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## **GENERALLY**

**35.010. Definitions.** As used in this Chapter, the following mean:

- (a) Alley: Any public thoroughfare twenty feet or less in width.
- (b) Occupy: The installation, ownership, leasing, operation or maintenance of any equipment or facilities for the provision of public utility service in, upon, over or under public rights-of-way or other public property.
- (c) Public utility: Any individual, partnership, corporation, limited liability company, governmental entity other than the City of Salem, cooperative, or other entity in law or fact, installing, renting, leasing, owning, operating and/or maintaining service transmission systems, distribution systems or communication systems by means of poles, conduit, wire, cable, fiber, ducts, pipes, mains, pedestals, antennas, power boxes, cabinets or other equipment and facilities in, upon, over or under public rights-of-way or other public property. As used in this Chapter, public utilities include, but are not limited to, electric service, gas service, telecommunications service, and telegraph service.
- (d) Right(s)-of-way or other public property: the streets, alleys, sidewalks, public squares or other public places owned or otherwise held by the City of Salem.
- (e) Street: Any public thoroughfare more than twenty feet in width.
- (f) Telecommunications service: any service provided for the purpose of voice, video or data transmission, including, but not limited to, local exchange service, access service, extended area service, call origination, interconnection, switching, transport, call termination and/or any other telecommunications service identified and authorized by the Federal Communications Commission (FCC) or the Public Utility Commission of Oregon. As used in this Chapter, telecommunications service does not include:
  - 1) cable service as defined by 47 U.S.C. §522;
  - 2) open video system service as defined in 47 C.F.R 76;
  - 3) private communications system services provided without using the public rights-of-way;
  - 4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the FCC or any successor thereto; and
  - 5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act. (Ord No. 3642; Ord No. 15-2003; Ord No. 24-10)

### **35.020. Franchise or Agreement Required.**

- (a) No public utility shall occupy right-of-way or other public property without first entering into a franchise or other agreement with the city, stating the terms and conditions for such occupation, including the payment of compensation, charges or fees.
- (b) Any public utility occupying right-of-way or other public property may be excluded or ejected from such right-of-way or property if the public utility fails, after notice from the city, to enter into a franchise or other agreement setting forth terms and conditions for its

occupation, and providing for the payment of compensation, charges or fees. (Ord No. 3642; Ord No. 15-2003)

**35.030. Insurance or Cash Bond Requirement.** Each public utility covered by this chapter, and not operating under a valid franchise, shall forthwith deposit with the city recorder a policy or a certificate thereof of public liability insurance covering bodily injury and damage to property in the sum of not less than \$10,000 for one person or \$40,000 for a group of persons; or, at its option and in lieu of the deposit of such policy of insurance, shall deposit with a bank or trust company in the city, designated by the council, the sum of \$20,000 as a cash bond, which policy of insurance or cash bond shall be conditioned, in form satisfactory to the city attorney, to protect the public and citizens of the city from loss or damage due to personal injury or property damage by fire or otherwise, which may be proximately caused by the negligence of the public utility. Such policy or cash bond shall remain in effect so long as such public utility is operating in the city. (Ord No. 3642)

**35.040. Construction of Power and Communication Systems Generally.** The type, form, and character of construction of the electric power and communication systems mentioned in SRC 35.010 shall conform to the requirements of the state public utility commissioner, the same being the "Safety Rules for the Installation and Maintenance of Electric Supply and Communications Lines issued by the U.S. Department of Commerce - National Bureau of Standards" as set forth in their publication entitled "Hand Book H-32," and successive issues thereof; the State of Oregon Electrical Code and other state and federal statutes, rules, and regulations pertaining to such construction. Such requirements, rules, regulations, and statutes are herewith included and made a part of this chapter, as the requirements of the city, by reference thereto. (Ord No. 3642)

**35.050. Wires and Cables Crossing Streets.** No wires or cables belonging to any public utility shall be installed across any street from buildings on one side of the street to buildings on the other side without the support of poles or without being conducted across the street in conduits under the surface of the street. (Ord No. 3642)

**35.060. Excavations on Public Property.** When any excavation is made in any street, avenue, alley, or other city property for the purpose of installing poles and conduits covered by this chapter, the public utility making such excavation shall restore that portion of the street, avenue, alley, or other city property to the same condition to which it was prior to the opening thereof, and all such work shall be done in strict compliance with the provisions of this Code and other rules, regulations, ordinances, or orders of the council. (Ord No. 3642)

**35.070. Map of Location of Poles and Conduits.** Each public utility, prior to installing any poles or conduits, shall file with the director of public works a map, in size and form as prescribed by him, showing the proposed location of such poles or conduits. (Ord No. 3642)

**35.080. Changes in Construction upon Order of the Director of Public Works.** If at any time the director of public works shall determine that any public utility has not complied with the provisions of this chapter in performing any construction work, it shall be his duty, and he shall have the authority, to order such public utility, in writing, to make such changes in such construction as may be needed to cause such construction to comply with the provisions of this chapter; provided, however, that such public utility shall have the right of appeal to the council from the director of public works judgment and order, by filing notice of such appeal with the city recorder within 30 days from the date of the said director's order appealed from. (Ord No. 3642)

**35.090. Unauthorized Interference with Equipment, Etc.** It shall be unlawful for any unauthorized person to meddle or interfere with, molest, or destroy any structure, equipment, or appliance of any public utility installed in compliance with this chapter. (Ord No. 3642)

**35.100. Interference with City Improvements.** Poles, conduits, and the like coming under this chapter shall be so installed as not to prevent the city from installing sewers or drains, grading, paving, planking, repairing, ordering, or doing any work that may be desirable on any of the streets, avenues, alleys, or other property of the city, but all such work shall be done, if possible, in such a manner as not to obstruct, injure, or prevent the free use and operation of the electric power or communication system of the public utilities.

