

## Right of Way Workgroup Final Draft

### ITEMS FOR LC TO REVIEW/INCLUDE

- \*If you are eligible for a franchise fee, you are not eligible for this program.
- \*Sunset after 6 years; effective date January 1, 2025 to give the counties a chance to implement their ordinance.
- \*\*Make sure leg council looks at wireless participation. Presumed they should be included because of discrimination.
- \*A county must intact an ordinance to participate in cost recovery, and the ordinance MAY require an annual public review process.
- \*Cost recovery basis, not a revenue generator.

Make it clear that counties must choose to participate and create an ordinance to recover costs.

### Section 1:

#### (1) As used in this section:

- a. **“Occupant” has the meaning licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles, structures or within conduits.**
- b. **“Operator” has the meaning every person as defined in ORS 756.010, public utility as defined in ORS 757.005, electricity service supplier as defined in OAR 860-038-0005, telecommunications utility as defined in ORS 759.005, telecommunications carrier as defined in ORS 759.400, telecommunications provider that includes competitive providers, cooperatives, and telecommunication utilities, consumer-owned utility as defined in ORS 757.270, cable operator as defined in ORS 30.192, association, cooperative, or government entity and their agents, lessees, or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership, or control of any facility within Oregon.**

- c. **“Owner” has the meaning a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, structures, ducts, conduits, right of way, manholes, handholes or other similar facilities.**
- d. **“Consumer price index” refers to the annual 12-month average change in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor in September of the prior calendar year.**
- e. **Emergency or urgent projects includes, but is not limited to, work required resulting from accident or casualty, fire, flood, drought, wind, action of the elements, court orders, litigation, breakdown of or damage to facilities of the utility or of third parties, acts of God, civil, military, or governmental authority, and acts or omissions of third parties.**

**(2) It is the responsibility of each registered operator, occupant, or owner to apply for all required county right of way permits and pay any required permit fees.**

**(3) County governing bodies may only charge a fee for projects that add new facilities within the county right of way or major underground renovations or upgrades to facilities within the county right of way, except as described in Subsection (4).**

**(4) The following work is excluded from fee requirements:**

- a. **County governing bodies may not charge a fee for any vegetation clearance or management that are required by ORS 757.035, and ORS 758.280 through 758.286 or under the current National Electric Safety Code.**
- b. **Routine replacement or maintenance of facilities, including but not limited to, pole and equipment replacements and work required by ORS 757.035, and ORS 758.280 through 758.286 or under the current National Electric Safety Code.**
- c. **Maintenance of water and wastewater systems, including air relief and pressure valves, fire hydrants, or improvements or maintenance essential for the safe operation of pumping facilities within the right of way.**

- d. Emergency or urgent projects necessary for the protection of the health or safety of the public to restore or maintain services regardless of the duration of restoration efforts, and counties may not delay a utility from restoring services to process a permit or a fee.**
- e. Utility relocations required by the county.**

**(5) Counties that enter into or have an existing intergovernmental agreement, as defined under ORS 190.010, with a public utility addressing the use of the county's right of way.**

**(6) Counties may charge up to a \$500 fee to recover county expenses related to permit issuance and compliance. That fee will be adjusted by the consumer price index up to five percent on an annual basis rounded up to the nearest dollar effective one year after the county ordinance becomes law.**

**(7) Excluding county-required relocations of utilities, counties must process a completed permit application and issue or deny to the applying occupant, operator or owner within 15 business days of the completed permit application being filed.**

**(8) Any fee assessed shall be technology neutral and shall not discriminate among providers. \*LC review the CTIA request to be excluded**

**(9) This act does not apply to facilities governed by the terms of any existing or future cable agreements, including memorialized understandings and franchises. Nothing in this act shall prevent the county from entering into any such agreement or be construed to allow a county to assess a franchise fee or a privilege tax on any operator or other person for use of the public right-of-way.**

**\* LC review- What counties do currently collect fees?**