

TITLE 4. FRANCHISES

CHAPTER 4.12

PACIFICORP FRANCHISE

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4.12.010 INTRODUCTION

1. Statement of Intent and Purpose. The City of Stayton intends, by the granting of this franchise, to authorize the continued development and operation of an electric utility system to serve the citizens of Stayton. Such development can contribute significantly to meeting the electrical needs and desires of many individuals, associations, and institutions in the City.
2. Short Title. This Ordinance shall be known as the PacifiCorp (Pacific Power & Light Co.) Franchise Ordinance. Within this document, it shall also be referred to as Athe franchise@ or Athe franchise@.
3. Definitions. For the purpose of the ordinance, the following terms shall have the meaning given herein.
 - a. Administrator: The City Administrator of the City of Stayton, or such person as may be designated by the City Administrator for the administration of this franchise.
 - b. Bridge: Includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine, or other place.
 - c. Conduit: An electrical raceway for the enclosure of electrical conductors and may consist of rigid conduit of electrical metallic tubing or plastic tubing.
 - d. City: The City of Stayton, Oregon, and the area within its boundaries including its boundaries as extended in the future and all property owned by the City, outside City limits. It means all officers, employees, and representatives of the City of Stayton.
 - e. City Council: The legislative body of the City.
 - f. Customer Base: The total number of individual customers in any given year within the City.
 - g. Distribution Facilities: Electric facilities of up to 35,000 kilovolts used for the delivery of electric power and energy to customers.
 - h. Easement: Public right-of-way, private utility easement on private or public property, or public utility easement on public or private property but not including a private utility easement for a customer=s service drop.

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- i. Franchise Territory: The area within the legal boundaries of City, and all property owned by City outside its boundaries and includes areas annexed during the term of franchise.
- j. Gross Revenue: Revenues derived from the sale of electricity or from the use, rental or lease of PacifiCorp=s operating facilities other than residential-type space and water heating equipment within City allowed by law to be included within the term AGross Revenue@, after deducting therefrom any amounts paid by PacifiCorp to the United States or to the State of Oregon as excise, occupation, or business taxes upon the sale or distribution of electric service in City and after deducting net uncollectibles. Gross Revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.
- k. May: Is permissive.
- l. PacifiCorp: PacifiCorp, an Oregon corporation doing business as Pacific Power & Light Company, its successors, transferees, legal representatives, employees, contractors, subcontractors, agents, or assigns.
- m. Person: Includes an individual, corporation, statutory entity (LLC, intergovernmental agency, etc.), firm, partnership, and joint stock company.
- n. Public Place: Includes any City owned or leased park, place, facility, or grounds within the City that is open to the public, but does not include a street or bridge.
- o. Public Rights-of-Way: Includes, but is not limited to streets, roads, highways, bridges, alleys, sidewalks, trails, paths, parking strips, public easement on private property, and all other public ways or areas, including subsurface and air space over these areas.
- p. Shall: Is mandatory.
- q. State: The State of Oregon
- r. Street: includes the surface, the air space about the surface, and the area below the surface of any public street, alley, avenue, road, boulevard, thoroughfare, or public highway, and other public rights-of-way, including public utility

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easements, but does not include a bridge or public place.

- s. Technical Facilities or Facilities: All real property, equipment, and fixtures used by PacifiCorp in the distribution of its services through its system.
- t. Volumetric: A method of computing franchise fees based on the volume of electricity sold or transmitted through PacifiCorp facilities within the City.

4.12.020 GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Authority. Subject to the conditions and reservations contained in this ordinance, City hereby grants to PacifiCorp, the right, privilege and franchise to:
 - a. Own, construct, expand, upgrade, maintain, and operate an electric utility system within the City.
 - b. Install, maintain, and operate on, over, or under the streets, bridges, and public places approved by City, facilities for the transmission and distribution of electricity to be distributed to City and to its inhabitants and to other customers and territory beyond the limits of City. This franchise does not limit PacifiCorp's ability to provide other utility services such as telecommunications and cable television, but does not allow PacifiCorp to provide these services under this franchise. PacifiCorp shall be required to enter into separate franchise agreements for these services at the sole discretion of City.
2. Duration, Renewal, and Renegotiation. This franchise ordinance and the rights and privileges granted herein shall take effect on or before thirty (30) days after the date this ordinance is passed by the City and remain in effect until October 4, 2031 unless reopened sooner under the provisions of Section 4.12.060.1.e or .f, or terminated sooner under the provisions of Section 4.12.070.7. Notwithstanding the foregoing, City and PacifiCorp shall retain the right, upon sixty (60) days advance written notice to the other party, to reopen and renegotiate any provision of this franchise at any time during or after the fifth year of the term of the franchise. All terms of the franchise must be unconditionally accepted by PacifiCorp in writing, signed by an authorized officer of the corporation, within thirty (30) days after the date this ordinance is passed by City; and if PacifiCorp fails to do so, this ordinance shall be void. (Ord. 939, October 29, 2011)
3. Franchise Nonexclusive. This franchise is not exclusive and shall not be construed as a limitation on the City in:

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- a. Granting rights, privileges, and authority to other persons similar to, or different from, those granted by this ordinance.
- b. Constructing, installing, maintaining or operating any City owned public utility, including but not limited to an electric power and light utility system.

