

**CITY OF FLORENCE  
ORDINANCE NO. 14, SERIES 2007**

**AN ORDINANCE ADOPTING A RIGHT-OF-WAY LICENSE PROCESS AND  
ESTABLISHING INITIAL RATES THEREFORE, AND DECLARING AN EMERGENCY**

WHEREAS, the public right-of-way of the City of Florence represents a public asset that should be used to the benefit of Florence and the residents of Florence; and

WHEREAS, individuals or businesses or others may desire to use a portion of the public right of way within the corporate limits of the City of Florence for the purpose of installing and maintaining telecommunications or utility equipment without the need for obtaining a franchise from Florence because the materials being installed are not primarily for the use of the residents of the City of Florence;

THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

SECTION I. Right-of-Way License Required, Exceptions

1. Except as provided in this ordinance, no individual, partnership, corporation or other legal entity (hereafter "person") shall hang, install, lay, place, construct or locate (hereafter "locate") or obtain ownership of any wire, cable, fiber cable, pipe, conduit or other material designed for the purpose of transmitting or transporting physical objects or electronic current or light signals (hereafter "facility") in, upon, beneath, over or across any public right-of-way or public property within the corporate limits of the City of Florence (hereafter "the City") without first obtaining a right-of-way license from the City.
2. No person that holds a valid franchise granted by the City need apply for a right-of-way license to perform actions consistent with and authorized by the franchise granted by the City.
3. The City and all City employees in the performance of their duties as City employees are exempted from the requirement to obtain a right-of-way license before taking any action in the public right-of-way or on City property.
4. Lane County, the State of Oregon and the United States Government are exempted from the requirement to obtain a right-of-way license where the Florence Public Works director has been informed of the proposed activities to take place in the right-of-way and has approved the activities.
5. A right-of-way license shall not be required for a person who proposes to use the right of way or City property for a temporary use, for a duration of continuous use of less than seven days, where such temporary use is authorized by law or has been otherwise approved by the Florence Public Works Director.

## SECTION II. Restrictions on a Right-of-Way License.

1. No right-of-way license shall be granted when, in the opinion of the Florence City Manager, a grant of a right-of-way license would be detrimental to the public health, welfare or benefit of the City or the residents of the City.
2. No right of way license shall be granted for an applicant who would otherwise be required to obtain a franchise from the City. This restriction shall apply, but is not otherwise limited to, any person that seeks to use the public right-of-way for the purpose of providing services to two or more persons residing within, or properties located within, the City.
3. No right of way license shall be granted to a person who will not have and retain ownership of the facilities proposed to be located in the public right-of-way. No right-of-way license shall be granted to a person who is not authorized to transact business in the State of Oregon.
4. No right-of-way license shall be granted to a person who has submitted an application that is in any way determined by the Florence City Manager to be incomplete, unless the applicant is able to remedy the incompleteness of the application within a reasonable time prior to the issuance of a right-of-way license and is not otherwise ineligible for a right-of-way license.
5. The decision to grant a right-of-way license, or to deny an application for a right-of-way license, shall be a decision solely within the discretion of the Florence City Manager, who may consult with any person deemed appropriate in the course of making a decision on such an application.

## SECTION III. Application for a Right-of-Way License

1. An application for a right-of-way license shall be submitted to the City. The application shall be typed and shall contain the signature of a person authorized to make decisions for and bind the applicant. The application shall state the name of the applicant, the address of the applicant, the registered agent in the state of Oregon of the applicant (if applicable), the nature of, and the intended purpose of, the proposed facilities and the name, address and phone number of an individual who may be contacted in the event of an emergency or when deemed necessary by the City.
2. The application shall be accompanied by:
  - a. Engineered drawings or plans showing the nature of the facilities proposed to be installed, including the dimensions of the facility or facilities, the composition of all materials to be used, the method of proposed installation, including the size of any trenching that might be required in the course of installation, the nature of the proposed use of the facilities, and such other information as determined to be necessary by the Florence City Manager to make a determination concerning the appropriateness of granting a right-of-way license.

- b. A map or maps of the City showing the proposed location of the facilities in the public right-of-way and facilities, on under, or across other property within the City. The map or maps shall be of sufficient size and detail to allow the Florence City Manager to determine the exact place or places in the City where the facility is proposed to be located. The map shall include the location of any physical conditions of significance to the proposed location of the facilities, and shall include the location of any structure or building within 20 feet of any portion of the proposed location of the facility.
- c. Applicant shall pay a non refundable application fee in an amount to be determined by the Florence City Manager based upon the complexity of the application and the cost of having outside consultants review the application. The application fee shall be no less than \$100, and may hereafter be adjusted by adoption by the Florence City Council of a resolution adjusting the minimum fee.

