

ORDINANCE NO. 2025-09

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA, AMENDING CHAPTER 23 OF THE PEORIA CITY CODE (1992), ARIZONA BY ADOPTING SECTION 23-107 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; PURPOSE AND FINDINGS; BY ADOPTING SECTION 23-108 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; DEFINITIONS; BY ADOPTING SECTION 23-109 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; LICENSE TO OPERATE; REQUIRED; BY ADOPTING SECTION 23-110 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; FAILURE TO HAVE LICENSE; VIOLATION AND PENALTIES; BY ADOPTING SECTION 23-111 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; LIMITATIONS ON LICENSE TO OPERATE; BY ADOPTING SECTION 23-112 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; LICENSE APPLICATION; BY ADOPTING SECTION 23-113 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; LICENSE DURATION; BY ADOPTING SECTION 23-114 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; LICENSE FEE; BY ADOPTING SECTION 23-115 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; LOCATION AND RELOCATION IN RIGHTS-OF-WAY; BY ADOPTING SECTION 23-116 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; CONFLICT WITH CITY PROJECTS; BY ADOPTING SECTION 23-117 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; RELOCATION OF FACILITIES; BY ADOPTING SECTION 23-118 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; DAMAGE TO CITY RIGHTS-OF-WAY AND FACILITIES; BY ADOPTING SECTION 23-119 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; CITY POLICE POWER; CONTINUING JURISDICTION; BY ADOPTING SECTION 23-120 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; REMOVAL AND ABANDONMENT OF PROPERTY BY LICENSEE; BY ADOPTING SECTION 23-121 PERTAINING TO FIBER OPTIC COMMUNICATIONS SYSTEMS; EXEMPTION; AND PROVIDING FOR SEVERABILITY, FOR CLERICAL CORRECTIONS, AND FOR AN EFFECTIVE DATE.

WHEREAS, the City of Peoria recognizes the importance of accommodating the community's needs for Fiber Optic Communications Services in the rights of way along with balancing the need to manage the City's rights-of-way, and other City owned property and to ensure providers fairly compensate the City for use of the City's rights-of-way, and other City owned property;

WHEREAS, the City of Peoria deems it necessary to adopt certain regulations regarding the use of City's rights-of-way, and other City owned property to protect the health, safety, and welfare of the City of Peoria residents;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 23 of the Peoria City Code (1992) is hereby amended by adopting Section 23-107 through Section 23-121 as shown in Exhibit A.

SECTION 2. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3. Clerical Corrections. The City Clerk is hereby authorized to correct typographical, clerical, and grammatical errors, if any, related to this Ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the City Code. Any such changes shall be in writing and approved by the City Attorney.

SECTION 4. Effective Date. This Ordinance shall become effective in the manner provided by law.

**EXHIBITS ON FILE AT THE PEORIA CITY CLERK'S OFFICE – 8401 W. Monroe Ave.
Peoria, Arizona**

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona this 22nd day of April 2025.



Jason Beck, Mayor

April
~~March~~ 30, 2025

Date Signed


ATTEST:



Agnes Goodwine, City Clerk



APPROVED AS TO FORM:



Emily Jurmu, City Attorney

Published in: Peoria Times

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Effective Date: May 28, 2025

Exhibit A

Amendments to the Peoria City Code, Chapter 23

HOW TO READ THIS DOCUMENT

Applicable sections of the City Code are denoted by **highlighted bold text** for ease of readability during the drafting process.

Unless otherwise stated, provisions or regulations being deleted are shown in red strikethrough text or a line through the graphic, like this: ~~Provisions that are being deleted are shown with a red strikethroughs text~~. Graphics containing red strikethrough are intended to remove the graphic in its entirety as well as any text that is embedded in the graphic.

Provisions or regulations that are being added are shown in double-underlined blue text, like this: Provisions that are being added are shown in double-underlined blue text. Graphics containing a double blue box are intended to add the graphic in its entirety as well as any text that is embedded in the graphic.

Only those changes noted through the above methods for the specific sections and subsections of the City Code identified shall be made. When regulations, graphics or other text is omitted, or is shown unchanged in adjoining sections or subsections of the code, it shall remain unchanged.

Section 1. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-107 pertaining to Fiber Optic Communications Systems; Purpose and findings, which shall read as follows:

Sec. 23-107. Fiber Optic Communications Systems; Purpose and finding.

The purpose of this ordinance is to establish a policy governing the management of Public Highways and rights-of-way for the installation, construction, operation or maintenance of any Fiber Optic Communications Systems and the provision of Fiber Optic Communications Services. This will enable the City to:

(a) Issue Licenses to corporations who use the Public Highways and rights-of-way to provide Fiber Optic Communications Services on a competitively neutral and nondiscriminatory basis;

(b) Manage the Public Highways and rights-of-way in order to minimize the impact and cost to Peoria citizens of the placement of Fiber Optic Communications Systems within Public Highways and rights-of-way;

(c) Manage the Public Highways and rights-of-way so as to maximize their efficient use, thereby minimizing the foreclosure of future additional uses of such Public Highways and rights-of-way; and

(d) Minimize congestion, inconvenience, visual impact, and other adverse effects on the City's Public Highways and rights-of-way.

Therefore, in this ordinance the City Council intends:

(a) To ensure that locally elected officials manage local Public Highways and rights-of-way consistent with their fiduciary trust obligations;

(b) To ensure compliance with public health, safety and welfare measures for Public Highways and rights-of-way;

(c) To encourage public-private partnerships to provide Fiber Optic Communications Systems needed for the most cost-effective delivery of Fiber Optic Communications Services, including interstate services;

(d) To conserve the limited physical capacity of the Public Highways and rights-of-way held in public trust by the City; and

(e) To assure that the City's current and ongoing costs of granting and regulating private access to and use of the Public Highways and rights-of-way are fully paid by the persons seeking such access and causing such costs.