4.12.030 SERVICE STANDARDS

1. Continuous Service. PacifiCorp shall maintain and operate an electric power utility system in the City that conforms to the standards of the National Electric Safety Code. PacifiCorp shall use due diligence to maintain continuous and uninterrupted service which shall conform at least to the standards adopted by the State and Federal authorities, and to standards of City which are not in conflict with those adopted by the State and Federal authorities. Under no circumstances is PacifiCorp liable to City for an interruption or failure of service caused by acts of God, unavoidable accident, or other circumstances beyond the control of PacifiCorp through no fault of its own.
2. Emergency Repair Service. PacifiCorp shall maintain emergency repair service available to City customers on a twenty-four (24) hours per day, seven (7) days per week basis. Such emergency service shall be easily reached by phone during normal business hours and through an answering service at all other times. PacifiCorp shall at all times during the course of this franchise meet or exceed the customer commitment and performance standards as established by PacifiCorp and City and by this reference are incorporated herein. PacifiCorp shall designate these emergency repair facilities as a priority and provide all necessary information and assistance to resolve the emergency as soon as possible.
3. Provision of Service Standards. PacifiCorp will at all times maintain the following service standards.
 - a. Underground Extension of System.
 - i. In cases of new construction or where utilities are to be placed underground, or service to newly created lots, which shall be underground in accordance with standards of the Stayton Municipal Code, the developer or property owner shall give PacifiCorp reasonable notice of such construction or development, including a copy of any final plat, and of the particular date on which open trenching will be available for PacifiCorp=s installation of conduit, pedestals and/or vaults, and laterals to be provided at PacifiCorp=s expense, in accordance with PUC OR

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34, Rule 13. PacifiCorp shall also provide to City specifications as needed for trenching.

ii. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner as provided in PacifiCorp=s Tariff Rule 13 as approved by the Oregon Public Utility Commission. Written notice must be given to PacifiCorp five (5) working days before trenches are available.

iii. It shall be the policy of City to encourage all utilities, including PacifiCorp, to place overhead distribution facilities underground. PacifiCorp has a right to collect costs of undergrounding in a manner consistent with its tariffs, Oregon statutes, and Oregon Public Utility Commission regulations. It is also the policy of City to encourage co-location of utilities in common underground facilities. PacifiCorp shall make its best effort to satisfy City=s policy.

iv. In cases of capital improvement projects undertaken by City, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect the incremental costs associated with the conversion from overhead to underground distribution facilities consistent with OAR 860-22-0046, the Oregon Public Utility Commission rule on forced conversion.

v. Pacificorp shall remove idle overhead facilities within a reasonable time.

- b. In the event a utility or person vacates or abandons a pole or facility, the utility or person shall provide written notification at least thirty (30) business days prior to vacation or abandonment of such pole or facility to City and all other utilities or persons sharing the pole through a joint use agreement. Affected utilities shall be provided a grace period of thirty (30) business days following the date of pole vacation or abandonment in which to remove their facilities. If facilities have not been removed within the thirty (30) day grace period, City may have the facilities removed at the expense of the owner of the facilities.
- c. PacifiCorp shall operate its electric utility system authorized by this ordinance twenty-four (24) hours per day, seven (7) days per week.
- d. PacifiCorp shall repair and maintain all existing and future street lights within the

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City at no cost to City in accordance with the established service standards and policies of PacifiCorp and City. Additionally, PacifiCorp shall provide the necessary materials and service to add additional street lighting as deemed necessary by City. City shall pay power costs for all street lights.

- e. PacifiCorp shall provide, at no cost to City, based on applicable tariff rate plan selected by City, the repair and maintenance of street lights within the franchise jurisdiction and in accordance with the most current Street Light Master Plan jointly developed by PacifiCorp and City. Repair and maintenance shall include, but not be limited to, all labor and materials necessary to repair and maintain all street lights in good working order.
- f. PacifiCorp shall perform periodic inspection and maintenance to street lights to ensure proper and consistent operation of street lights. In addition, City may request PacifiCorp to inspect and repair any street lights not in good working order. PacifiCorp shall respond to City's request for repair within seventy-two (72) hours (three working days), of receipt of such request and make repairs necessary to street lights within ten (10) days (ten-working days) upon request. In the event PacifiCorp fails to meet either request and/or repair time, City shall deduct monthly a pro-rated portion of cost of street lights from PacifiCorp invoice based on quantity of street lights reported and not repaired.

