4) assist the City in monitoring compliance with local, and, to the extent authorized by law, with State and Federal laws.

4.604 License Application. Any utility that is required to have a utility license shall file an application, using the form provided for such purpose, with the Public Works Department which shall include the following information:

- (1) The identity of the license applicant, including all affiliates of the applicant.
- (2) A description of the utility services that are or will be offered or provided by licensee
- (3)
- (4) Information to establish that the applicant has obtained or has applied for all other governmental approvals and permits to construct and operate the facilities and to offer or provide the services. Such approvals include, without limitation, any land use decisions. In the event any other required government approval is not obtained any license granted hereunder shall be subject to modification to reflect the absence of such approval.
- (5) Identification of any adverse circumstances affecting the use of the public way, and a description of efforts to mitigate such circumstances.
- (6) All fees, deposits or charges required pursuant to this Chapter.

4.606 Determination by the City. Within 120 days after receiving a complete application under Section 4.604 hereof, the Public Works Director shall, if the application conforms with the requirements of law, issue the license.

If the application is denied, the denial shall be in writing and state the reasons for denial.

4.608 Utility License. (1) The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the Springfield Municipal Code, and other applicable provisions of state or federal law, to operate the utility and provide the utility services covered by the license. The license shall authorize the licensee to place facilities in, and occupy, the public ways of the City for so long as the licensee shall comply with the provisions of this code, and continue to hold any and all licences and permits required by state or federal law for the provision of such services as covered by this license; provided, however that all work, construction, placement or operation of such facilities shall be in compliance with the provisions of this code, including the Standard Construction Specification. Nothing in such license shall authorize the licensee to use the facilities or property of another, including agencies such as the Springfield Utility Board, which use, if any shall be subject to agreement with the owner of such facility or property and any applicable provisions of law. Nothing in such license shall operate or be construed as an approval of such business or a regulation of the practices of such business.

- (2) The City reserves the right, in every event, without limitation, to:
 - (a) construct, install, maintain and operate any public improvement, work or facility in, on, over or under the public ways;
 - (b) perform or authorize or direct the performance of any work that the City may find desirable or convenient in, on, over or under any public way; or

(c) vacate, alter, or close any public way; provided, however, that no vacation shall obligate a utility to remove or abandon any facility located within such public way; or

(d) require, in the public interest, the removal or relocation, temporarily or permanently, of facilities maintained by the utility in the public ways of the City. The Utility shall remove and relocate such facilities within 120 days after receiving notice in writing to do so from the City. Such removal or relocation shall be without cost or expense to the city, provided, however, that when such removal or relocation is required for the convenience or benefit of any private person, or non-governmental agency or instrumentality, utility shall be entitled to reimbursement for the reasonable cost thereof from such person, agency or instrumentality, to the extent permitted by law.

(3) Whenever the City shall perform or cause or permit to be performed, any work in the public way or the vicinity of the public way where such work may disturb or interfere with a utility's facilities, the City shall, or shall require its permittee, to notify, in writing, the utility sufficiently in advance of such contemplated work to enable utility to take such measures, including removal or relocation of such facilities, as may be deemed necessary to protect such facilities, at its own expense.

4.610 Nonexclusive Grant. No license granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of utility services or any other purposes.

4.612 Rights Granted. No license granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed a license only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no license shall be construed as any warranty of title.

4.614 Term of Grant. Unless otherwise specified in a license agreement, a telecommunications license granted hereunder shall be in effect for a term of five (5) years, provided, however, that no agreement shall grant a license for any term in excess of ten (10) years.

4.616 Coordination of Activities. All holders of a License shall be obliged to coordinate their activities affecting the public ways and shall be obliged to participate in coordination meetings to be held by the City not less than annually for the purpose of facilitating such cooperation and coordination.

4.618 Amendment of Grant. A new license application and grant shall be required of any utility that desires to extend additional or different services in the City which are not included in a license previously granted under this Chapter.

4.620 Renewal Applications. A licensee that desires to renew its license under this Article shall, not more than 180 days nor less than 90 days before expiration of the current license, file

an application with the City for renewal of its license which shall include the information required pursuant to Section 4.604 of this Article.