Any poles or conduits of a public utility which may at any time interfere with the work of the city, as set forth in this section shall, within a reasonable time, but not to exceed 30 days after the receipt of written notice from the director of public works of such interference, be moved by the owner at his expense to a new location which will not thus interfere with such work to be done by the city. (Ord No. 3642)

## **GAS UTILITIES**

**35.110. Definition.** The term "public utility," as used in SRC 35.110 to 35.150, shall be construed to mean any individual, partnership, corporation, cooperative, or other association and all other legal entities installing, owning, operating, or maintaining any mains, equipment, and appliances in, upon, under, over, or along the streets, alleys, and other public ways within the city for the purpose of selling or delivering gas, either natural or artificial, or furnishing natural or artificial gas to any of the residents of the city, which gas is paid for wholly or in part by the users thereof. (Ord No. 4012)

### **35.120. Fee Required.**

(a) Each public utility shall pay to the city a right-of-way use or franchise fee as follows: three percent annually and two percent quarterly of the gross revenue of such public utility received for gas, either natural or artificial, furnished within the city to the users thereof. Gross revenue as the term is herein used shall have the meaning as set forth in the Public Utility Commissioner's Order No. 43946.

(b) Each public utility shall file with the director of finance on or before the first day of March of each year, the annual fee and a statement showing the amount of the gross revenue of the public utility for the year immediately preceding the year in which such statement is required to be filed. Payment must be made in immediately available federal funds.

(c) Each public utility shall file with the director of finance on or before the forty-fifth (45th) day following each calendar quarter (January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31) the quarterly fee and a statement showing the amount of the gross revenue of the public utility for the quarter immediately preceding the date on which such statement is required to be filed. (Ord No. 3768; Ord No. 55-99)

**35.140. Section Does Not Constitute Grant or Franchise.** SRC 35.120 shall not be construed as being a grant or franchise authorizing a public utility to occupy any street, alley, or public place within the city. (Ord No. 4012)

## **ELECTRIC UTILITIES**

**35.150. Definitions.** The term "public utility," as used in SRC 35.150 to 35.180, shall be construed to mean any individual, partnership, corporation, cooperative, or other association and all other legal entities installing, owning, operating, or maintaining electric power service transmission or distribution systems by means of poles, conduits, wires, cables, or other equipment and appliances in, upon, over,

under, or along the streets, alleys, or other public places of the city or furnishing electricity to any of the residents of the city, which electricity or electrical service is paid for wholly or in part by the users thereof.

As used in SRC 35.160, "gross revenue" shall be deemed to include any revenue earned within the city, after adjustment for the net writeoff of uncollectible accounts, from the sale of electrical energy, gas, steam, or water, from the transportation of persons or from transmission of communications; excluding, however, income from carriage of passengers or transmission of communications to a point within the city from a point beyond the city limits, or from a point within the city to a point beyond the city limits as a continuous operation of that particular utility, and excluding sales at wholesale by one public utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer. (Ord No. 3954)

### **35.160. Fee Required.**

(a) Each public utility shall pay to the city a right-of-way use or franchise fee as follows: three and one-half percent annually and one and one-half percent quarterly of the gross revenue of such public utility received for electrical power and energy furnished within the city to the users of such power and energy. Gross revenue as the term is herein used shall have the meaning as set forth in the Public Utility Commissioners' Order No. 43946.

(b) Each public utility shall file with the director of finance on or before the first day of March of each year, the annual license fee and a statement showing the amount of gross revenue of the public utility filing such statement for the year immediately preceding the year in which such statement is required to be filed. Payment must be made in immediately available federal funds.

(c) Each public utility shall file with the director of finance on or before the forty-fifth (45th) day following each calendar quarter (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) the quarterly fee and a statement showing the amount of the gross revenues of the public utility for the quarter immediately preceding the date on which such statement is required to be filed. (Ord No. 37-68; Ord No. 42-92; Ord No. 55-99)

**35.170. Section Does Not Constitute Grant or Franchise.** SRC 35.160 shall not be construed as being a grant or franchise authorizing a public utility to occupy any street, alley, or public place within the city. (Ord No. 3954)

### **TELEGRAPH UTILITIES**

**35.180. Definition.** The term "public utility," as used in SRC 35.180 to 35.210, shall be construed to mean any individual, partnership, corporation, cooperative, or other association and all other legal entities installing, owning, operating, and maintaining transmission and communication systems by means of poles, conduits, wires, cables, and other equipment and appliances in, upon, over, and under the streets, alleys, and other public ways within the city for the purpose of furnishing telegraph communication service to any of the residents of the city which service is paid for wholly or in part by the users thereof. (Ord No. 76-67)

**35.190. Annual Fee Required.** Each "public utility" shall pay to the city an annual license or franchise fee of two and one-half percent of the gross revenue of such public utility received for telegraph communication service furnished within the city to the users thereof.

