

ORDINANCE NO. 72**AN ORDINANCE REGULATING THE USE BY UTILITIES OF PUBLIC STREETS, ALLEYS, PLACES, AND EASEMENTS IN THE CITY OF COOS BAY FOR PURPOSES OTHER THAN VEHICULAR AND PEDESTRIAN TRAFFIC; PROVIDING FOR FEES, PENALTIES, AND DAMAGES IN THE ENFORCEMENT THEREOF; AND REPEALING ORDINANCE NO. 2343, AS AMENDED.**

The City of Coos Bay ordains as follows:

Section 1. Purpose. The Council finds that the construction, alteration, and repair of streets, and the use of streets by the public, is directly affected by the existence and use of utility property within the public rights-of-way and that the use of streets by utilities should be regulated and controlled to protect the traveling public, to prevent damage to the public streets, and to prevent damage to public and private property, including the property of utilities using the streets. The Council further finds that it is necessary in the interest of the public health, safety, welfare, and convenience to establish rules, regulations and standards to control and regulate the use by utilities of the public streets, alleys, easements, and places within the city.

Section 2. Definitions. As used in this ordinance, the following mean:

City. The city of Coos Bay.

Utility. A person, firm, corporation, company, board, or commission, whether public or private, which owns, possesses, or maintains over, on, or under the public streets, alleys, places and easements within the city, any poles, wires, cables, conduits, pipelines or other fixtures.

Street. Any part of the full dedicated width or length of a public street, alley, place or easement.

Section 3. Rules, Regulations and Standards. The Council may enact, by motion or resolution, rules, regulations, and standards for the height, location, and relocation of wires, poles, and fixtures and the depth, location and the repair and inspection thereof, for the purposes of protecting the traveling public from hazards, obstructions, and defects on public streets, of providing for the restoration of public streets to substantially their previous condition, and for the protection of utility property over, on or under the streets of the city. The Council may provide for the issuance of permits for work to be done and impose reasonable fees and charges for the review and inspection of plans and construction work and for damage to streets which cannot be fully repaired. Copies of all rules, regulations and standards and amendments or additions thereto provided for in this section shall be mailed to both the local and head office of each utility using the streets of the city at least 10 days prior to the effective date thereof. The rules, regulations and standards adopted by the Council shall have the effect of law; and any violation of such rules, regulations and standards shall be a violation of this ordinance and subject to all the penalties and remedies provided for in this ordinance. All rules, regulations and standards adopted by the Council shall be filed with the City Recorder and shall be open to public inspection. No failure to mail copies to utilities shall cause any rule, regulation or standard to become ineffective or invalid or relieve any utility from the obligation of complying therewith.

Section 4. Relocation of Poles, Wires, or Fixtures. The Council may order the relocation within any area of the city of any poles, wires or fixtures to or from streets, alleys or easements or from poles to underground conduits, where the Council finds that relocation is necessary or desirable because of traffic

congestion or the partial obstruction or impairment of pedestrian or vehicular traffic, or the existence of hazards or dangerous conditions created by the location of the poles, wires or fixtures. The Council may determine that joint use of poles by two or more utilities is feasible and desirable in a particular area or street and the city may make written request to utilities for joint use. If the request is not complied with, the Council may order the utilities to provide joint use under terms and conditions deemed by the Council to be fair, equitable and reasonable to all parties concerned, or the Council may order the utilities to place the wires in underground conduits.

The Council may order the raising or lowering of a pipeline or conduit where the Council finds that a pipeline or conduits conflicts with the proposed location of any pipeline designed to carry a substance or material by gravity flow, or because of the establishment of an original grade or change in the grade of any street. Where a change is made in a legally established grade, the Council may prescribe reasonable terms for raising or lowering of pipelines or conduits.

Section 5. Location and Profile Maps. No utility shall commence any work for original installation or relocation of poles, wires, pipelines or conduits on public streets unless the utility has filed a location map with the City Engineer and has received approval from the City Engineer for the original installation or relocation. In the case of pipelines and conduits, a utility shall file a profile map in addition to a location map with the City Engineer. The City Engineer shall give approval or disapproval in writing to the utility within 5 days after receipt of the location map and/or profile map, excluding Saturdays, Sundays and holidays. Each location map and/or profile map filed with the City Engineer shall designate with reasonable certainty the boundary line or lines of the public right-of-way and the proposed location for the poles, wires, pipelines or conduits. Except as provided in section 6 of this ordinance, approval or disapproval by the City Engineer shall be based upon the existing or proposed location of pipelines, conduits, poles, or fixtures, the existing or proposed grade of the street, the existing or proposed improvements of the street, and the street and zoning plans and policies of the city. Upon completion of any original installation or relocation, a utility shall file with the City Engineer plans and profiles of the location, if there is any material variation from the original plans and profiles.