4.622 Renewal Determinations. Within 90 days after receiving a complete application under Section 4.620 hereof, the Public Works Director shall issue a written determination applying the following standards, as applicable, and, if the application conforms with the requirements of law, grant the application:

- (1) Demonstrated legal qualifications, financial and technical ability of the applicant.
- (2) Compliance with requirements of applicable State and federal laws and regulations.
- (3) The continuing capacity of the public ways to accommodate the applicant's existing facilities
- (4) The applicant's compliance with the requirements of this Chapter and any Public Way Use Agreement.
- (5) Such other factors as may demonstrate that the continued grant will serve the community interest.

If the renewal application is denied, the written determination shall include the reasons for non-renewal.

4.624 Obligation to Cure As a Condition of Renewal. No license shall be renewed until any existing violations or defaults in the licensee's performance of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the licensee has been approved by the City.

UTILITY LICENSE - FEES AND COMPENSATION

4.700 Purpose. It is the purpose of this Article to provide for the payment and recovery of all direct and indirect costs and expenses of the City related to the enforcement and administration of this Chapter

4.702 Application and Review Fee.

- (1) Any applicant for a license, including a renewal or amendment of an existing license, pursuant to Article 1 of this Chapter shall pay a fee fixed by resolution of the Council.
- (2) The application and review fee shall be deposited with the City as part of the application filed pursuant to Article 1 of this Chapter.
- (3) An applicant whose license or franchise application has been withdrawn, abandoned or denied within sixty (60) days of its application and review fee written request, shall be refunded the balance of its deposit under this section, less:
 - (i) the non-refundable portion of the application and review fee, as fixed by resolution of the Council, or
 - (ii) All ascertainable costs and expenses incurred by the City in connection with the application, whichever is greater.

4.704 Other City Costs. In addition to the application and review fee, all license or franchise grantees shall, within thirty (30) days after written demand therefor, reimburse the City for all

direct and indirect costs and expenses incurred by the City in connection with any issuance, modification, amendment, renewal or transfer of the license or franchise or any license or franchise agreement to the extent permitted by law.

4.708 Compensation for City Property. If the right is granted, by lease, license, franchise or other manner, to use and occupy City property other than the public ways for the installation of facilities, the compensation to be paid shall be fixed by the City and shall be separate and distinct from any fees and taxes imposed herein.

4.710 Annual Fees., each license grantee shall pay an annual license fee to the City in an amount fixed by Council resolution as reimbursement for the City's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways in behalf of the public and existing or future users.

4.712 Regulatory Fees and Compensation Not a Tax. The regulatory fees and costs provided for in this Article, and any compensation charged and paid for City property provided for in Section 4.708, are separate from, and additional to, any and all federal, state, local and City taxes as may be levied, imposed or due from a utility, its customers or subscribers, or on account of the lease, sale, delivery or transmission of utility services.

4.714 Penalties and Interest for Late Payment. If any fee provided for herein shall not be timely paid, a penalty in the amount of 10 percent of such fee shall be assessed and due as of the date the underlying fee was due. Interest on fees and penalties shall accrue at the rate of 1.5 percent per month, commencing with the fifteenth day after the fee or penalty shall be due

Section 3. Following Section 4.714 of the Springfield Municipal Code, as amended by Section 2 of this ordinance, there are added the following sections, to be sections 4.801 through 4.807:

UTILITY TAX

4. 801 Utility Tax Imposed. There is hereby imposed a tax in the amount of five percent of gross revenue upon the privilege of conducting a utility business and providing utility services required to be licensed under Section 4.602, upon any utility required to be licensed, as defined herein, in consideration of the authority of such utility to conduct such business.

4. 802 Minimum Tax. In no event shall the tax due for any calendar year be less than:

- (1) In the case of a utility providing services within the City of Springfield, \$1,000.
- (2) In the case of a utility not providing services within the City of Springfield, the greater of the product of the number of linear feet of public ways occupied by the facilities of the taxpayer and \$3.00, or

\$1,000.