4. Safety Standards and Work Specifications.

- a. PacifiCorp shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire system in a good state of repair and shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its facilities, in a safe and well-maintained manner so as not to present a danger to the public or City.
- b. The location, construction, extension, installation, maintenance, removal, and relocation of the facilities of PacifiCorp shall conform to:
 - i. The requirements of the State and Federal statutes and regulations in force at the time of such work.
 - ii. Such reasonable specifications in force at the time of such work, as City may from time to time adopt.
 - iii. All installations, rearrangements, removals, lowering or raising of aerial

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electric utilities, wiring, or other apparatus shall be done in conformance with the requirements of the National Electric Safety Code, the laws of the State of Oregon, all Oregon Public Utility Commission rules and all ordinances and municipal codes of City.

iv. For the purpose of carrying out Section 4.12.030.4, City may provide such specification relating thereto as may be necessary or convenient for public safety or the orderly development of City. City may reasonably amend and add to such specifications from time to time.

v. PacifiCorp shall within a reasonable time remove graffiti on electrical facilities upon notification from City.

5. Maintenance Personnel. Maintenance personnel shall at a minimum be on duty eight (8) hours a day, during regular Monday through Friday working days, and shall be on-call at all times to respond to system outages in a prompt and expedient manner.

4.12.040 USE OF PUBLIC WAYS

1. Excavation and Restoration.

- a. PacifiCorp shall comply with all applicable ordinances, municipal codes, rules or regulations that may pertain to its activities within easements, public places and public rights-of-way of City.
- b. All structures, lines, and equipment erected by PacifiCorp within the City shall be located so as to cause minimum interference, with the proper use of streets, alleys, and other public rights-of-ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys, or other public rights-of-ways or places.
- c. Pursuant to Stayton Municipal Code Section 12.04.140, no newly overlaid street or newly constructed street shall be excavated by PacifiCorp for a period of five (5) years from the time of completion of the street overlay or the street construction unless specifically authorized by City, or in cases of an emergency declared by authorized City, state or federal officials. Such authorization shall not be unreasonably withheld.
- d. All installations by PacifiCorp in new residential subdivisions shall be, wherever and whenever practical, placed in conjunction with all other utility installations in

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compliance with existing regulations.

- e. Except as provided in Section 4.12.040.1, when any excavation is made by PacifiCorp, PacifiCorp shall, within seven (7) calendar days, restore the affected portion of the street, bridge, easement area, private property or public place to as reasonably good a condition as it was prior to the excavation. The restoration shall be done in compliance with City specifications, requirements, and regulations in effect at the time of such restoration and shall be guaranteed for a period of one year following inspection and acceptance of the restoration by City. If PacifiCorp fails to restore, within seven (7) calendar days, the affected portion of the street, bridge, easement area, private property, or public place to as reasonably good a condition in which it was prior to the excavation, City may make the restoration, and the reasonable costs of making the restoration, including the cost of inspection, supervision, and administration shall be paid by PacifiCorp. City may grant an extension to the seven (7) calendar day requirement of this section.
- f. City may require that any excavation made by PacifiCorp in any street, bridge, or public place be filled and the surface replaced by City, and that the reasonable cost thereof, including the cost of inspection, supervision, and the administration shall be paid by PacifiCorp.
- g. The reasonable costs of excavation and restoration incurred by City pursuant to Section 4.12.040.1.e and 4.12.040.1.f of this franchise, including the cost of inspection, supervision, and administration shall be paid by PacifiCorp to City in accordance with the standard billing policy of City in effect at the time the excavation or restoration occurred.

2. Relocation of Facilities.

- a. PacifiCorp shall, at its expense, protect, support, temporarily disconnect, or relocate any of its equipment or facilities that are required to promote the public interest by City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sanitary or storm sewer lines, water pipes, power lines, signal lines, or tracks, or any other type of structures or public improvements by City or its agents. Relocation of facilities, required by City shall be completed within a time limit mutually agreed to by City and PacifiCorp.
- b. A written request for facility relocation may be initiated directly by City or by a

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private developer or contractor installing or modifying public infrastructure under the approval of City; provided PacifiCorp may charge the expense of removal or relocation to the developer or contractor that makes a request, directly or indirectly, if the removal or relocation is caused by an identifiable development of property in the area, or is made for the convenience of a developer or contractor. PacifiCorp shall not be reimbursed for removal or relocation requested by, and for the sole convenience of City.

- c. All facilities placed in the public rights-of-way shall be placed in coordination with City and other affected utilities.
- d. If PacifiCorp fails to comply with any requirement of City pursuant to this section, City may remove or relocate the facilities at PacifiCorp=s expense, unless said removal or relocation would be in violation of any portions of ORS 757.800 and ORS 757.805.
- e. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer.

3. Tree Pruning.

- a. Subject to the provisions of this ordinance, PacifiCorp may prune trees, when necessary in easements, for the operation of the utility lines, wires or other appurtenances, provided such pruning shall be performed by or supervised by a certified arborist, in accordance with applicable City ordinances, and it shall be done without cost or expense to City.
- b. PacifiCorp shall provide a written notice to the City Public Works Department and property owner and resident at least ten (10) business days prior to any pruning to be done on the property. City recognizes that a ten (10) day notice may not be possible in emergency situations, however, City does encourage PacifiCorp to provide as much advance notice to property owners and residents as is reasonably possible under such emergency circumstances.