#### SECTION IV. Terms for the Grant of a Right-of-Way License

A right-of-way license approved by the City shall become effective only upon fulfillment of the following terms and conditions, and shall remain in effect only during the period that any of the terms and conditions placed in the permit for a continuing obligation are met.

- 1. Payment of an annual fee, to be determined by the City Manager, in the amount of no less than \$1.00 per lineal foot of public right-of-way or public property occupied by or traversed by the facility. The amount of the minimum fee may be adjusted by a resolution adopted by the Florence City Council.
- 2. The City may waive all or a portion of the required fee in the event that the City and the person owning the facility enter into an agreement concerning in-kind services to be provided by the person owning the facility. Such in-kind services may be of whatever form or type deemed by Florence to be at least of equivalent value to the required license fee. Installation of any additional facility or provision of any service, whether for free or for a charge, in conformity with a written contract with the City concerning in-kind services shall not require an additional right-of-way license and shall not be considered to be services requiring a franchise from the City.
- 3. A right-of-way license granted by the City shall cover and allow for only the uses and location described in the application for the license. Any additional installation or location of facilities, or modification of use, shall require an additional application for a right-of-way license, and shall not be allowed until approval of the application.
- 4. The person holding a right-of-way license shall be responsible for all costs of installation of any facilities associated with the right-of-way license, and shall be responsible for the repair of any portion of the right-of-way or property in the right-of-way disturbed or damaged by the installation of the facility. Repairs must return the right-of-way and all other property to a condition equivalent of the

condition of the right-of-way or property before the initiation of installation of the facility. The City may require the posting of a bond or the provision of other securities in an amount to be determined by the City to guarantee the payment of any cost to the City for any work required to return the right-of-way and any property in the right-of-way to a condition equivalent to the condition before initiation of installation of the facility.

5. Maintenance, repair or removal of the facility or any portion of the facility may be initiated only upon prior written approval of the Public Works Director. All work done for the purposes of maintenance, repair or removal of the facility shall be subject to the same terms and conditions as apply to installation work.
6. The City may require the owner of the facility to move, at the owner's expense, any portion of the facility when such movement is necessary for the completion of any work initiated by or under the authority of the City. The City shall not be responsible for any cost associated with damage or loss of business resulting from the required movement of the facility. Except in the event of an emergency, the City will provide ample prior notice to the owner of the facility concerning any needed relocation of the facility.
7. The owner of the facility retains all responsibility to notify other persons or entities of the location of the facilities in the right of way, and to respond to inquiries concerning the location of facilities. The City shall have no responsibility to provide such information, nor responsibility for any damage that might result from providing or failing to provide such information. The owner of any facility installed pursuant to a right-of-way license shall agree to indemnify and hold harmless the City from any and all claims concerning damages arising from the installation, maintenance, repair, relocation, operation of the facility and all other obligations created by this ordinance.
8. A right-of-way license does not allow the use of any private property within or outside the right-of-way.
9. A right-of-way license shall be non-transferable, in whole or in part, without prior approval by the City. Any change in the use of, or change of users of, the installed equipment shall constitute a transfer of the right-of-way license if the change affects any party's right or obligation to gain physical access to the fiber installed in the right- of- way.
10. A right-of-way license may be terminated by the City 30 days after written notice of the termination is mailed to the last known address of the person to whom the license was granted. The City may terminate a right-of-way license for failure to abide by any of the terms and conditions of the license, for failure to abide by any contract entered into for in-kind services, or upon discovery by the City that the conditions under which the license was granted no longer apply. The owner of the facilities must remove the facilities within 60 days of the notice of termination being mailed. Removal shall be at the owner's expense. Any facility or portion of a facility not removed within the time allowed may be removed by the City at the owner's expense, or may become the property of the City. Such a choice will be based upon the sole discretion of the City.



SECTION V Declaration of Emergency

Whereas the peace, health, safety and general welfare of the citizens of the City of Florence depends on the protection of the public right of way and the regulation of certain commercial activity within the City of Florence, an emergency is hereby declared to exist, and this ordinance shall take effect immediately upon its passage by the City Council and approval by the Mayor.

**ADOPTED THIS 19th DAY OF NOVEMBER, 2007 BY THE FLORENCE CITY COUNCIL.**

**Ayes: 4** - Councilors Xavier, Holman, Roberts, and Mayor Brubaker

**Nays: 0**

**Absent: 1** - Councilor Burns

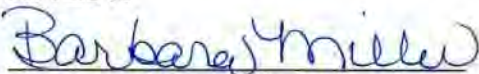
**Absentia: 0**

**APPROVED BY THE MAYOR this 20<sup>th</sup> DAY OF NOVEMBER, 2007**



**Phil Brubaker, Mayor**

**ATTEST:**



**Barbara Miller, City Recorder**