Section 2. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-108 pertaining to Fiber Optic Communications Systems; Definitions, which shall read as follows:

Sec. 23-108. Fiber Optic Communications Systems; Definitions.

In this Section 23-108, unless the context otherwise requires, the following terms, phrases, words, and their derivatives must have the meanings given herein. Unless otherwise defined in these Sections 23-107 through 23-121, the rules of construction and definitions set forth in Sections 1-2, 19-2, 23-89, and 23-92 of the Peoria City Code apply to these Sections 23-107 through 23-121 as they relate to Fiber Optic Communications Licenses and encroachment permits for Fiber Optic Communications Systems and Fiber Optic Communications Services regulated by this Chapter of the Code. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "must" and "must" are mandatory, and "may" is permissive. Notwithstanding any provision of this code, and only for the purpose of these Sections 23-107 through 23-121, the following words,

terms, and phrases must have the following meaning ascribed to them, except where the context clearly indicates a different meaning:

(a) *Annual Minimum Fee (AMF):* Means the annual fee assessed prior to the Licensee earning revenues from the provision of Fiber Optic Communications Services, which is based on the size of Licensee's service area and impact on City's infrastructure as determined by the City Engineer.

(b) *Applicant:* Means a person who submits an application for a Fiber Optic Communications License to the City.

(c) *Application:* Means a submission or response by a Fiber Optic Communications provider in accordance with City specifications requesting the City grant a Fiber Optic Communications License.

(d) *Fiber Optic Communications:* Means transmitting data from one place to another by sending pulses of infrared or visible light through an optical fiber.

(e) *Fiber Optic Communications Services:* Means intrastate and interstate data communication services provided over a Fiber Optic Communications System. This definition includes any provision of broadband internet services and leasing, contracting, or leasing of fiber optic connections, fiber optic strands, or conduit, within the Fiber Optic Communications System to third parties. This definition does not include Telecommunications and Telecommunications Services as defined in A.R.S. § 9-581, Wireless Services as defined in A.R.S. § 9-591, Cable Services, as defined in Chapter 19 of the City Code, and Video Services as defined in A.R.S. § 9-1401.

(f) *Fiber Optic Communications System:* Means a network of fiber optic cables and all related parts and property including, without limitation, conduit, carrier pipe, cable fibers, repeaters, power sources, and all other attachments and appurtenances designed for or used to provide Fiber Optic Communication Services whether in active use or not. Fiber Optic Communications Systems may be referred to in these Sections 23-107 through 23-121 as "Facilities". Any reference to a Licensee's Fiber Optic Communications System or Facilities refers to the Fiber Optic Communications System as a whole or any part thereof.

(g) *Fiber Optic Communications License and License:* Means any grant under Sections 23-107 through 23-121 of this Chapter by the City allowing such Licensee to construct, operate, use, and maintain a Fiber Optic Communications System or to provide Fiber Optic Communications Services in the City. Any such authorization, in whatever term granted, must not mean and include, and is distinct from, any license or permit required for the privilege of transacting and carrying on a business within the City in accordance with the City of Peoria Sales Tax Code or Chapter 11 of this code.

(h) *Gross Revenues:* means all cash, credits, property of any kind of nature, or other consideration, less related bad debts not to exceed one and one-half percent (1½%) annually, that is received directly or indirectly by the Licensee, its affiliates, subsidiaries, parent, or any person, firm, or cooperation in which the Licensee has a financial interest

or that has a financial interest in the Licensee and that is derived from or attributable to the Licensee's operation of its Fiber Optic Communications System and provision of Fiber Optic Communications Services within the City, including, but not limited to:

- (1) Revenue from all charges for services provided to Subscribers;
- (2) Revenue from all charges for the insertion of commercial advertising upon the Fiber Optic Communications System;
- (3) Revenue from all charges for the use of, lease of, or license of fiber optic connections, fiber, or conduit.
- (4) Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a User and/or subscriber to receive Fiber Optic Communications Services;
- (5) And any other income derived from the Fiber Optic Communications System;
- (6) "Gross Revenues" must not include taxes, fees, or surcharges collected by Licensee on behalf of any governmental authority; any increase in the value of any stock, security or asset; dividends or other distributions made in respect of any stock or securities; value received by a Licensee (or any of its affiliates, subsidiaries or parent) through cooperative advertising.
 - (i) Internet service provider (ISP): Means an entity that provides broadband services for accessing and using the internet.
 - (j) Laws: Means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance existing or heretofore enacted or established.
 - (k) Licensee: Means any person who has applied for and been granted a Fiber Optic Communications License pursuant to Sections 23-107 through 23-121 of this Chapter.
 - (l) Notice: Means mailing via USPS to the address provided by the parties on the Fiber Optic Communications License.
 - (m) Person: Means as defined in Section 23-92 of this code.
 - (n) Provider: Means a person who delivers Fiber Optic Communications Services or constructs, operates, uses, or maintains a Fiber Optic Communications System.
 - (o) Public Highway or Highway: Means all roads, streets, City owned property, and alleys and all other dedicated public rights-of-way and public utility easements of the City.
 - (p) Residential Unit: means any property used as a residence, regardless of zoning classification, which will be utilized as a basis to calculate the AMF. If Licensee has a contract to provide Fiber Optic Communications Services to a multiple dwelling unit

complex, including condominiums or apartments, Licensee shall include the total number of Residential Units available within the property for calculation of the AMF.