Payment of said fee shall be made in one annual payment, on or before April 1 of each and every year for the 12 months of the preceding calendar year and shall be computed upon the amount of gross revenue within the city during the preceding year. The license fee and privilege tax to be paid under this section shall be accepted by the city as full payment and in lieu of all other municipal franchise or

permit fees, licenses, and privilege or occupation tax that may be imposed on or against any public utility paying the same. (Ord No. 76-67)

**35.200. Section Does Not Constitute Grant or Franchise.** SRC 35.190 shall not be construed as being a grant or franchise authorizing a public utility to occupy any street, alley, or public place within the city. (Ord No. 76-67)

### **TELEPHONE UTILITIES**

**35.210. Definition.** As used in SRC 35.210-35.230, public utility means any individual, partnership, corporation, limited liability company, governmental entity other than the City of Salem, cooperative, or other association and all other legal entities installing, owning, renting, leasing, using, operating, and/or maintaining transmission and communication systems by means of poles, pipes, mains, conduits, ducts, fiber, wires, cables, vaults, pedestals, antennas, power boxes, cabinets and any other equipment, facilities and appliances in, upon, over, and/or under the rights-of-way or other public property within the City for the purpose of furnishing telecommunications service. As used in SRC 35.210-35.230, public utility does not include commercial mobile radio service as defined in 47 C.F.R. 20. (Ord No. 76-67; Ord No. 30-97; Ord No. 24-10)

### **35.220. Annual Fee Required.**

(a) Each public utility shall pay to the City a privilege tax or franchise fee of seven percent of the gross revenues earned within the corporate limits of the City unless a different amount is specifically set forth in the franchise or other agreement with the City. Gross revenues means any and all revenue in whatever form, grant, subsidy, exchange, or otherwise, directly or indirectly received by the public utility for telecommunications service provided to subscribers within the City subject to all applicable limitations imposed by federal and/or state law.

(b) Any public utility deriving no local service revenues shall annually pay to the City three dollars and fifty cents per lineal foot of communication facilities located within the rights-of-way or other public property within the City. Such per lineal foot fee shall increase in an amount equal to any percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Portland-Salem, Oregon region effective on July 1 of each year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor.

(c) Each public utility earning gross revenues within the corporate limits of the City shall file with the City Manager on or before the first day of March of each year, a certified statement showing the amount of the gross revenues of the public utility filing such statement for the year immediately preceding the year in which such statement is required to be filed.

(d) Unless provided otherwise by law or in a franchise or other agreement, the franchise fee, privilege tax, or lineal foot fee shall be made in one annual payment, on or before the first day of April. (Ord No. 76-67; Ord No. 37-68; Ord No. 34-82; Ord No. 29-87; Ord No. 30-97; Ord No. 62-2001; Ord No. 24-10)

**35.230. Section Does Not Constitute Grant or Franchise.** SRC 35.220 shall not be construed as being a grant or franchise authorizing a public utility to occupy any street, alley, or public place within the city. (Ord No. 76-67)

### **POLES**

**35.300. Location Generally.** All poles installed in city streets, unless otherwise directed by the director of public works, shall be installed between the private property line and the curb line of the street, and in such a position so that the outside surface of the pole nearest the center of the street will be 12 inches from the curb line of the street, or that curb line established by city ordinance, if no

permanent curb is in place. All poles installed in alleys in the city shall be so installed that the outside surface of the pole nearest the private property line shall be four inches from the property line, unless otherwise directed by the director of public works. (Ord No. 3642)

**35.310. Prohibited in Certain Area; Exception.** In the area bounded by the south line of Center Street on the north, the east line of Church Street on the east, the north line of Trade Street on the south and the east line of Front Street on the west, no poles shall be installed on the streets except those required to support street lamps and circuits, and primary electric power and communication circuits extending from outside such area to poles in alleys within such area, necessary to provide public utility services therein. (Ord No. 3642)

**35.320. Joint Use.** All public utilities are hereby required to permit the joint and common use of their poles, with other public utilities, subject to the technical electrical limitations of having electric power lines and communication lines on the same poles. (Ord No. 3642)

**35.330. Compensation for Use.** Any public utility using the poles of another public utility shall pay the public utility owner of the poles for their use on a basis fixed by an agreement between the parties concerned and, in case of a failure to agree upon such basis, the state public utility commissioner shall be requested to fix the basis for such compensation; provided, that prior to such use of any poles, the compensation thereof, as fixed by the agreement of the parties or as determined by the state public utility commissioner, shall be affirmed in writing by the public utility asking to use such poles. (Ord No. 3642)

**35.340. To be Placed Near Intersection of Division Lines.** Poles shall be as near as practical to the intersection of private property division lines with the side lines of streets and alleys, so as not to unreasonably interfere with ingress or egress to or from abutting private property. (Ord No. 3642)

**35.350. Location Near Fire Hydrants.** Unless otherwise directed by the director of public works, no part of any pole shall be less than five feet from any city fire hydrant. (Ord No. 3642)

**35.360. Change of Location.** Whenever it shall be deemed necessary for the public convenience that the location of any pole should be changed, the owner of the pole shall, upon written notice from the director of public works, move such pole at his expense and as promptly as practical. (Ord No. 3642)

**35.370. Steps.** No steps for the purpose of climbing poles coming under this chapter shall be placed on such poles within eight feet of the ground. (Ord No. 3642)

**35.380. Variances.** Where the provisions of SRC 35.300, 35.340, and 35.350, if complied with, will cause a hazardous condition to life or property, they shall be complied with as near as practical with due regard to safety of life and property. (Ord No. 3642)