4. 803 **Returns.**

- (1) For purposes of calculating taxes dues under this section, every utility subject to tax shall pay such tax on the basis of a calendar year, and shall file, quarterly, before the 45th day following the end of a calendar quarter, a return certified by an officer of the utility showing the amount of tax due and accompanied by the amount due.
- (2) Such return shall show the amount of gross revenue of the utility within the City for the period covered by the payment computed on the basis set out in this section, and shall show any offsets, deductions or credits against the revenue or the amount of tax due. The compensation for the period covered by the statement shall be computed on the basis of the gross revenue so reported. If the utility fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by the utility within fifteen (15) days from discovery of the error or determination of the correct amount, with interest at the rate of 9 percent per annum, compounded monthly. Any overpayment to the City through error or otherwise shall be offset against the next payment due from the utility.
- (3) In the event a taxpayer files a return claiming the minimum tax provided by Section 4.802 shall be due, the taxpayer shall nonetheless file a return as provided in subdivision (2) hereof and shall, if claiming under Section 4.801(1), file a report duly certified by an engineer, licensed to practice within the State of Oregon, setting forth the calculation of the number of linear feet of public way occupied by the taxpayer.
- (4) The City may audit any return filed by the utility, and require the utility to submit such information as shall reasonably be required to establish the accuracy of any payment of tax or return documenting the amount of tax due. In the event such audit shall disclose a discrepancy in favor of the City in excess of five percent of the amount paid, there is hereby imposed a penalty in the amount of 10 percent of the difference between the amount paid and the amount found, upon audit, to be due.
- (5) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any rights to conduct such audit, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

4. 804 **Gross Revenue.** For purposes of this article, gross revenue shall mean all inflows or enhancements of assets or settlements of its liabilities (or a combination of both) of whatsoever kind and nature derived by the utility and, any affiliates, subsidiaries or parent of the utility on account of goods or services from the utilities ongoing or major operations delivered within the City of Springfield. Gross revenue shall include any and all subsidies, discounts, rebates or other considerations or forbearances by the utility associated with the delivery of such goods and services within the City of Springfield. In determining gross revenues for the calculation of taxes, the city shall consider mobile

telecommunications services to occur within the city if they are used by a customer whose place of primary use is within the city. As used in this section, "place of primary use" means the residential street address or the primary business street address of the customer. The city shall apply this provision consistently with the Mobile Telecommunications Sourcing Act, 4 USC 116 to 126.

4. 805 **Exemptions and Credits.** If any licensed utility is a party to a franchise, public way use agreement, or other contract with the City which requires the payment of a fee for the use of the public ways of the City, any payments made under such agreement during the filing year shall be credited against any tax due hereunder to the extent the revenue upon which such payments are based is subject to taxation hereunder.

- (1) If a taxpayer asserts that any other provisions of local, state or federal law imposes a limit upon the revenue subject to taxation that can be imposed in connection with the use of public ways, such taxpayer shall file a return which:
 - (a) itemizes the gross revenue subject to taxation under this article;
 - (b) itemizes the portion of such revenue that is subject to the limitation claimed to exist under other provisions of local, state or federal law.
- (2) The tax liability of a taxpayer claiming a limitation on revenue subject to taxation shall be the sum of:
 - (a) the tax due hereunder on that portion of the taxpayers revenue not subject to the limitation; and
 - (b) on the portion of revenue subject to a limitation, the lesser of:
 - (i) The tax due under this article; or
 - (ii) The tax due under the other provision of local, state or federal law.
- (3) Any licensed utility shall be allowed, as a credit against taxes due hereunder, the reasonable value of any and all services rendered to or goods provided to the City without fee, if any, during the preceding calendar year.

4. 806 **Penalties and Interest.**

- (1) If any tax payment due hereunder shall not be timely made, there is imposed a penalty in the amount of 10 percent of the amount due.
- (2) Interest on any payment not timely made, and upon all penalties imposed, shall accrue at the annual rate of nine (9) percent, compounded daily, for each day beyond the due date, until the date paid.