(q) Rights-of-Way or ROW shall have the same meaning as Public Highway or Highway.

(r) User: means a recipient of Fiber Optic Communications Services provided by a Licensee.

Section 3. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-109 pertaining to Fiber Optic Communications Systems; license to operate; required, which shall read as follows:

Sec. 23-109. Fiber Optic Communications Systems; license to operate; required.

The City Council may grant a Fiber Optic Communications License to any person, whether or not such person has been granted a license pursuant to any other provision of the Peoria City Code, who offers to provide Fiber Optic Communications Services or construct, install, maintain, or operate a Fiber Optic Communications System under and pursuant to the terms and provisions of Sections 23-107 through 23-121 of this Chapter.

The City Engineer or designee is authorized to approve and execute a Fiber Optic Communications License on behalf of the City and to authorize minor deviations thereto upon a showing of good cause.

The City explicitly reserves the power, without limitation, to, in its sole discretion, amend any section of the City Code to require additional or greater standards of construction, operation, maintenance, or otherwise pursuant to the City's lawful police powers.

It is unlawful for any person to construct, install, maintain, or operate a Fiber Optic Communications System or any portion thereof or provide Fiber Optic Communications Services using any City right-of-way or other City owned property, unless said person has first:

(1) Applied for and been granted a Fiber Optic Communications License by the City Council pursuant to the provisions of this Chapter;

(2) Obtained all relevant permits required by the City Engineer;

(3) Posted all insurance, bonding, security, or any other requirements required by the City Engineer; and

(4) Complied with all provisions of the Peoria City Code, a Fiber Optic Communications License, the City of Peoria Engineering Standards, any other requirements of the City Engineer or designee, and all other laws, directives, and regulations.

(e) The power to grant a Fiber Optic Communications License is in the sole discretion of the City Council. Nothing in this Chapter must be deemed to require the City to grant a Fiber Optic Communications License to any person.

(f) All provisions of these Sections 23-107 through 23-121, and any Fiber Optic Communications License are binding upon each Licensee, its successors, lessees, or assignees and such responsibility may not be transferred except with the written permission of the City Engineer.

(g) Notwithstanding any language to the contrary in a Fiber Optic Communications License or elsewhere, all licenses granted pursuant to these Sections 23-107 through 23-121 are non-exclusive privileges and will never impart to the Licensee or any other party, any right of property in any City right-of-way or other City owned property.

(h) It is unlawful to provide Fiber Optic Communications Services anywhere within the City except pursuant to a Fiber Optic Communications License.

(i) A Fiber Optic Communications License granted under this Chapter must never have the power to or the effect of:

(1) Authorizing a Licensee to use the City's rights-of-way or other City owned property to provide any service other than Fiber Optic Communication Services;

(2) Invalidating any franchise, license, or permit that authorizes the use of the City's rights-of-way, or other City owned property for any other service;

(3) Authorizing any party holding any franchise, license, or permit other than a Fiber Optic Communication System License, to use the City's rights-of-way or other City owned property to provide to install, maintain, construct, or operate a Fiber Optic Communications System, or to provide Fiber Optic Communications Services without first obtaining a Fiber Optic Communications License.

(j) Nothing in this ordinance must be deemed to affect the terms or conditions of any franchise, license, or permit issued by the City prior to the effective date of this ordinance or to release any party from its obligations thereunder. The City Manager, with the consent of the City Council, may enter into an agreement with any existing franchise holder, licensee, or permittee to modify or terminate any existing franchise, license, or agreement, subject to the terms of those agreements.

Section 4. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-110 pertaining to Fiber Optic Communications Systems; failure to have license; violation and penalties, which shall read as follows:

Sec. 23-110. Fiber Optic Communications Systems; Failure to have license; violation and penalties.

(a) This ordinance manages and regulates Fiber Optic Communications Systems and the provision of Fiber Optic Communications Services in the City's rights-of-way and other City owned property, it does not grant any right to occupy the City's rights-of-way or other City owned property except as described herein.

(b) Any person, firm or corporation that violates any provision of Sections 23-107 through 23-121, shall be guilty of a class one misdemeanor. Each day of violation continued shall be a separate offense, punishable pursuant to City Code.

Section 5. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-111 pertaining to Fiber Optic Communications Systems; limitations of license, which shall read as follows:

Sec. 23-111. Fiber Optic Communications Systems; Limitations of License.

The City specifically reserves the right, without limitation, to grant a Fiber Optic Communications License to any person or to authorize itself or any other governmental entity to provide Fiber Optic Communications Services without first obtaining a Fiber Optic Communications License at any time and in any area of the City in the City's sole discretion.

Any right or privilege in the City's rights-of-way or any other City property claimed under any license or by any licensee is subordinate to any and all rights of the City and all other governmental entities including without limitation prior or subsequent occupancy or use thereof by the City or any governmental agency and is subordinate to any prior easements or other property interests therein; provided, however, that nothing herein must extinguish or otherwise interfere with property rights established independently of any license issued pursuant to these Sections 23-107 through 23-121.

Any right, power, or duty imposed upon any officer, employee, department, or board of the City pursuant to this Chapter is subject to transfer by the City to any other officer, employee, department, or board of the City pursuant to this code, in the City's sole discretion.

Licensees are subject to and must comply with all Peoria City Codes, subdivision regulations, the City of Peoria Engineering Standards, a Fiber Optic Communications License, any other requirements of the City Engineer or designee, the provisions of any license, permit, or franchise issued by the City, and all other laws, directives, and regulations.