**35.390. Installation.** Gas service piping from a main to the metering point shall be installed according to OAR 860-24-020, issued by the public utilities commissioner of the state, and such order by this reference thereto is hereby adopted and made a part of this chapter as if fully set forth herein. (Ord No. 5133; Ord No. 14-86)

**35.400. Testing of New, Reconditioned and Reactivated Services; Report.** All new services, reconditioned services, and services reactivated after a period of one year, unless tested within the past two years, shall be tested for leakage before being activated. A written report for each service tested shall be furnished to the inspector. (Ord No. 5133)

**35.410. Methods of Shutting Off Service.** Whenever the supplying of gas to any building through a service pipe be discontinued at the request of the user, other than for temporary accommodation for such user, the supplier of such gas shall, within 30 days after requested date of discontinuance of the gas supply, shut off the gas supply by means of the meter cock, a curb cock, a service cap, or by cutting the service.

In all cases where the building is supplied through a high pressure service and in all cases where a low pressure service is equipped with a curb cock, the supplier shall shut off the supply by means of a curb cock.

When the owner of a building to which the supply of gas has been discontinued at the request of the user shall request in writing the supplier of gas to shut off the supply at a point distant from the building, the supplier shall comply with such request within 30 days after receipt thereof by cutting the service and capping or plugging both ends of the service. (Ord No. 5133)

**35.420. Penalty for Violation.** Any violation of this chapter shall be subject to the penalties provided by SRC 1.070. (Ord No. 5133)

## **UNDERGROUND UTILITIES**

**35.430. Underground Utility Districts Established.** The districts hereby created as underground utility districts shall include the streets within the following described perimeters:

### **UNDERGROUND UTILITY DISTRICT "A"**

Beginning at the southeast corner of Front and Union Streets, thence easterly along the south line of Union Street to 12th Street; thence southerly along the west line of 12th Street to Trade Street; thence westerly along the north line of Trade Street to Commercial Street; thence north along the east line of Commercial Street to Ferry Street; thence westerly along the north line of Ferry Street to Front Street; thence northerly along the east line of Front Street to the point of beginning.

### **UNDERGROUND UTILITY DISTRICT "B"**

Beginning at the southeast corner of Front and Union Streets; thence northerly along the east line of Front Street to where Front Street crosses the Mill Creek; thence easterly along the meander line of Mill Creek to the intersection of 5th and "D" Streets; thence easterly along the south line of "D" Street to 17th Street; thence southerly along the west line of 17th Street to Mission Street; thence westerly along the north line of Mission Street to Commercial Street; thence northerly along the east line of Commercial Street to Trade Street; thence easterly along the south line of Trade Street to 12th Street; thence northerly along the east line of 12th Street to Union Street; thence westerly along the south line of Union Street to the point of beginning.

### **UNDERGROUND UTILITY DISTRICT "C"**

The entire public right-of-way of Wallace Road NW (State Highway Route 221), beginning at the north right-of-way line of Orchard Heights Road NW at the intersection with Wallace Road NW, and ending at the south right-of-way line of Michigan City Lane NW at the intersection with Wallace Road NW.

### **UNDERGROUND UTILITY DISTRICT "D"**

Beginning at the southeast corner of Parcel 2 of Partition Plat 98-66, Record of Partition Plats for Marion County, Oregon; said point being in the southeast quarter of Section 14, Township 7 south, Range 3 west of the Willamette Meridian, in the City of Salem, Marion County, Oregon; said point being on the northerly right-of-way of Sunnyview Avenue NE; and running thence: north 88° 09' 00" west 136.64 feet along said northerly right-of-way of Sunnyview Avenue NE; thence north 59° 07' 40" west 512.67 feet continuing along said right-of-way to the most westerly corner of said Partition 98-66; said point being on the southerly right-of-way of Fairgrounds Road NE; thence north 43° 07' 25" west