4. 807 **Lien.**

- (1) The tax imposed by section 4.801, together with the interest and penalties provided by section 4.806 and the filing fees paid to the Department of Records of Lane County, Oregon, and advertising costs which may be incurred when the tax becomes delinquent under section 4.803 shall be, and until paid remain, a lien from the date of its recording with the Department of Records of Lane County, Oregon, and superior to all subsequent recorded liens on all tangible personal property of the utility located within the City of Springfield and may be foreclosed on and sold as necessary to discharge the lien, if the lien has been so

recorded. Notice of lien may be issued by the tax administrator whenever the operator is in default in the payment of the tax, interest and penalty, and shall be recorded with the Department of Records and a copy sent to the delinquent utility. The personal property subject to the lien and seized by any deputy of the tax administrator may be sold by the tax administrator at public auction after 10 days notice thereof published in a newspaper in the city.

- (2) Any such lien as shown on the records of the Department of Records shall, upon the payment of the taxes, penalty and interest for which the lien has been imposed, be released by the tax administrator when their full amount has been paid to the city. The person making the payment shall receive a receipt therefore stating that the full amount of the taxes, penalties, and interest have been paid and that the lien is thereby released and the record of lien satisfied.

Section 4. Sections 3.224 and 3.226 of the Springfield Municipal Codes, as amended, shall be further amended as follows:

3.224 Placement of Devices or Structures in the Public Way.

(1) No structure or device shall be placed in, upon, over or under the public way unless the owner of such structure or device shall *have received a placement permit* ~~be a party to a valid public way use agreement or franchise~~ authorizing the placement of such structure or device. Any violation of this provision shall be an infraction within the meaning of Chapter 5 of this code.

(2) Unless otherwise specified in a *placement permit*, license, public way use agreement, or franchise agreement, all structures and devices shall be constructed, installed and located in accordance with the following terms and conditions:

(a) Where existing utility poles exist, telecommunication facilities shall be installed on utility poles to the extent there is useable space.

(b) Where useable space does not exist on existing utility poles and cannot be made available consistent with the provisions of the Springfield Development Code, or where existing telephone, electric utilities, cable facilities or telecommunications facilities are located underground, telecommunications facilities shall be installed underground within a non-conductive duct or conduit including, if capacity exists, within an existing underground duct or conduit.

(c) Whenever any new or existing telephone, electric utilities, cable facilities or telecommunications facilities are required to be located or relocated underground within a public way, the public works director may direct that any other licensee or franchisee that currently occupies the same public way concurrently relocate its facilities underground at its expense, if underground location of such facilities is required by the provisions of article 32 of the Springfield Development Code; provided, however, that nothing in this subsection shall require the relocation of electrical transmission lines and backbone distribution features covered by section 32.120(2) of the Springfield Development Code.

(d) Whenever new telecommunications facilities will exhaust the capacity of a public way reasonably to accommodate future telecommunications carriers, the licensee or franchisee placing such facility may be required to provide additional

ducts, conduits, maintenance holes and other facilities for nondiscriminatory access to future telecommunications carriers at its expense.

(e) All structures and devices placed underground shall be locatable underground facilities within the meaning of ORS 757.541(6).

3.226 Location of Structures or Devices in the Right-of-Way.

(1) Prior to placing a structure or device in the right-of-way, the owner of such structure or device shall secure placement permit, which permit shall also serve as an encroachment permit.

(2) Applications for placement permits shall be on the form prescribed by the public works director and accompanied by the fee therefor, in an amount fixed by the council by resolution.

(3) Applications shall not be complete unless accompanied by the following:

(a) A copy of the applicant's *utility license, public way use agreement or franchise agreement;*

(b) *Preliminary engineering plans, specifications and a map of the facilities located in or to be located within the public ways in the City, all in sufficient detail to identify:*

- 1. the location and route requested for applicant's proposed facilities;*
- 2. the location of all existing overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way which may be affected along the proposed route;*
- 3. the location(s), if any, for interconnection with the facilities of other utilities.*
- 4. A description of the facility to be placed.*

(c) *If the applicant is proposing to install overhead facilities within the public ways, evidence that useable space is available for locating its facilities on existing utility poles along the proposed route, or a duly executed pole attachment agreement with an owner of existing poles..*

(d) *Identification of any adverse circumstances affecting the use of the public way, and a description of efforts to mitigate such circumstances.*

(e) Four copies of a work plan and schedule showing when and how the placement shall be accomplished;

(f) If applicable, a certificate of insurance, as required under section 3.210(1);

(g) If applicable, a state or county permit for work in the state or county right-of-way within the corporate limits of the city;

(h) Evidence that the applicant is a subscriber to the Oregon Utility Notification Center;

(i) Any other information deemed necessary by the public works director.