Any Fiber Optic Communications License granted under Sections 23-107 through 23-121 of this Chapter is hereby deemed to be an executory contract under the provisions of 11 U.S.C. Section 365.

The City shall not issue any permits related to or otherwise authorize a person to construct, occupy, or install any portion of a Fiber Optic Communications System in the City's

rights-of-way or other City property unless the person, entity, or corporation has first been granted a Fiber Optic Communications License under this Chapter.

Section 6. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-112 pertaining to Fiber Optic Communications Systems; license application, which must shall as follows:

Sec. 23-112. Fiber Optic Communications Systems; license application.

() Any person, firm or corporation desiring a Fiber Optic Communications License under this Chapter may file an application with the City Engineer in a form prescribed by the City Manager and must pay an application filing fee determined by the City Manager. No Fiber Optic Communications License will be granted unless the applicant:

Provides any other information that the City in its sole discretion deems necessary to ensure that the applicant will comply with requirements for use of and location of such Facilities;

Identifies the person, entity, or corporation including its legal name, current address, and telephone number that connects to a live person authorized to make decisions related to the Fiber Optic Communications System and License;

Thoroughly and accurately describes the services to be provided;

Includes a complete copy of all agreements with all other persons, entities, or corporations that will use the Facilities to provide Fiber Optic Communications Services,

Agrees, in writing provided to the City, to comply with all use requirements that the City may establish from time to time;

Provides current, accurate, and detailed maps showing the locations of all of applicant's Facilities and any other Facilities the applicant may use that are located in the City rights-of-way or other City owned property, and agrees in writing to provide updated maps to the City upon request and comply with any other mapping requirements or requests as the City may make from time to time;

Obtains and maintains for the duration of the License all insurance that the City deems necessary in its sole discretion, and provide proof of such insurance to the City prior to issuance of the License and upon request throughout the duration of the License;

Agrees, in writing provided to the City, to post all bonds and securities as required in the sole discretion of the City Engineer;

Agrees, to fully indemnify the City, its officers, employees, agents, boards, and commissions, in a form satisfactory to the City;

Provides a written waiver of all recourse whatsoever against the City or its officers, employees, agents, boards, and commissions for any loss, cost, expense or damage arising out of any provision of the License, any City requirement related to the License, or because of any defects in this Chapter or the License in a form satisfactory to the City;

Agrees to comply with and be bound by all City Codes, administrative and enforcement provisions as the City may establish from time to time.

(a) Upon receiving an application for a Fiber Optic Communications License that satisfies the conditions of Subsection (a) above, the City may proffer a draft Fiber Optic Communications License to the applicant for review, and may inquire into any matters the City, in its sole discretion, deems relevant to the issuance of a Fiber Optic Communications License. If the applicant agrees to the terms and conditions of the License, and otherwise satisfies all relevant conditions, as determined in the sole discretion of the City Engineer, the License must be submitted for a vote by the City Council with a recommendation for approval. Notwithstanding the foregoing, the City may refuse to grant a Fiber Optic Communications License if the City determines in its sole discretion that the applicant has previously had its Fiber Optic Communications License (or any similar license) revoked in any jurisdiction, or for any other reason permitted under law.

(b) Every Fiber Optic Communications License shall be subject to the following administrative and enforcement provisions:

Fiber Optic Communications Licenses are personal to the Licensee. No transfer of a License, or change of control over the person, entity, or company holding the License (including, but not limited to transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) will be valid or effective without the City's prior written consent, which consent will not be unreasonably withheld or delayed. Any attempted transfer in violation of this Section shall render the License revoked.

In making a determination as to whether to approve a transfer of a Fiber Optic Communications License the City may consider without limitation: i) the same information and qualifications required of an original application for said License; ii) whether the Licensee is in compliance with the Fiber Optic Communications License, the City Code, and all relevant department guidelines; iii) whether the proposed transfer would result in an evasion of any other applicable provisions of law, or impair any lawful contracts; and iv) the effect of the proposed transfer on the City's interests and responsibilities.

No application for a transfer of a Fiber Optic Communications License will be considered unless the proposed transferee agrees in writing provided to the City that it will abide by and accept all terms of the Peoria City Code, the Fiber Optic Communications License, and all relevant department guidelines and will assume all obligations, liabilities, and responsibilities for all acts and omissions, known and unknown, of the previous Licensee and the Fiber Optic Communications License for all purposes, including renewal.

Approval by the City of a transfer of a license does not constitute a waiver or release of any of the rights of the City under this Chapter or the License, whether arising before or after the date of the transfer.

Every License is subject to revocation if the Licensee fails to comply with any terms of the Peoria City Code, the Fiber Optic Communications License, and all relevant department guidelines. The City may revoke a Fiber Optic Communications License no less than sixty (60) days after providing notice to the Licensee according to the terms of the License of the defect in performance, and failure of Licensee to cure the defect in performance to the City's satisfaction within sixty (60) days of said notice. Except if the City finds that the defect in performance is due to intentional misconduct, is a violation of any law, or is part of a pattern of violations of which the City has previously provided notice to the Licensee according to the terms of the License and provided Licensee a reasonable opportunity to cure such pattern of violations, the City may revoke the Fiber Optic Communications License immediately. A hearing before a City hearing officer designated to hold such hearings, pursuant to Section 2-20 of the Peoria City Code, must be held before a License is revoked if the Licensee requests a hearing.

Additional penalties for a violation of the terms of a Fiber Optic Communications License.

Damages for violation of the License terms. Any remedies available to the City are cumulative and are not limited by the recovery of any amounts pursuant to the insurance provisions of the License, or pursuant to any indemnity clause.