4. Use of Facilities by City.

- a. As additional consideration for the franchise and privileges granted to PacifiCorp by this ordinance, City shall have the free right and privilege to install, or affix

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and maintain street lights, wires, seasonal decorations and equipment for municipal purposes upon the structures and installations, excluding underground facilities, owned and/or maintained by PacifiCorp. For the purpose of this section, the term "municipal purposes" means all municipal purposes except the distribution or sale of electric power to the public and includes, but is not limited to, the use of structures and installations for:

- i. Municipal fire, police, water, wastewater, and storm water utility service wires and equipment.
 - ii. Municipal interdepartmental computers and communications.
 - iii. Municipal fire alarm and police and traffic signals, signs, and equipment.
 - iv. Seasonal decorations and special event banners and attachments authorized by the City.
- b. City shall install, affix, maintain and operate its wires and equipment at its own expense and in accordance with the requirements of State and Federal law, and regulations adopted pursuant thereto, and in accordance with good engineering practice and safety standards. The wires and equipment of City shall be subject to interference by PacifiCorp only when necessary for the maintenance, operation or repair of the facilities of PacifiCorp. PacifiCorp's actions shall not unduly interfere with City's safe and convenient use of its installations.
- c. City shall install, affix, maintain and operate its wires and equipment in such a manner as not to impose any undue additional expense upon PacifiCorp, or unduly interfere with the safe and convenient use and maintenance by PacifiCorp of its structures and installations.
- i. If there is not sufficient space available thereon for said purposes, PacifiCorp shall change, alter or re-arrange its structures at City's expense so as to provide proper clearance for such wires or appurtenant facilities.
 - ii. Such facilities shall be subject to interference by PacifiCorp only when and to the extent necessary for the proper construction, maintenance, operation or repair of PacifiCorp's facilities.
- d. City shall indemnify, protect, and save PacifiCorp, its officers, employees and

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agents, harmless against and from any and all damages, claims, loss, liability, cost or expense resulting from damage to property or injury or death to any third person to the extent caused by or arising out of the installation, maintenance, existence, or use of the installations for municipal purposes as described in Section 4.12.040.4.

5. Use of Bridges and Public Places by PacifiCorp.
 - a. Before PacifiCorp may use or occupy any bridge or public place, PacifiCorp shall first obtain permission from City to do so and comply with any special conditions City desires to impose on such use or occupation.
 - b. The compensation paid by PacifiCorp for this franchise includes compensation for the use of bridges and public places located within the City, as authorized. However, this subsection shall not be construed to prevent City from requiring PacifiCorp to pay the compensation or charges as provided in Section 4.12.060.1.
6. Emergency Removal and Alternate Routing of Facilities.
 - a. If at any time, in case of fire or disaster in the franchise territory, it shall become necessary in the reasonable judgment of City to cut or move any of the wires, equipment or other appurtenances to the system of PacifiCorp, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by PacifiCorp, at its sole expense, provided that such repairs are not necessitated by a negligent act of City, in which case costs for repairs shall be borne by City.
 - b. City shall indemnify, protect and hold PacifiCorp, its officers, employees and agents harmless against and from all damages, claims, loss, liability, cost or expense resulting from damage to property or injury or death to any third person caused by such cutting or moving any of the wires, equipment or other appurtenances.
 - c. In the event continued use of a street or easement is denied to PacifiCorp by City for any reason, PacifiCorp shall provide service to affected customers over such alternate routes as shall be determined by PacifiCorp within a reasonable period of time. City shall provide or attempt to provide an alternate route if continued use of a street or easement is denied to PacifiCorp.

4.12.050 CONSTRUCTION

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1. Public Works and Improvements Not Affected by Franchise. City reserves the right to:
 - a. Construct, install, maintain, and operate any public improvement, work, or facility.
 - b. Do any work that City may find desirable on, or over, or under any street, bridge or public right-of-way.
 - c. Vacate, alter, or close any street, bridge or public right-of-way.
 - d. Whenever City shall excavate or perform any work in any of the present and future streets, alleys, and public rights-of-way of City, or shall contract or issue permits to others for such excavation or work, where such excavation or work may disturb PacifiCorp=s underground electric utility, pipes, conduits, and appurtenances, the City may, in writing, notify PacifiCorp sufficiently in advance of such contemplated excavation or work to enable PacifiCorp to take such measures as may be deemed necessary to protect such underground electric utility, pipes, conduits, and appurtenances from damage and possible inconvenience to the public. In any such case, PacifiCorp, upon receiving such notice, shall furnish maps or drawings to City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
 - e. Whenever City shall vacate any street or public place for the convenience or benefit of any person or governmental agency or instrumentality other than City, PacifiCorp=s rights shall be preserved as to any of its facilities then existing in such street or public place.
2. Control of Construction. PacifiCorp shall file with City, maps that meet City specifications, showing the location of any construction, extension, or relocation of any of its electric lines, conduits or facilities and must first obtain City=s approval of the location and plans prior to the commencement of the work. PacifiCorp shall be required to obtain a permit from City before commencing the construction, extension, or relocation of any of its electric utility transmission or distribution facilities within an easement.
3. Maps. Upon request from the City, PacificCorp shall provide the City with a system “as built” map in mutually acceptable format showing the location of PacifiCorp’s electric facilities within the public right of ways of the City. (Ord. 939, October 29, 2011)
4. Rearrangement of Facilities to Permit Moving of Buildings and Other Objects.