(4) The amount of security deposit required in section 3.210 and the temporary storage fee required in section 5.052(2)(a), if applicable, will be determined during the plan checking process and will be due at the time the permit is issued.

(5) At the election of the applicant, the applicant may file a comprehensive Telecommunications Placement Plan which describes all facilities it presently intends to install. Such plan is subject to approval of the public works director and may be modified from time to

time by the applicant with the approval of the public works director. The fee for review of such plan shall be fixed by the council by resolution.

(6) If an applicant has on file an approved comprehensive Telecommunications Placement Plan, any application for a placement permit hereunder which is consistent with such approved plan shall be deemed approved unless the public works director notifies the applicant, within 48 hours of submission, that the application is disapproved, stating the reasons for disapproval.

(7) If an applicant does not have on file an approved plan, the public works director shall grant a placement permit under such terms and conditions as he/she shall deem appropriate if he/she shall find that the applicant has demonstrated:

- (a) Compliance with requirements of applicable State and federal laws and regulations.
- (b) The capacity of the public ways to accommodate the applicant's proposed facilities.
- (c) The capacity of the public ways to accommodate additional utility facilities if the license is granted.
- (d) The absence or minimization of damage or disruption of public or private facilities, improvements, service, travel or landscaping if the license is granted.
- (e) The minimization of the cost and disruption occasioned by construction within the public ways.
- (f) Measures taken to address any adverse effect on public health, safety and welfare if the license is granted.
- (g) The availability of alternate routes and/or locations for the proposed facilities.
- (h) Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

~~if the applicant demonstrates to his/her satisfaction that there is no adequate facility outside of the right-of-way for the placement and no excess capacity to install an additional facility.~~

(8) The permit shall authorize the placement of such device or structure by boring or jacking only, unless the public works director shall determine it is in the best interests of the city to allow the placement by open trenching.

(9) Upon completion of all work, the permit holder shall notify the utilities coordinator of the city of Springfield by completing and returning the Permit Status Report, accompanied by as-built drawings in such form as shall be determined by the public works director.

(10) A *holder of a utility license*, party to a franchise agreement or public way use agreement, including a utility making a payment in lieu of taxes, may apply to the public works director for an annual placement permit covering underground individual service connections. Such annual permit, if granted, shall require the applicant to:

- (a) Provide 48 hours notice of work through the Utility Notification System;
- (b) Conduct all work pursuant to the requirements of sections 3.212 through 3.222 of the code;
- (c) Supply as-built drawings, in such form as the city shall require, for each installation or connection;
- (d) Provide a monthly report to the city listing all activities performed pursuant to the permit;
- (e) Provide and maintain a list describing the sizes and types of facilities to be placed pursuant to the permit;

(f) Designate an individual responsible for coordinating these activities with the city and for responding to the city should additional information be required. The annual placement permit shall not be applicable to any installation requiring a cut in the right-of-way between curb lines.

The public works director shall deny such permit if the applicant is in violation of any of the provisions of this chapter or if the applicant has on three or more occasions in the 12 months preceding the date of application conducted any operations in the public way in violation of the provisions of this chapter. Such permit, if granted, shall be subject to revocation upon a finding by the public works director that the permittee has, on three or more occasions in the immediately preceding 12 months, conducted operations in the public way in violation of the provisions of this chapter.

Section 5. Severability. Should any court of competent jurisdiction determine that a section or part of a section of this ordinance is invalid, such invalidity shall not impair the effect or validity of the remaining sections or parts of sections.

Section 6. Effective Date. This ordinance shall become effective on December 29, 2004.

ADOPTED by the Common Council of the City of Springfield this ____ day of ____, 2004, by a vote of ____ for and ____ against.

APPROVED by the Mayor of the City of Springfield this ____ day of ____, 2004.

Mayor

ATTEST:

Amy Sowa, being first duly sworn, deposes and says that Sidney W. Leiken, to me personally known and known by me to be the person described in the foregoing instrument did sign this ordinance with his hand in my presence this ____ day of ____, 2004.

CITY RECORDER