A requirement that if the Licensee fails to pay amounts owed to the City by the time prescribed for payment, the Licensee must pay interest on the amounts owed, at the rate of one percent (1%) per month.

A requirement that Licensee must produce books and records for the City's inspection and copying, prepare reports, respond to questions and permit the City to have access to its Facilities as the City may request in order to determine whether Licensee has complied with its obligations under the license, or other applicable law.

(c) A Licensee may apply for a renewal of the Fiber Optic Communications License prior to the expiration of the License, which the City may approve or reject in accordance with the requirements of this Chapter.

(e) The grant of a license, permit or other authorization by the City is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation or warranty that a franchise is not required.

Section 7. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-113 pertaining to Fiber Optic Communications Systems; license duration, which shall read as follows:

Sec. 23-113. Fiber Optic Communications Systems; license duration.

Any Fiber Optic Communications License granted by the City pursuant to this Chapter shall commence upon adoption of the License and acceptance of the License by the provider within thirty (30) days of the grant. The License shall be effective for a period determined by the City Council, but not to exceed five (5) years, and subject to the conditions and restrictions provided in the instrument and this Chapter.

Section 8. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-114 pertaining to Fiber Optic Communications Systems; license fee, which shall read as follows:

Sec. 23-114. Fiber Optic Communications Systems; license fee.

All Licensees must pay to the City an annual license fee as set forth in this Section 23-114 of the City Code and as codified in Table 27-7 of the City Code. The annual license fee must be paid quarterly and/or annually on the anniversary date of the issuance of the License, as set forth in this Section 23-114, and submitted to the City's Chief Financial Officer. Any annual license fee unpaid thirty (30) days after the anniversary date of the issuance of the License will accrue interest at the rate of one percent (1%) per month.

Licensee shall pay an Annual Minimum Fee ("AMF") on a quarterly or annual basis until such time that Licensee begins earning revenue from the provision of Fiber Optic Communications Services, which Licensee will then transition to the fee structures set forth in Subsections 23-114(a)(2) and 23-114(a)(3) of this Section.

If the Licensee is offering internet services directly to subscribers and is the Internet Service Provider (ISP), Licensee shall transition to an annual license fee of three percent (3%) of Gross Revenues when three percent (3%) of gross revenues from the sale of internet services using Licensee's Facility exceeds the AMF.

(3) If a Licensee occupies any portion of the City rights-of-way or any other City property and leases, licenses, or contracts the use of fiber-optic broadband connections, strands of fiber, or conduit to any other party in exchange for any form of compensation, Licensee shall transition to a quarterly and/or annual payment of six percent (6%) of Gross Revenues when six percent (6%) of gross revenues from the leasing, licensing, or contracting Licensee's Facilities to any other party exceeds the AMF, unless Licensee provides evidence that such use is exempt from fees by any state or federal law. Users that lease, license or contract use of the Licensee's Facilities to provide Fiber Optic Communications Services as defined in this ordinance, Telecommunications and Telecommunication Services, as defined by A.R.S. §9-581, Wireless Services as defined in §9-591, Cable Services as defined in the Peoria City Code, or Video Services as defined in A.R.S. §9-1401, must obtain the appropriate Fiber Optic Communications License, Telecommunications, Wireless, Cable or Video Services license from the City.

(4) If a Licensee increases or decreases the size of the service area in which Fiber Optic Communications Services are provided, the AMF will be increased and/or decreased respectively.

(b) New residential subdivisions.

(1) Licensee may coordinate with a developer to install its Facilities within the rights-of-way and public highways of a new residential subdivision prior to completion of the street asphalt layer.

(2) If Licensee installs its Facilities in the rights-of-way and/or public highways of a new residential subdivision concurrent with new street construction that does not disturb the asphalt surface, Licensee will not be subject to the street restoration requirements set forth in the City's Street Cut Policy and in Section 23-63 of the Peoria City Code.

(3) Until the developer has obtained permits for fifty-one percent (51%) of the Residential Units, Facilities installed under this Subsection 23-114(b) will not be subject to an annual license fee, and any Residential Units that Licensee has passed on a local street and a collector street with its Facilities within the new residential subdivision, will be excluded from the calculation of the AMF. If the new residential subdivision is developed in phases, then the annual license fee or AMF shall be implemented when the developer has obtained permits for fifty-one percent (51%) of the Residential Units in that phase of the new residential subdivision. The Licensee must notify the City Engineer within thirty (30) days of the developer obtaining permits for fifty-one percent (51%) of the residential units in the new residential subdivision and the City Engineer shall verify the percentage of permits issued within the new subdivision.

(c) Each Licensee must reimburse the City for all additional expenses that the City incurs, in connection with the processing, evaluation and preparation of documents relating to the Fiber Optic Communications License including, without limitation, any and all administrative, engineering, publication, legal costs, and consultants' expenses. The City will document all such expenses by invoice. If expenses exceed the total amount of filing fees collected from the Applicant(s), the Licensee must pay to the City the excess amount within thirty (30) days of demand of the City. All amounts unpaid thirty (30) days after said demand will accrue interest at the rate of one percent (1%) per month.

(d) All fees described in this Section 23-114 will increase annually according to the Consumer Price Index (CPI) adjustments, to be applied annually, which will be based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Phoenix area, published by the U.S. Department of Labor, Bureau of Labor Statistics. The increase will be calculated by dividing the most recent calendar year's December CPI-U by the December CPI-U in the year rates last changed. In the event that the change between December CPIs indicates an adjustment of less than one percent (1%), a rate change may not be made for the upcoming year.