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- a. Upon reasonable advance notice in writing from any person desiring to move a building or other object, PacifiCorp shall temporarily raise, lower, or remove its facilities upon any street, bridge, or public place within the City, when necessary, to permit the person to move the building or other object across or along such street, bridge or public place. The raising, lowering, or removal of the facilities of PacifiCorp shall be in accordance with all applicable ordinances and regulations of City.
- b. The notice required by Section 4.12.050.4.a of this section shall bear the approval of the Administrator, shall detail the route of movement of the building or other objects, and shall provide the actual expense incurred by PacifiCorp in making the temporary rearrangement of its facilities, including the cost to PacifiCorp of any interruption of service to its customers caused thereby, will be borne by the person giving the notice. It shall further provide that the person giving said notice will indemnify and save PacifiCorp harmless from any and all damages or claims whatsoever caused directly or indirectly from such temporary rearrangement of PacifiCorp=s facilities.
- c. PacifiCorp, before making the temporary rearrangement of its facilities, may require the person desiring the temporary rearrangement to deposit cash or other adequate security reasonably acceptable to PacifiCorp, to secure payment of the costs of rearrangement as estimated by PacifiCorp.
- d. Upon advance notice by City of its own intent to move a building or other object, either in its governmental or proprietary capacity and for the sole benefit of City, the temporary rearrangement of PacifiCorp=s facilities shall be accomplished by PacifiCorp at no cost to City; provided, however, that the indemnification provisions of Section 4.12.050.4.b shall still apply to City.

4.12.060 FINANCIAL

1. Compensation.

- a. In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to City from and after the effective date of the acceptance of this franchise, seven percent (7.0%) of its gross revenues derived from within the corporate limits of City. Notwithstanding any provision to the contrary, at any time during the term of this franchise, City may elect to increase the franchise fee to five percent (5.0%), or any greater amount as may then be allowed by state law. City shall provide PacifiCorp prior written notice of such increase following

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adoption of the change in percentage by City. The increase shall be effective sixty (60) days after City has provided PacifiCorp with such written notice.
(Ordinance No. 950, Adopted February 5, 2013)

- b. The compensation required by this section shall be due on or before the 25th day of each and every month for the month preceding. Within thirty (30) days after the termination of this franchise, compensation shall be paid for the period elapsing since the end of the last month for which compensation has been paid.
- c. PacifiCorp shall furnish to City with each payment of compensation required by this section a statement, showing the amount of gross revenue of PacifiCorp within the City for the period covered by the payment and including an explanation of the basis upon which the amount of compensation is calculated. If PacifiCorp fails to pay the entire amount of compensation due to City through error or otherwise within the times allotted for payment in Section 4.12.060.1.b above, the amount of the compensation due for that month and not timely paid shall be subject to a late penalty of an additional ten (10) percent plus interest of two (2%) percent per month on the amount of compensation due and unpaid from the date due until it is paid together with the late penalty.
- d. Nothing contained in this franchise shall give PacifiCorp any credit against any ad valorem property tax now or hereafter levied against real or personal property within the City, or against any local improvement assessment or any business tax imposed on PacifiCorp, or against any charges imposed upon PacifiCorp as provided in Section 4.12.060.4 of this franchise, or reimbursement or indemnity paid to City.
- e. In the event PacifiCorp is prohibited by State or Federal law from paying a fee or compensation based on gross revenues, or City is prohibited by State or Federal law from collecting such a fee or compensation, either City or PacifiCorp shall have the right to re-open the franchise agreement to renegotiate the compensation section. Additionally, if at any time a volumetric approach to the calculation of fees or compensation is deemed by City as advantageous, PacifiCorp shall cooperate in the renegotiation of the compensation section to ensure that City shall remain revenue neutral in respect to the total amount of fees or compensation collected from PacifiCorp.
- f. In the event Oregon law is changed to provide for a franchise fee or privilege tax in an amount greater than the amount established in Section 4.12.060.1.a, or PacifiCorp agrees to pay any other city in the State of Oregon a higher amount

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pursuant thereto, City shall have the right to re-open the franchise agreement for the purpose of establishing the franchise fee or privilege tax in an amount equal to that being paid to such other city.