100.00 feet to a point on the northerly right-of-way of said Fairgrounds Road NE; said point being on the southerly line of Lot 2, Dairy Cooperative Ass'n Addition to Salem, as recorded in Volume 13, Page 38, Book of Town Plats for Marion County; thence along said Fairgrounds Road NE right-of-way and said Dairy Cooperative Ass'n Addition south  $46^{\circ} 50'$  west 241.16 feet to the southernmost corner of Lot 14 of said Dairy Cooperative Ass'n Addition; thence along the westerly line of said Lot 14, 13, 12, and 11, north  $42^{\circ} 16'$  west 300 feet to the most westerly corner of Lot 11; said point being the most westerly corner of that parcel described in Reel 1116, Page 0323, Parcel XIII, Microfilm Records for Marion County; thence north  $11^{\circ} 38'$  east 120.37 feet along said Reel 1116, Page 0323, Parcel XIII, to a point on the south right-of-way of Academy Street NE thence northeasterly 78 feet, more or less, in a direct line to the most westerly corner of Lot 7 of said Dairy Cooperative Ass'n Addition; thence north  $46^{\circ} 50'$  east 141.78 feet along the northwest line of said Lot 7 to the most northerly corner thereof; thence south  $42^{\circ} 43'$  east 159.85 feet to the most southerly corner of Lot 3, Block 3, Columbia Addition to Salem, as recorded in Volume 13, Page 10, Book of Town Plats for Marion County; thence north  $47^{\circ} 02'$  east 101.43 feet along the southerly line of said Lot 3, Block 3, to the most westerly corner of Lot 2, Block 3, of said Columbia Addition; thence south  $42^{\circ} 37'$  east 84.60 feet along said Lot 2, Block 2, and the extension thereof to the southerly line of a 20-foot alley; thence north  $46^{\circ} 57'$  east 541.4 feet along said southerly line of said alley to the westerly line of Block 1 of said Columbia Addition; thence north  $43^{\circ} 03'$  west 10.00 feet to the center line of a vacated 20-foot alley; thence north  $46^{\circ} 57'$  east 120.20 feet along said center line to the northerly line of said Columbia Addition; thence north  $42^{\circ} 49'$  west 46.52 feet along said northerly line to the southwest corner of that parcel described in Reel 989, Page 0202, Marion County Records; thence north  $34^{\circ} 24'$  east 163.50 feet along the westerly line of said Reel 989, Page 0202, and the westerly line of that parcel described in Reel 1518, Page 0461, Marion County Records to the northwesterly corner of said Reel 1518, Page 0461; thence north  $02^{\circ} 58'$  east 26.66 feet along the west line of that parcel described as Parcel I in Reel 1557, Page 364, to the south line of Fairlodge Addition as recorded in Volume 10, Page 153, Book of Town Plats for Marion County; thence south  $89^{\circ} 15'$  east 78.10 feet along said south line of Fairlodge Addition to the most westerly corner of Parcel II of said Reel 1557, Page 0364; thence north  $31^{\circ} 58'$  east 22.44 feet along the westerly line of Parcel II of said Reel 1557, Page 0364, to a point on the east line of Lot 5 of said Fairlodge Addition; thence north  $00^{\circ} 30'$  west 125.81 feet, more or less, along the east line of said Lot 5 to the south right-of-way of Highland Avenue NE; thence east along said south right-of-way of Highland Avenue NE to the intersection with the east line of Brooks Street NE extended; thence north 775.55 feet along the east line extended and the east line of Brooks Street NE to the south line of Pine Street NE; thence east 240.60 feet along the south line of Pine Street to the west line extended of that parcel described in Reel 1206, Page 0631; thence north  $00^{\circ} 49' 43''$  east 157 feet, more or less, along the west line extended and the west line of said Reel 1206, Page 0631, to the westerly northwest corner thereof; thence easterly 19.59 feet to a re-entrant corner therein; thence north  $00^{\circ} 01' 43''$  west 38.06 feet, more or less, to the southwest corner of Gregson's Addition as recorded in Volume 8, Page 106, Book of Town Plats for Marion County; thence north 242.47 feet along said west line of Gregson's Addition to the south right-of-way of Hickory Street NE (50-foot right-of-way); thence east 288 feet, more or less, to an angle in said south right-of-way; thence north 10 feet to the northwest corner of Lot 6 of said Gregson's Addition; thence east 380 feet, more or less, continuing along the south line of Hickory Street NE and the extension thereof to the old westerly right-of-way of Portland Road NE (Highway 99E 60-foot right-of-way); thence north  $34^{\circ} 30'$  east 800 feet, more or less, along said Portland Road NE right-of-way to the southernmost corner of that parcel described in Volume 224, Page 0121; thence north  $22^{\circ} 15'$  east 886 feet, more or less, along the westerly line of said Volume 224, Page 0121, and the Southern Pacific Railroad right-of-way to the northernmost corner of that parcel described in Reel 1368, Page 0628; thence north  $59^{\circ} 45'$  west 10 feet to the westernmost corner of that parcel described in Reel 190, Page 1396; thence continuing along said Southern Pacific Railroad property and right-of-way north  $22^{\circ} 15'$