(e) Each year, before the anniversary date of the effective date of the Fiber Optic Communications License, each Licensee must submit an accounting and attestation to the City Engineer and the City's Chief Financial Officer that fully sets forth the following information:

(1) The total Gross Revenue generated by all of Licensee's Facilities located in the City's rights-of-way and any other City property during the twelve (12) consecutive months prior to the anniversary date of the effective date of the Fiber Optic Communications License. Licensee must submit the Gross Revenue report to the City Engineer and the City's Chief Financial Officer annually by the anniversary date of the effective date of the Fiber Optic Communications License.

(2) Identities of all third parties to which Licensee is providing fiber connections, strands of fiber, or conduit in exchange for any form of compensation. If Licensee is not providing fiber connections, strands of fiber or conduit to any third party, Licensee must attest to such.

(3) Provide the total linear footage of fiber or conduit provided to a third party in exchange for any form of compensation. If Licensee is not providing strands of fiber or conduit in exchange for any form of compensation to any third party, Licensee must attest to such.

(f) If in any year before the anniversary of the effective date of the Fiber Optic Communications License, the City Engineer believes Licensee has not submitted a complete and accurate accounting and attestation to the City as required by Section (e) above, the City will provide written notice to the Licensee of such violation. If the Licensee has not cured the violation within thirty (30) days of the City mailing said notice, the Fiber Optic Communications License will immediately be revoked.

Section 9. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-115 pertaining to Fiber Optic Communications Systems; location and relocation in rights-of-way, which shall read as follows:

Sec. 23-115. Fiber Optic Communications Systems; Location and relocation in rights-of-way.

Each Licensee is responsible for all work within the City's rights-of-way, or any other City owned property, or work that may affect the City's rights-of-way or any other City owned property carried out by the Licensee, its contractors, agents, and employees. Each Licensee must ensure that:

All of Licensee's Facilities are installed, constructed, and maintained in strict accordance with all City Codes, subdivision regulations, the City of Peoria Engineering Standards, the Fiber Optic Communications License, any other requirements of the City Engineer or designee, the provisions of any license, permit, or franchise issued by the City, and all other laws, directives, and regulations.

No work within the City rights-of-way or any City owned property, or work that may affect the City rights-of-way or any City owned property, may commence until all applicable bonds, licenses, permits, and any other requirements of the City Engineer have been satisfied and/or approved by the City.

All Facilities are installed, constructed, and maintained so that no additional costs are imposed upon the City, and so that the Facilities do not interfere with other uses or users of any public right-of-way or other City owned property.

All Facilities must be located (or relocated) so as to minimize interference with any City use of the City's rights-of-way, and other City owned property, including without limitation traffic control. Any construction that has the potential to affect traffic control, including without limitation, backfilling, compaction, and paving, as well as the location or relocation of said Facilities may be subject to additional regulation in the sole discretion of the City Engineer.

In the event that any portion of a Licensee's Facilities are used by a provider other than the Licensee for any reason, the Licensee and every provider using said portion of the Licensee's Facilities, are jointly and severally responsible for the Facilities. Licensee and all users are jointly and severally responsible to ensure that all Facilities are installed, constructed, and maintained in strict accordance with all City Codes, subdivision regulations, the City of Peoria Engineering Standards, Fiber Optic Communications License, any other requirements of the City Engineer or designee, the provisions of any license, permit, or franchise issued by the City, and all other laws, directives, and regulations.

The Licensee must keep and maintain accurate installation records of the location of all portions of the Facilities and furnish said records to the City upon request or at such periodic intervals as the City may require. For underground Facilities (whether new or relocated), Licensee must provide such records in a format compatible with the current City mapping tools in a way that clearly and accurately shows the location of the underground and above ground Facilities.

Whenever a Licensee causes any opening or alteration whatsoever to be made for any purpose in any City right-of-way or other City owned property, all related work must be completed within a reasonable time, and before such work will be considered complete, the Licensee must, without expense to the City, restore any disturbance in a manner consistent with all City Codes, subdivision regulations, the City of Peoria Engineering Standards, a Fiber Optic Communications License, any other requirements of the City Engineer or designee, the provisions of any license, permit, or franchise issued by the City, and all other laws, directives, and regulations, and subject to the approval of the City Engineer.

A Licensee must not install, use, or maintain any of its Facilities in such a manner as to interfere with the City's placement, construction, use, or maintenance of its rights-of-way or other City owned property, including without limitation, street lighting, water pipes, drains, sewers, traffic signal systems, or any other system that has been, or may be, installed, maintained, used, or authorized by the City. At any time, upon the City's request, Licensee must relocate Facilities at no cost or expense to the City, within a timeframe specified by the City. If Licensee has not moved the Facilities or otherwise made arrangements acceptable to the City Engineer within thirty (30)

days after the City mailed notice of such request to the contact address provided by the Licensee, the City may relocate said Facilities in the City's sole discretion. In such event, Licensee must reimburse the City any costs the City incurs related to the removal and relocation of the provider's Facilities, including all design and construction costs.

No Licensee must install, maintain, or use any of its Facilities in such manner as to damage or interfere with any Facility of another provider located within the City rights-of-way or other City owned property. If the City Engineer determines that a Licensee has violated this section, the Licensee must relocate its Facilities at no cost or expense to the City in such a way that eliminates the violation.

No person, entity, or corporation must install Facilities within the City rights-of-way or other City owned property except in strict accordance with plans approved by the City. A Licensee may install Facilities in existing conduit after providing the City proof acceptable to the City Engineer, that the owner of said conduit has granted the Licensee permission to install Facilities within the Owner's conduit. If a Licensee uses existing conduit of another provider, the Licensee and provider are subject to the provisions of this Chapter.