2. Insurance.

- a. PacifiCorp shall indemnify, protect and save City, its officers, employees and agents, harmless against and from any and all damage claims, and any and all loss, liability, cost or expense, occasioned by any negligent act or omission of PacifiCorp in the construction, maintenance, operation, or repair of PacifiCorp's property or any use thereof, and PacifiCorp shall at all times comply with any lawful present or future charter provisions, ordinances, rules or regulations of City relating to the manner of occupation or use, or to the repair or improvement of all public rights-of-way.
- b. PacifiCorp shall, for the purposes of carrying out the provisions of this franchise, prior to commencing construction of any kind, have in full force and effect, and file evidence thereto with the City Administrator, good and sufficient insurance policies covering Employer's Liability insurance with a minimum limit of \$500,000; Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the work performed under this franchise; Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to vehicles whether owned, hired or non-owned, assigned to or used by any contractor in the performance of the work. PacifiCorp may self-insure for any or all of the above coverage and shall furnish City with documentation, acceptable to City, certifying evidence of self-insurance.
- c. The City of Stayton, its officers, agents, and employees, shall be named insureds in any policy or self-insurance covering losses caused in whole or in part by reason of the exercise of the rights and privileges herein granted, but only such losses for which PacifiCorp has agreed to indemnify City per the terms of this franchise. PacifiCorp shall pay all expenses incurred by City in defending itself with regard to all damages and penalties mentioned in Section 4.12.060.2.a above. These expenses shall include all out-of-pocket expenses, including consultants' or attorneys' fees.

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3. Damages. Damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omissions, theft, fire, and all other damages arising out of PacifiCorp=s exercise of this franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this franchise.
4. Permits. Nothing in this ordinance shall be construed to limit the right of City to require PacifiCorp to obtain any necessary permits required by the Stayton Municipal Code.
5. Reflecting Expenditures on Billing Statements. If the franchise fee or compensation paid to City is itemized on the customer billing statement, it shall only be the amount over 3.5% of PacifiCorp=s gross revenues in accordance with the applicable Oregon Administrative Rules.

4.12.070 CITY ADMINISTRATION OF FRANCHISE.

1. Ongoing Communication. PacifiCorp shall keep City informed of all new developments, issues or concerns affecting the utility system. PacifiCorp shall notify the Administrator in advance of any public announcement that is to be made on such subjects. City shall endeavor to notify PacifiCorp of any developments or issues concerning the franchise in advance of any public announcement on such subjects.
2. PacifiCorp=s Rules. PacifiCorp shall have authority to promulgate such reasonable rules and regulations governing the conduct of its business as shall be reasonably necessary to enable PacifiCorp to exercise its rights and performance obligations under this franchise, and to assure uninterrupted service to its customers. PacifiCorp=s rules and regulations shall be subject to provisions of this ordinance and any other governmental regulations. Copies of such rules and regulations, and any updates, shall be furnished to City or be made available through PacifiCorp=s electronic web site.
3. Right to Inspect Records. PacifiCorp shall keep current, accurate records of account at any office within a reasonable days commute of City for the purpose of determining the amounts due City under Sections 4.12.060.1.a and 4.12.060.1.c of this ordinance. City may inspect and audit the records of account, upon written request. The City Council may request periodic reports from PacifiCorp relating to its revenue within the City.
4. Reports and Records.
 - a. Within thirty (30) days following any written request by City, PacifiCorp shall

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furnish to City a report which will accurately identify the total number of PacifiCorp=s customers, according to customer class, within the City limits.

- b. The cost of preparing and furnishing to City the records and reports required by this franchise shall be borne by PacifiCorp.
- 5. Assignment or Sale of Franchise or Facilities. PacifiCorp shall not transfer or assign any rights under this franchise to another person or entity, except transfers and assignments by operation of law including mergers and similar transactions, unless City shall first give its approval in writing, which approval shall not be unreasonably withheld or delayed; provided, however, inclusion of this franchise as property subject to the lien of PacifiCorp=s mortgage(s) shall not constitute a transfer or assignment.
- 6. Remedies Not Exclusive: When Requirement Waived. All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive, and City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition, or obligation imposed upon PacifiCorp by, or pursuant to, this ordinance. A specific waiver of a particular breach of any term, condition, or obligation imposed upon PacifiCorp by, or pursuant to, this ordinance or acceptance of any payment due shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition, or obligation itself.
- 7. City=s Right to Revoke. In addition to all other rights which City has pursuant to law or equity, City reserves the right to revoke, terminate, or cancel this franchise, and all rights and privileges pertaining thereto, in the event that:
 - a. PacifiCorp repeatedly violates any material provision of this franchise.
 - i. The following provisions are deemed to be material to the performance of the franchise:
 - # Continuous Service (Section 4.12.030.1)
 - # Emergency Repair Service (Section 4.12.030.2)
 - # Excavation and Restoration (Section 4.12.040.1)
 - # Relocation and Facilities (Section 4.12.040.2)
 - # Compensation (Section 4.12.060.1)
 - # Insurance (Section 4.12.060.2)

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- # Damages (Section 4.12.060.3)
- # Assignment of Sale of Franchise (Section 4.12.070.5)

- b. PacifiCorp practices any fraud upon City or any customer.
- c. PacifiCorp becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.
- d. PacifiCorp misrepresents a material fact in the application for or negotiation of, or renegotiation of, or renewal of, the franchise.
- e. PacifiCorp deliberately fails to operate the system without prior approval of City or without just cause.