This section shall not apply to the relocation of poles, wires, pipelines or conduits which are ordered to be relocated by the city where the new location is designated by the city with location and/or profile maps.

Section 6. Extension Denial. The city may deny permission for the extension of utility services over streets which are dedicated but have not been Accepted as public streets by the city where such extension is designed to serve only properties which are being developed in violation of city or state law.

Section 7. Utility to Provide Maps. Within 30 days after receiving written request from the City Engineer, a utility shall deliver to the city location and profile maps showing the location of all pipelines and underground conduits in specified streets, which are the subject of proposed street or sewer improvements.

Section 8. Relocation Due to Construction. A utility shall, at its own expense, move and relocate poles, fixtures, wires, pipelines and conduits whenever the movement and relocation becomes necessary or expedient because of the construction of public improvements upon any street in the city, The utility shall be given at least 30 days' written notice, excluding Saturdays, Sundays and holidays, specifying the place where the poles, fixtures, wires, pipelines or conduits should be moved and the time within which the movement should take place. Where the city has contracted for the construction of a public

improvement upon any street, it shall give the written notice provided in this section at or about the time of the letting of the contract, but not less than 30 days prior to the time required for moving any poles, fixtures, wires, pipelines or conduits. If any pole, fixture, wire, pipeline or conduit is not moved within the time specified in the written notice, the utility shall, upon demand by the city, pay to the city liquidated damages and penalty in an amount equal to \$100.00 for each day or part thereof, excluding Saturdays, Sundays and holidays, from the time specified in the notice until the pole, fixture, wire, pipeline or conduit is actually moved as directed.

Section 9. Moving of Buildings. No person, firm, or corporation shall move, or cause to be moved, over any city street, a building or structure unless the person, firm or corporation has given at-least 96 hours' written notice, excluding Saturdays, Sundays and holidays. The notice shall be given to the engineering department and police department of the city and to all utilities having wires which must be raised or lowered to permit the passage or movement of the building or structure along or across the street. The written notice shall designate the route over which the building or structure is to travel, the time that the movement is to take place, the height of the-building, and the estimated weight of the building or structure. Before the time specified for the movement of the building, the City Engineer may require that a different route be taken or that specified methods be used in the movement of the building if the Engineer finds that damage might be caused to any street. The Engineer may also designate a different time of day for the movement and give notice to the utilities in the event that an interruption of utility service at the proposed time will unduly inconvenience the public. Where utility wires must be raised, or lowered, the cost of raising or lowering the wires shall be paid in advance to the utilities involved, If the notices are given and the cost paid to the utilities, it shall be the duty of the utilities to raise or lower all wires necessary at the required time.

Section 10. Liability of Utility. A utility shall be responsible and liable for any damages cause by its failure or neglect to comply with any of the provisions of this ordinance, or the rules, regulations, and standards adopted under the terms of this ordinance, for the protection of persons or property, Neither the city nor any of its officers or employees shall be liable for a dangerous or negligently created condition caused by the utility or by the failure of the utility to comply with this ordinance or the rules, regulations, and standards provided for in this ordinance. Nothing in this ordinance shall be construed to impose a duty on the City to perform any work which is required of any utility, and a failure of a utility to perform work required by this ordinance shall constitute a violation.

Section 11. Remedies. Insofar as it shall be permitted by law, the City may enforce any of the provisions of this ordinance in a civil action or suit brought against the utility, or any of its officers, agents, or employees.

Section 12. Penalty. Violation of, or failure to comply with, any provision of this ordinance is punishable upon conviction by a fine not to exceed \$500. Each day that a violation continues constitutes a separate violation of this ordinance.

Section 13. Ordinance Not a Grant or Permit to Use Streets. No provision of this ordinance shall constitute or be construed as granting or permitting the use of streets in the City by any utility which does not have a franchise from the City. This ordinance shall not be construed as a waiver or relinquishment by the City of any of its powers or privileges provided for by law, franchise or contract.

Section 14. Conflicting Provisions. This ordinance is intended to be an exercise of the City's police powers for the health, safety, welfare, and convenience of the public; but in the event that any provision hereof shall not be so construed, and shall conflict with any provision of an existing franchise or charter,

then the terms of such franchise or charter shall prevail.

Section 15. Severability. The sections and subsections of this ordinance are severable and the invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 16. Repeal. Ordinance No. 2343, enacted July 22, 1968, as amended by Ordinance No. 2527, enacted August 28, 1972, is repealed.

Passed by the Council and approved by the Mayor May 12, 1986.