east 994 feet to the most northerly corner of that parcel described in Reel 1280, Page 0495; thence south 59° 45' east 10 feet; thence north 22° 15' east 168.10 feet; thence north 59° 45' west 10 feet; thence north 22° 15' east 286.50 feet along the westerly line of that parcel described in Reel 1336, Page 0338; thence south 44° east 33 feet, more or less, to the southeast corner of that parcel described in Volume 588, Page 602; thence north 22° 15' east 156.71 feet; thence north 68° 00' west 30.00 feet to the eastern right-of-way of the Southern Pacific Railroad right-of-way; thence north 22° 15' east 97.66 feet; thence south 68° 00' east 20.00 feet; thence north 22° 15' east 97.66 feet; thence north 68° 00' west 20.00 feet; thence north 22° 15' east 1170.48 feet along the east line of the Southern Pacific Railroad right-of-way; thence north 39° 58' east 98.57 feet along the easterly line of that parcel described in Volume 675, Page 672; thence north 21° 37' east 32.10 feet along said westerly line of that parcel described in Reel 751, Page 0848; thence south 68° 00' east 429.72 feet; thence north 22° 00' east 76.17 feet to the southerly line of Wayside Terrace as Recorded in Volume 19, Page 40; thence south 68° 00' east 9.47 feet along said south line of Wayside Terrace to the southwest corner of Lot 7 thereof; thence north 22° 00' east 125.06 feet along the westerly line of said Lot 7 and the extension thereof to the northerly right-of-way of Wayside Terrace NE; thence north 68° 00' west 7.32 feet to the southwest corner of Lot 10 of said Wayside Terrace; thence north 22° 00' east 75.06 along the west line of said Lot 10 to the northwest corner thereof; thence north 68° 00' west along the northerly boundary of said Wayside Terrace 171.21 feet to the westerly line of that parcel described in Reel 1722, Page 384; thence north 18° 10' east 10.32 feet; thence south 72° 15' east 28.14 feet to the southwest corner of that parcel described in Reel 916, Page 0111; thence north 18° 10' east 304.92 feet along the west line of the aforesaid Reel 916, Page 0111, to the northwest corner thereof; thence north 74° 18' west 318.00 feet to the easterly right-of-way of Southern Pacific Railroad; thence north 16° 35' east 1,090.00 feet along said Southern Pacific Railroad right-of-way to the northwest corner of that parcel described in Volume 592, Page 0435; thence south 83° 27' 30" east 704 feet, more or less; thence northeasterly 59.80 feet; thence north 24° 54' 24" east 428.41 feet to the south right-of-way of Hyacinth Street NE; thence south 71° 06' east 142.97 feet continuing on said right-of-way; thence north 24° 50' east 5 feet; thence south 71° 06' east 59 feet continuing along said right-of-way to the southerly extension of the west line of Timothy Park as recorded in Volume 34, Page 005, Book of Town Plats for Marion County; thence north 31° 22' east 268 feet along the southerly extension of said west line and the west line of Timothy Park to the northwest corner thereof; thence north 35° 51' east 215.55 feet along the west line of that parcel described in Reel 1389, Page 0145; thence north 31° 22' east 206.21 feet along the west line of Reel 1363, Page 527; thence south 59° 55' 22" east 100.25 to the southwest corner of that parcel described in Reel 1402, Page 0488; thence north 31° 22' east 405 feet, more or less, along the west line of said Reel 1402, Page 0488, to the northernmost corner thereof; said point being on the south line of Claxter Road NE; thence along the right-of-way of Portland Road NE (Highway 99E) the following courses and distances: south 50° 15' 27" east 73.23 feet south 17° 37' 05" east 45.00 feet south 16° 30' 55" east 230.00 feet southerly 131.54 feet; thence southerly to the point of intersection of the westerly extension of the north line of Lot 13, Forkner's Acres as described in Volume 16, Page 007, Book of Town Plats for Marion County; thence south 60° 24' east 270 feet, more or less, along the westerly extension of and the north line of said Lot 13 to the northeast corner thereof; thence south 33° 13' 30" west 215.47 feet, along the westerly line of Lots 12 and 11 in said Forkner's Acres to the southwest corner of said Lot 11; thence south 83° 00' east 129.55 feet, more or less, along the south line of said Lot 11 to the southeast corner thereof; thence south 06° 56' west 320 feet along the east line of Lot 10, 9, 6 and the extension thereof to a point on the south right-of-way of Hyacinth Street NE; thence south 83° 00' east 16 feet, more or less, to the northeast corner of that parcel described in Reel 1359, Page 0771; thence south 06° 59' west 203.00 feet along the east line of said Reel 1359, Page 0771, to the southeast corner thereof; thence north 83° 00' west 230.00 feet along the south line of said Reel 1359, Page 0771, to the southwest corner thereof; thence

south 08° 29' 36" west 334 feet along the northerly extension of the east line and the east line of that parcel described in Reel 1691, Page 0564, to the southeast corner thereof; thence south 32° 38' west 229.73 feet along the east line of that parcel described in Reel 847, Page 0430, and the east line of that parcel described in Reel 334, Page 0900, to the southeast corner of Reel 334, Page 0900; thence north 88° 19' east 134.09 feet along the north line of that parcel described in Reel 239, Page 0622, to a point on the west boundary of Deer-Haven Estates as recorded in Volume 34, Page 36, Book of Town Plats for Marion County; thence south 01° 02' 44" west 292.68 feet to the southwest corner of Lot 13, Block 4, of said Deer-Haven Estates; thence north 89° 06' 42" west 13.25 feet to the northwest corner of that parcel described in Reel 1311, Page 0302 (Parcel II); thence south 01° 09' 59" west 211.90 feet along the west line of said Reel 1311, Page 0302, and the west line of that parcel described in Reel 1085, Page 0117, to the southwest corner thereof; thence south 89° 06' 42" east 13.25 feet to the southwest corner of Lot 11, Block 4, of said Deer-Haven Estates; thence south 24.09 feet to a point on the north boundary of Northgate Annex No. 4, as recorded in Volume 22, Page 24, Book of Town Plats for Marion County; thence south 87° 35' west 422.75 feet along said north boundary to the northwest corner thereof; thence south 87° 35' west 122.50 feet along the north line of that parcel described in Reel 582, Page 0442; thence continuing along said north line of Reel 582, Page 0442 south 86° 34' west 183.84 feet to the northwest corner thereof; thence south 86° 07' west 97.36 feet along the north line of that parcel described in Reel 1647, Page 0288, to the northwest corner thereof; thence south 25° 12' west 301.86 feet along the west line of said Reel 1647, Page 0288; thence south 34° 13' west 150.00 feet continuing along said west line of Reel 1647, Page 0288, to the southwest corner thereof; said point being on the north right-of-way of Wayside Terrace NE; thence north 88° 51' east 111 feet, more or less, along said right-of-way to the intersection of the northerly extension of the west right-of-way of Greenbriar Street NE; thence south 750.23 feet along said west right-of-way of Greenbriar Street NE to the northeast corner of that parcel described in Reel 1668, Page 0343; thence south 89° 32' west 281.00 feet along the north line of said Reel 1668, Page 0343, to the northwest corner thereof; thence south 00° 06' east 128.00 feet along the west line of said Reel 1668, Page 0343, to the southwest corner thereof; said point being on the north line of Stortz' First Addition as recorded in Volume 14, Page 006, Book of Town Plats for Marion County; thence west 400.13 feet to the northwest corner of Lot 3 of said Stortz' First Addition; thence south 125.51 feet along the west line of said Lot 3 to the southwest corner thereof; thence west 70 feet to the southwest corner of Lot 2 of said Stortz' First Addition; thence south 185.48 feet to the southwest corner of Lot 23 of said Stortz' First Addition; thence north 75° west 64.43 feet to the northwest corner of Lot 3, Block 3, of Capitola, as recorded in Volume 13, Page 13, Book of Town Plats for Marion County; thence south 15° west 164.35 feet along the west line of said Lot 3 and the extension thereof to a point on the north boundary of Cherry Place as recorded in Volume 13, Page 20, Book of Town Plats for Marion County; thence south 73° 10' east 56 feet, more or less, along said north boundary to the east right-of-way of Donald Street NE; thence south 34° 18' west 428.00 feet along said west right-of-way of Donald Street NE and the east line of Lot 7, Block 1, of said Cherry Place to the southeast corner of said Lot 7; thence south 73° 15' east 297.60 feet along the south line of said Cherry Place to the southeast corner thereof; thence south 1,191.30 feet along the east line of those properties described in Reel 239, Pages 1236 through 1238, to the southeast corner thereof, said point being on the northerly line of Salem Highway Tracts as recorded in Volume 11, Page 23, Book of Town Plats for Marion County; thence north 55° 30' west 442.51 feet along said northerly line to the northernmost corner of Lot 10, Block 4, of said Salem Highway Tracts; thence south 34° 30' west 232.35 feet to the northerly right-of-way of Highway Avenue NE; thence north 55° 30' west 538.74 feet along said northerly right-of-way; thence south 34° 30' west 177 feet, more or less; thence south 55° 30' east 93.14 feet; thence south 34° 30' west 337.35 feet to the southeast corner of Lot 32, Block 3, of said Salem Highway Tracts; thence north 55° 30' west 93.14 feet; thence south 34° 30' west 752 feet, more or less, feet along the extension of the westerly line of Lot 7, Block 2, and the westerly line of Lot 7, Block 2, and the westerly line of Lot 29,