No Licensee may begin any work within the City rights-of-way or other City owned property until said Licensee has obtained and provided proof acceptable to the City Engineer of satisfaction of all insurance, bonding, security, or any other requirements of the City Engineer. If a Licensee believes that the City has not specified such requirements for the type of work proposed, said Licensee must obtain written approval from the City Engineer before commencing any work within the City rights-of-way or other City owned property.

If the City Engineer finds that a Licensee has begun work in violation of this Chapter, City Codes, subdivision regulations, the City of Peoria Engineering Standards, a Fiber Optic Communications License, any other requirements of the City Engineer or designee, the provisions of any license, permit, or franchise issued by the City, and all other laws, directives, and regulations, the City Engineer may order the provider to stop work immediately. After the City Engineer has issued a stop work order, the City Engineer may require said Licensee to cease using the Facility, until all requirements are satisfied, or to remove the Facility. If Licensee has not moved the Facilities or otherwise made arrangements acceptable to the City Engineer within thirty (30) days after the stop work order, the City may relocate said Facilities in the City's sole discretion. In such event, said Licensee must reimburse the City any costs the City incurs related to the removal and relocation of the provider's Facilities, including all design and construction costs.

Notwithstanding the foregoing, in the event that a Licensee must make emergency repairs to its Facilities in order to remain in compliance with any federal or state law, the Licensee must notify the City prior to initiating such repairs, or as soon as practicable, and the license must obtain all necessary permits as soon as practicable.

Section 10. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-116 pertaining to Fiber Optic Communications Systems; conflict of City projects, which shall read as follows:

Sec. 23-116. Fiber Optic Communications Systems; conflict with City projects.

If the City suspects that Facilities used by a Licensee may create or have created a conflict with any proposed City construction, the City will notify Licensee in writing. Within fourteen (14) days of the mailing of such notice, the Licensee must either:

Locate and upon City's request, expose said Facilities, and provide the location information to the City; or

Use a location service under contract with the City to locate and/or expose said Facilities and provide such information to the City. The Licensee must then reimburse the City for all of the actual costs to the City resulting from the use of such location service.

If Licensee has not provided said location information to the City or otherwise made arrangements acceptable to the City Engineer within thirty (30) days after the mailing of the notice, the City may relocate said Facilities in the City's sole discretion. In such event, said Licensee must reimburse the City any costs the City incurs related to the relocation of the provider's Facilities, including all design and construction costs.

If the City Engineer finds that a Licensee's Facilities are in conflict with any City Project, the City will notify Licensee in writing. In such event, the Licensee must:

As soon as practicable, but in no event later than six (6) months from the mailing of the notice of conflict, remove or relocate the conflicting facilities in a manner approved by the City Engineer. This period may be extended at the sole discretion of the City Engineer.

(2) If the City Engineer finds that a conflict exists after the City has provided the project contractor notice to proceed on the project, the City will notify Licensee that an exigency exists. Upon receipt of such notice, Licensee must immediately begin the process of removing or relocating the Facilities. Notwithstanding any language in Sections 23-107 through 23-121 of this Chapter or a Fiber Optic Communications License, Licensee must begin actual construction of such removal or relocation no later than seventy-two (72) hours after receipt of such notification.

Section 11. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-117 pertaining to Fiber Optic Communications Systems; relocation of facilities, which shall read as follows:

Sec. 23-117. Fiber Optic Communications Systems; relocation of Facilities.

(a) Any language in any license notwithstanding, the City reserves every and all rights to the City's rights-of-way and all other City owned property, including without limitation the right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, maintain, modify, abandon, or alter any aerial, surface, or subsurface improvements thereon. Such improvements may include without limitation, water mains, traffic control conduits, cable, and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, and any other public construction. When the City invokes such rights for any reason, the City will provide written notice to the Licensee. Within thirty (30) days form the mailing of such notice, Licensee must remove all its Facilities from the stated rights-of-way at no cost or expense to the City. If Licensee has not moved the Facilities or otherwise made arrangements acceptable to the City Engineer within thirty (30) days after the mailing of notice, the City may relocate said Facilities in the City's sole discretion. In such event, said Licensee must reimburse the City any costs the City incurs related to the removal and relocation of the provider's Facilities, including any design and construction costs. The City shall not bear any cost of removal or relocation of existing Facilities, unless the City Engineer has agreed to bear said costs.

(b) If a Licensee's removal or relocation of Facilities delays construction of any public project, causes the City to be liable for damages including without limitation damages or delay, or causes the City to incur any cost or expense, including without limitation attorney's fees, the Licensee must reimburse the City in full.

(c) In the event a Licensee disputes the amount of damages attributable to the Licensee, the matter must be referred to the dispute resolution board. The dispute resolution board must consist of one member selected by the City, one member selected by the Licensee, and a third person agreed upon by both parties. The person agreed upon by both parties must be chairperson of the dispute resolution board. Expenses for the dispute resolution board must be shared equally by the City and the Licensee. The board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than sixty (60) days after notification by the City of Licensee's allocated share of damages suffered by the City. All decisions of the dispute resolution board are non-binding on either the City or the Licensee, however, the findings of the dispute resolution board must be admissible in any legal action. The City and the Licensee must accept or reject findings of the dispute resolution board within thirty (30) days after receipt of the findings. If damages are assessed by the dispute resolution board, the Licensee must pay the City within thirty (30) days. Late charges of five percent (5%) and interest charges of one and one-half percent per month must be added for late payment.

