

Portland ROW Code FAQ

FREQUENTLY ASKED QUESTIONS – Portland’s Right-of-Way, Shifting from Individual Franchise Agreements/Utility License Code to a Universal Code that applies to all those that utilizes the right-of-way or provision services within the City.

Below are some common questions that we believe will provide answers to your most pressing inquiries at this point in the process. We will continue to build out this FAQ as the process moves forward and we receive your feedback.

Date: April 2022 – Updated*

1. Who will this change impact?

The new, city code will apply to any current or future entity that provides a utility service and/or uses infrastructure in the right-of-way, whether or not the entity owns the infrastructure in the right-of-way.

In other words, these changes will apply, on a rolling basis (*see question 7 below*), to any entity that has a valid franchise agreement with the City or that is subject to the existing utility license fee for use of the right-of-way. Any affiliates or subsidiaries will also be subject to the new code if those companies are also offering utility services in Portland.

For example, this would include: a utility providing electric, natural gas, cable, pipeline, or telecommunications services. Resellers and voice over IP providers will also be subject to the new code.

2. What will be different?

The new code will:

- Require a 5-year license. (*City to develop a standardized form, which will be administratively, simpler than negotiating a franchise.*)
- Require an annual registration process to ensure the City has up-to-date information.
- Standardize penalties and fines for late payments and violations, which may or may not be different from your current agreement.
- Standardize penalties for violations from \$100 - \$1,000 per violation per occurrence, which may or may not be different from your current agreement. (*Currently, the Utility License Code is a minimum of \$500 or up to 2% of gross revenues. Franchise violations are typically set at \$1000 per occurrence*)
- Standardize due dates for payments.

3. What will NOT be different?

The charge for the use of the right-of-way – 5% of gross revenues – will remain the same whether you are currently subject to a franchise agreement or utility license fee. Payments will still be made quarterly. (*How the 5% is calculated is clearly spelled out in the administrative rules – not in the new code.*)

If you pay by foot or attachment, your cost will still be calculated in this way – and payments will now be made quarterly, in arrears.

To be very clear, the new code will not change the way entities apply for permits to physically access the right-of-way.

If public interest warrants, the City and the entity, may enter into a franchise agreement.

3a. Will there be a process by which the gross revenues will be determined?

Gross Revenues will be clearly defined in the administrative rules.

4. Why is the City making this change?

The City needs to streamline its work to most efficiently provide access to the right-of-way. Currently, the City negotiates and manages separate agreements that have different expiration dates, sometimes decades apart from one another. All entities that use and access the right-of-way should be playing by the same, and most up-to-date, rules.

5. Are there other cities that have done this?

Yes, other neighboring jurisdictions have shifted to a shared, standardized code. These changes mean the City will treat subject entities equitably and more efficiently than individually negotiated franchises.

6. What is the process and timeline for this work?

Based on the information received during the public comment period mentioned above, OCT has made changes to the original process and timeline outlined in an earlier version of this FAQ.

In response to companies requesting additional time to review the code and to companies who reported that they could not comment on the code without the fee ordinance, the plan now is to release the list of comments received thus far, responses to those comments and an updated draft of the code as well as the associated fee ordinance. The release of all this information will happen April 29 for a second public comment period. This ensures that all our stakeholders get the same information at the same time.

The second public comment period will close May 29. The City will review all comments and if warranted, make changes to the code. To follow, the draft will be reviewed by the City Auditor

and the City Attorney’s office. After that, the code will be filed for consideration by the City Council.

OCT has updated the timeline to bring the code to council in July 2022. The effective date of the new code will be January 1, 2023.

Previous Timeline

Outreach to Existing Franchise/Code Entities	Summer/Fall 2021
First Public Comment Period, Closes Nov. 15	Winter 2021
Release Updated Draft ROW Code & Draft Fee Ordinance (Second Comment Period Opens)	February 2022
Second Public Comment Period, Closes March 4 30 days after the release of the Draft ROW Code and Draft Fee Ordinance	March 2022
Filed for City Council Consideration	June 2022
Effective Date	January 2023

Updated timeline

<p>OCT will Distribute:</p> <ul style="list-style-type: none"> • Updated Draft ROW Code (redlined) • Updated Draft ROW Code (clean) • Draft Fee Ordinance • Draft Administrative Rules <p>Post to website:</p> <ul style="list-style-type: none"> • Complete comment letters • All distributed materials • Issue summary • Updated FAQ <p>(Second Comment Period Opens)</p> <p>Please submit all comments to: ComTech@portlandoregon.gov</p>	<p>April 29, 2022</p>
<p>Second Public Comment Period, Closes</p>	<p>May 29, 2022</p>

Tentative First City Council Reading	July 13, 2022
Tentative Second City Council Reading and Vote	July 20, 2022
Effective Date	January 2023

7. If I have a valid franchise agreement, will it be null and void on January 1, 2023?

No. Any valid franchise agreement will remain effective until it expires. After the expiration of the franchise, you may be subject to the new code.

Any entity that is operating under a holdover status, will continue to operate under the holdover status until January 1, 2023. At that point, the entity will be subject to the new code.

8. If I am immediately subject to the new code, when do I register?

Once the City Council passes the ordinance creating the new code, OCT will send out an update and more detailed instructions. You will have sufficient notice and opportunity to comply with all the requirements.

9. If I am currently subject to the Utility License Code, how does the timeline affect me?

You will be subject to the new code and provided sufficient notice and opportunity to comply with all the requirements, so there will not be any gaps in your authorization.

10. My company would like to obtain a franchise prior to the implementation of the ROW code, is that possible?*

Short answer: no. See below for more specific responses.

Scenario 1: Entity already operates via the utility license code.

Entity should continue to operate under the utility license code until the ROW code is implemented in January 2023.

Scenario 2: Entity has a current franchise with the City of Portland.

As stated above, for any entity with an expiration date PRIOR to January 1, 2023, or those currently operating under holdover tenant status, they will immediately shift to the city code on January 1, 2023. This also means that if your franchise agreement expires prior to January 1, 2023, the city will honor the agreement through December 31, 2022.

For any entity with an expiration date on or AFTER January 1, 2023, you will shift to the city code the day after your existing franchise agreement expires. For example, if your agreement expires in February 10, 2023, we will notify weeks prior to walk you through the process to shift you to the new code, which you would be subject to on February 11, 2023.

11. I would like to offer comments immediately. Where do I send them?

Please send any comments to: ComTech@PortlandOregon.gov

Have questions or would like to set up a phone call with OCT staff? Please contact us by email (ComTech@PortlandOregon.gov) to set up a phone call.