Block 2, and the westerly line of Lot 3, Block 1, all of said Salem Highway Tracts to the southeast corner of said Lot 3, Block 1; thence north 55° 30' west 248.00 feet to the easterly right-of-way of Portland Road NE (70-foot width); thence south 34° 30' west 760 feet, more or less, along said easterly right-of-way to its intersection with the westerly right-of-way of the Southern Pacific Railroad; thence south 22° 15' west 1,740 feet to the south right-of-way of Smith Street NE; thence north 69° 15' west 140.00 feet along said south right-of-way of Smith Street NE to the northwest corner of Lot 2, Block 1, of Melwood Addition, as recorded in Volume 9, Page 135, Book of Town Plats for Marion County; thence south 22° 15' west 124.5 feet to the southwest corner of said Lot 2; thence south 69° 15' east 40.00 feet along the south line of said Lot 2 to the northeast corner of Lot 16, Block 1, of said Melwood Addition; thence south 22° 15' west 185.00 feet along the east line of said Lot 16, and the extension thereof to the south line of Hall Street NE and the northeast corner of Lot 2, Block 2, of said Melwood Addition, thence north 69° 15' west 160.00 feet along said south line of Hall Street NE to the northeast corner of Lot 6, Block 2, of said Melwood Addition; thence south 22° 15' west 145.00 feet to the southeast corner of said Lot 6, Block 2; thence north 69° 15' west 125.78 feet along the south line of said Melwood Addition, which is concurrent with the north line of Haight Addition, as recorded in Volume 15, Page 24, Book of Town Plats for Marion County, to the northeast corner of Lot 2, Block 1, of said Haight Addition; thence south 17° 14' west 274.90 feet to the southeast corner of Lot 4, Block 2, of said Haight Addition, said point being on the north line of the aforementioned Partition Plat 98-66; thence south 59° 45'00" east 13.77 feet along said north line of Partition Plat 98-66 and the south line of said Haight Addition to the northeast corner of Parcel 1 of said Partition Plat 98-66; thence south 30° 15' 00" west 7.50 feet along the east line of said Parcel; thence south 59° 45' 00" east 293.28 feet to the east line of said Partition Plat 98-66; thence south 22° 00' 00" west 216.23 feet along said east line to the point of beginning. (Ord No. 274-68; Ord No. 36-79; Ord No. 76-98; Ord No. 2-99; Ord No. 91-99; Ord No. 64-2001)

#### UNDERGROUND UTILITY DISTRICT "E"

The entire public right-of-way of Commercial Street SE, beginning at the south right-of-way line of Kuebler Boulevard at the intersection with Commercial Street SE, and extending south to end at the south city limits. (Ord No. 274-68; Ord No. 36-79; Ord No. 76-98; Ord No. 2-99; Ord No. 91-99; Ord No. 64-2001; Ord No. 89-2002)

#### **35.440. New Installation Required Underground.**

(a) Except as provided in SRC 35.445, it shall be unlawful for any person to install a new electric, telephone, or cable amplified television (CATV) service entrance or make a major alteration of an existing electric, telephone, or CATV service entrance within any underground utility district established by SRC 35.430 without provision for the receiving of electric, telephone, or CATV utility service through the service entrance from an underground facility to be maintained in the street area or alley way by the affected utility. The affected utility may elect to connect the underground service to feed from the existing overhead utility facilities until such time as the street, block, or part thereof, is converted to underground.