8. Revocation Procedures;

- a. City shall provide PacifiCorp with a written notice of the cause of termination and its intention to terminate or revoke the franchise and shall allow PacifiCorp a minimum of ninety (90) days after service of the notice in which to correct the violation. If at the end of the ninety (90) day period, PacifiCorp has not corrected the matter which provides grounds for termination, the franchise may, at the option of City, become null and void and PacifiCorp shall thereafter be entitled to none of the privileges or rights herein extended to them and said PacifiCorp shall thereupon cease and desist from any activity within the City limits of City; provided, however, that City may at its option pursue any other and different or additional remedy provided to it by law or in equity.
- b. PacifiCorp shall be afforded due process and provided with an opportunity to be heard at a public hearing before the City Council prior to the termination of the franchise. The City Council shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal, or neglect by PacifiCorp has occurred.
- c. Any revocation of this franchise shall be by formal action of the City Council, by ordinance.

9. Penalties. Subject to requirement of prior notice as set forth in Section 4.12.070.10.a below, for violations of this ordinance occurring without just cause, City may, at its discretion and in addition to any other remedies provided herein, assess penalties against PacifiCorp as follows:

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- a. For failure to adhere to material provisions of this franchise, as defined in Section 4.12.070.7.a.i, and in lieu of revocation as described in Sections 4.12.070.7 and 4.12.070.8, Two Hundred Forty Dollars (\$240.00) per day for each provision not fulfilled.
- b. For failure to comply with any provision of this franchise, for which a penalty is not otherwise specifically provided, the penalty shall be One Hundred Twenty Dollars (\$120.00) per day, per each occurrence.

10. Procedure for Imposition of Penalties.

- a. Whenever City finds that PacifiCorp has violated one (1) or more terms, conditions or provisions of this franchise, a written notice, or a verbal notice followed by a written notice, shall be given to PacifiCorp informing it of such violation or liability. If the violation concerns requirements mandated by City permits, a verbal notice followed by a written notice will be given. The written notice shall describe in reasonable detail the specific violation so as to afford PacifiCorp an opportunity to remedy the violation. PacifiCorp shall have twenty (20) working days subsequent to receipt of the notice in which to correct the violation. PacifiCorp may, within ten (10) days of receipt of notice, notify City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by PacifiCorp to City shall specify with particularity the matters disputed by PacifiCorp.
- b. The City Council shall hear PacifiCorp=s dispute at its next regularly or specially scheduled meeting. The City Council shall supplement its decision with written findings of fact.
- c. If after hearing the dispute the claim is upheld by the City Council, PacifiCorp shall have twenty (20) working days from such a determination to remedy the violation or failure.
- d. PacifiCorp shall be liable for full payment of all penalties imposed under this section.

4.12.080 POST FRANCHISE

1. City Right in Franchise.

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- a. Notwithstanding City=s rights as outlined in Section 4.12.040.4, City use of PacifiCorp=s facilities shall at all times comply with the rules and regulations of PacifiCorp and shall not compete or interfere with PacifiCorp=s use. City shall hold PacifiCorp harmless from any claims arising out of City=s use of said facilities hereafter.
- b. City shall have the right to observe and inspect all construction or installation of PacifiCorp=s facilities subject to the provisions of this ordinance and to make such inspections as it shall find necessary to insure compliance with governing laws, rules, and regulations. No construction shall be commenced prior to approval by City. PacifiCorp is responsible for all work performed by or for PacifiCorp or its agents.
- c. Upon any termination of this franchise, whether before the expiration of the franchise or upon expiration, or by any abandonment of the franchise by PacifiCorp (except for an unapproved assignment provided in Section 4.12.070.5), all equipment installed or used by PacifiCorp shall be removed by PacifiCorp at PacifiCorp=s expense and the property upon which said equipment was used restored by PacifiCorp to the original or better than original condition it was in before installation or use by PacifiCorp.

2. Foreclosure, Receivership and Abandonment.

- a. Upon the foreclosure or other judicial sale of the system, PacifiCorp shall notify City of such fact and such notification shall be treated as a notification that a change in control of PacifiCorp has taken place, and the provisions of this franchise governing the consent to transfer or change ownership shall apply without regard to how such transfer or change in ownership occurred.
- b. City shall have the right to cancel or terminate this franchise subject to any applicable provisions of Oregon or Federal law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a debtor-in-possession, receiver or trustee to take over and conduct the business of PacifiCorp, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:
 - i. Within one hundred and twenty (120) days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of this

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franchise and remedied all defaults thereunder; and

- ii. Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this franchise.
 - iii.
3. Continuity of Service Mandatory. Upon expiration or the termination of this franchise, City may require PacifiCorp to continue to operate the system for an extended period of time, not to exceed twelve (12) months. PacifiCorp shall, as trustee for its successor in interest, continue to operate the system under the terms and conditions of this franchise. In the event PacifiCorp does not so operate the system, City may take such steps as it, in its sole discretion, deems necessary to assure continued service to subscribers, at PacifiCorp=s cost and expense.