(b) The director of public works may permit overhead lines in a conduit, pipe, or similar type casing to be attached to the exterior surface of a building whenever it is impracticable under existing conditions to place the lines underground. (Ord No. 36-79; Ord No. 91-99; Ord No. 89-2002)

**35.441. Definition; Overhead Utility Facilities.** For the purposes of SRC 35.430 to 35.490 "overhead utility facilities" means all utility poles, overhead wires, and associated overhead structures with the exception of:

(a) Antennae, associated equipment, and supporting structures, used by a utility for furnishing communication services.

- (b) Equipment appurtenant to underground facilities, such as surface mounted transformers, pedestal mounted terminal boxes, and meter cabinets and concealed ducts. Also fire alarms, street lights, traffic control signals, and poles used exclusively for such municipal services which are served from an underground source of supply.
- (c) Temporary poles, overhead wires, and associated overhead structures used or to be used in conjunction with construction projects.
- (d) High capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. (Ord No. 89-2002)

**35.445. Exemption of Certain CATV Service.** Notwithstanding the provisions of SRC 35.440, a cable amplified television (CATV) service may be supplied above ground to any premises in underground utility district "B" where either telephone or electric service or both is supplied by above ground wires. Such service may continue to be provided above ground until the date on which, by ordinance, all utility service in district "B" is to be converted to underground service only. (Ord No. 36-79)

**35.450. Underground Utility Conversion in Utility District "A" by December 31, 1978.** All overhead utility facilities used in supplying electric, communication, or similar associated service in underground utility district "A" shall be converted to underground facilities on or before December 31, 1978, and it shall be unlawful for any person or utility to erect, construct, use, or maintain any poles, overhead line, or associated overhead structure within such underground utility district after said date.

**35.460. Underground Utility District "A" Conversion Program.** On or before December 1 of each calendar year hereafter, each utility providing electric or telephone service within said Utility District "A" shall file with the council a listing of streets, blocks, or parts thereof, within said Utility District "A" shall file with the council a listing of streets, blocks, or parts thereof, within said district scheduled to be converted during the following calendar year to underground facilities. Such schedule shall be placed on the council agenda and notice of a public hearing by the council upon said schedule shall be given by mail to each utility, utility customer, and property owner. Such schedule shall be considered by the council and approved or amended as the council may find reasonable; provided, however, said utilities may at any time file with the council amendments to said schedules, and, if the council finds that a proposed amendment should be allowed and that the proposed amendment does not affect the public generally, the proposed amendment shall be allowed without notice or hearings, but, if the council finds that the proposed amendment will affect the public generally, the same procedure shall be followed for notice and hearing as in the case of the original schedule filed with the council. (Ord No. 51-96)

**35.470. Notification of Conversion to Utility Customers.** After such a determination of a conversion program as set forth in SRC 35.460, customers receiving service from streets scheduled for conversion shall be notified by the affected utility of its plan to proceed with such program during the particular calendar year. It shall be unlawful for any person to fail or neglect within 60 days after notification by the affected utility of the completion of the conversion work on an approved street, block, or part thereof, to provide for receiving such service from the completed underground utility facility within the area approved for conversion, unless he discontinues such service. In providing for receiving such service, the property owner or occupant shall not install or maintain any overhead utility facilities except as may be permitted under SRC 35.440. The property owner or such occupants shall provide all necessary wiring changes to their premises so as to receive service from the underground facilities in accordance with applicable utility tariffs, or other applicable schedule of charges on file with the Public Utility Commissioner of Oregon.

**35.480. Underground Utility Service Required in Conversion Area.** After the applicable calendar year of a scheduled council approved conversion, it shall be unlawful for any electric or telephone utility to provide any permanent service in the area determined except from an underground facility, or to continue service from an overhead installation, except with special council permission.

**35.490. Certain Conversion Charges to be Borne by Utility.** No utility shall, within any underground utility district established by SRC 35.430, impose any charge for conversion of its main facilities from overhead to underground, but no utilities shall, by this section, be required to provide any equipment or facilities or perform any installation or other work in connection therewith required of property owners and customers for receiving the utility service on their premises from an underground facility. Such affected utility may make such charges for equipment, facilities, or installation on private premises as are specifically authorized by its effective tariffs. (Ord No. 89-2002)

**35.495. Underground Crossings Required in Utility District "C."** All overhead utility facilities, as defined in SRC 35.441, including guy wires or similar appurtenances, used in supplying electric, communication, or associated service that cross the roadway contained within underground utility district "C" shall be converted to underground facilities on or before December 31, 1999, and it shall be unlawful for any person or utility to erect, construct, use or maintain any overhead utility facilities that cross the roadway contained within such underground utility district after said date. Overhead utility facilities that run parallel to the roadway contained within such utility district shall be exempt from said requirements. (Ord No. 76-98; Ord No. 89-2002)

**35.496. Underground Crossings Required in Utility District "E."** It shall be unlawful for any person or utility to erect or construct any overhead utility facilities, as defined in SRC 35.441, including guy wires or similar appurtenances, used in supplying electric, communication, or associated service that cross the roadway contained within underground utility district "E" after the effective date of this ordinance. Overhead utility facilities that run parallel to the roadway contained within such utility district shall be exempt from this requirement. (Ord No. 89-2002)