4.12.090 MISCELLANEOUS

1. Compliance with Laws, Rules, and Regulations. At all times during the term of this franchise, PacifiCorp shall comply with all applicable laws, ordinances, municipal codes, rules, and regulations of the United States of America, the State of Oregon, Marion County and the City of Stayton including all agencies and subdivisions thereof. PacifiCorp shall be subject to the lawful exercise of the police power of City and to such reasonable regulations as City may from time to time hereafter by resolution or ordinance provide. No provision of this franchise shall be construed as a waiver of local, State, or Federal law, or as a limit of liability.
 - a. If at any time during the term of this franchise, City implements a generic ARight of Way Management Ordinance@ or similarly title document which may apply to all of City=s utility franchises, PacifiCorp agrees to abide by such ordinance; provided that any specific conflicts between such an ordinance and this franchise ordinance shall be mutually reviewed and resolved by City and PacifiCorp.
2. Discriminatory Practices Prohibited. PacifiCorp shall make its services available without discrimination and shall not give any person any preference or advantage not available to all persons similarly situated. Notwithstanding the above, the City Council may, by resolution, approve any program or service offered by PacifiCorp that the City Council believes to be in the best interest of the City. PacifiCorp shall comply at all times with all other applicable, Federal, State, and local laws, and all executive and administrative orders relating to non-discrimination.

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3. Rules of Construction. This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:
 - a. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include singular number, and words in the singular number include the plural number.
 - b. Time is of the essence of this ordinance. PacifiCorp shall not be relieved of its obligation to comply promptly with any provision of this ordinance by any failure of City to enforce prompt compliance with any of its provisions.
 - c. Unless otherwise specified in this ordinance, any action authorized or required to be taken by City may be taken by the City Council or by an official or agent designated by the City Council.
 - d. Every duty and every act to be performed by either party imposes an obligation of good faith on the party to perform such.
4. Severability and Constitutionality. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining positions hereof.
 - a. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce, or otherwise affect any other consideration or obligation required of PacifiCorp by any franchise granted hereafter. If, for any reason, the franchise fee or compensation is invalidated or amended by the act of any court or authorized governmental agency, then the highest reasonable franchise fee or compensation allowed by such court or authorized governmental agency shall be the franchise fee or compensation charged by this ordinance.
 - b. Written Notice. All notices, reports, or demands required to be given in writing under this franchise shall be deemed to be given when a registered or certified mail receipt is returned indicating delivery, or on the next addressed business day if sent by express mail or overnight air courier to the party to which notice is being given as follows:

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If to the City: City of Stayton
362 North Third Avenue
Stayton, OR 97383
Attn: City Administrator

If to PacifiCorp: PacifiCorp, Pacific Power
P.O. Box 248
830 Old Salem Road
Albany, OR 97321
Attn: Regional Community Manager

Such addresses may be changed by either party upon written notice to the other party given as provided in this section.

6. Dispute Resolution. Notwithstanding the provisions of Section 4.12.070.10, any dispute regarding the terms of this franchise shall be resolved in the following manner:
- a. **Mandatory Mediation.** In the event a dispute arises between the parties, it is agreed that they shall engage in mandatory mediation. The parties shall agree on the selection of a Mediator within ten (10) days= written notice from either party and, if not, the Circuit Court Presiding Judge for the Oregon county which would have jurisdiction on the issues shall make the selection. The mediation shall occur within twenty (20) days of the selection of the Mediator. The parties shall at all times perform in good faith and shall make every effort to resolve the dispute in mediation.
 - b. **Arbitration.** Except for the pre-requirement of Section 4.12.090.6.a, each party, at the party=s option, shall have the right to require that any claim, controversy, or dispute between the parties be determined by binding arbitration in accordance with the Uniform Trial Court Rules for Oregon, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. If litigation has been commenced in court by either party with respect to a dispute, with the expectation that a default judgment could be obtained:
 - i. The party who is the defendant or respondent in such litigation shall be deemed to have waived its option to arbitrate said dispute if such party files a general appearance in the litigation prior to providing written notice to the plaintiff or claimant of the filing of a claim in arbitration in the manner specified

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above; and,

ii. The plaintiff or petitioner in such litigation shall be deemed to have waived its right to arbitrate said dispute if such party fails to file a claim for arbitration in the manner specified above within sixty days after a general appearance in the litigation has been filed by the party who is the defendant or respondent in the litigation. This provision is intended to allow either party to commence litigation and seek an order of default without waiving the right to arbitrate in the event the default is not attainable.

iii. If either party exercises its option to arbitrate, arbitration of such dispute shall be mandatory and any pending litigation shall be stayed.

iv. There will be no right to appeal an order or decision made by the Arbitrator or decision maker after arbitration or trial.

v. The prevailing party in the arbitration may be awarded reasonable attorneys' fees and costs.

7. Non-enforcement by City. PacifiCorp shall not be relieved of its obligation to comply with any of the provisions of this franchise by reason of any failure of City to enforce prompt compliance.
8. Captions. The paragraph captions and headings in this franchise are for the convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this franchise.
9. Calculation of Time. Where the performance of doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time unless stipulated otherwise in this agreement. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.