(d) Except as otherwise provided in a license, franchise or permit or by other provision of law, the entire cost of relocation must be borne by the City if the Licensee is required by the City to relocate Facilities which are located within private easements obtained by the Licensee prior to the dedication of the public street or easement from which the Facilities must be relocated. These prior rights of the Licensee would also be unaffected by any subsequent relocation. A prior right as used in this Subsection (d), means private easement rights obtained by the Licensee prior to the dedication of the streets or public ways from which the Facilities are requested by the City to be relocated. In the case of Facilities that serve multiple purposes, the prior rights must extend to all uses for this exception to apply.

Section 12. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-118 pertaining to Fiber Optic Communications Systems; damage to City rights-of-way and facilities, which shall read as follows:

Sec. 23-118. Fiber Optic Communications Systems; damage to City rights-of-way and facilities.

(a) If, Licensee during construction, installation or repair of its Facilities causes damage to pavement, sidewalks, driveways, landscaping, surface or subsurface of any rights-of-way or adjoining public property, or the public improvement located thereon, therein, or thereunder the public property or other property, the Licensee or the authorized agent shall, at its own expense and in a manner approved by the City, replace and restore such places to a condition satisfactory to the City Engineer that existed before said work was commenced. The Licensee shall further maintain all such restoration related to Licensee's activities, in the condition approved by the City for a minimum period of one (1) year following such restoration. Upon failure of the Licensee to complete any work required by law, or by the provisions of this Chapter, or by its License, to be done in any Street, within ten (10) days following due notice and to the satisfaction of the City Engineer, the City may, at its option, cause such work to be done and the Licensee shall pay to the City the cost thereof in the itemized amounts reported by the City Engineer to the Licensee within fifteen (15) days after receipt of such itemized report. Or, at City's option, City may demand of Licensee the estimated cost of such work as estimated by the City Engineer, and such shall be paid by Licensee to City within fifteen (15) days of such demand. Upon award of any contract or contracts therefor, Licensee shall pay to City, within fifteen (15) days of demand, any additional amount necessary to provide for cost of such work. Upon completion of such work, Licensee shall pay to City or City shall refund to Licensee such sums so that the total received and retained by City shall equal the cost to the City of such work. "Cost" as used herein shall include fifteen percent (15%) of other costs for the City's overhead, together with any interest charges incurred by City arising out of Licensee's late payment to City under this section.

Section 13. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-119 pertaining to Fiber Optic Communications Systems; City police power; continuing jurisdiction, which shall read as follows:

Sec. 23-119. Fiber Optic Communications Systems; City police power; continuing jurisdiction.

Every License is at all times subject to all lawful exercise of the police power by the City, including any and all City Codes, subdivision regulations, the City of Peoria Engineering Standards, Fiber Optic Communications License, any other requirements of the City Engineer or designee, the provisions of any license, permit, or franchise issued by the City, and all other laws, directives, and regulations which the City has adopted or will ever adopt, and all laws, rules, regulations, orders, and policies of the State of Arizona and the United States government. In the event of a conflict between this ordinance and other provisions of the City Code, the stricter requirement must apply.

(b) In addition to all other rights and powers retained by the City under this Chapter or otherwise, the City Engineer has the right and authority to revoke any Fiber Optic Communications License and all rights and privileges of a Licensee thereunder upon finding that a Licensee has committed a recurring, protracted, or material breach of the License, City Codes, subdivision regulations, the City of Peoria Engineering Standards, a Fiber Optic Communications License, any other requirements of the City Engineer or designee, the provisions of any license, permit, or franchise issued by the City, and all other laws, directives, and regulations.

(c) Any finding by the City Engineer pursuant to any provision of Sections 23-107 through 23-121 is subject to appeal and a hearing before a City hearing officer, designated to hold such hearings pursuant to Section 2-20 of the Peoria City Code, should the Licensee request such a hearing.

Section 14. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-120 pertaining to Fiber Optic Communications Systems; removal and abandonment of property of Licensee, which shall read as follows:

Sec. 23-120. Fiber Optic Communications Systems; Removal and abandonment of property of Licensee.

If the use of substantial part of the Facilities is discontinued for any reason for a continuous period of twelve (12) months, or if Facilities or property have been installed in any City right-of-way or other City owned property without strictly complying with the requirements of a Fiber Optic Communications License and this Chapter, or after a Fiber Optic Communications License has been terminated, revoked, canceled, or has expired without renewal, the City may provide notice to the Licensee that the Facilities or property must be removed. The Licensee must promptly and completely remove all such Facilities and property from City rights-of-way and other City owned property and restore the street or other area from which such property has been removed to a condition satisfactory to the City Engineer.

If such Licensee has not promptly and completely removed the Facilities and property and completely restored area to a condition satisfactory to the City Engineer or otherwise made arrangements acceptable to the City Engineer within thirty (30) days after the mailing of the notice, the City may relocate said Facilities in the City's sole discretion. In such event, said Licensee must reimburse the City any costs the City incurs related to the removal and relocation of the provider's Facilities, including all design and construction costs.

Any property of the Licensee remaining in place one hundred eighty (180) days after the termination or expiration of the License shall be at the option of the City considered permanently abandoned.

A Licensee must not abandon in place any Facilities or property unless approved by the City Manager and only in such a manner as the City Manager may prescribe. Upon abandonment of such Facilities or property, the Facilities or property must become that of the City, and the

Licensee must submit to the City an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such facilities and property.

Section 15. Chapter 23 of the Peoria City Code (1992) is amended by adopting Section 23-121 pertaining to Fiber Optic Communications Systems; exemption, which shall read as follows:

Sec. 23-121. Fiber Optic Communications Systems; Exemption.

Any provider that claims that it is exempt from some or all of the provisions of Sections 23-107 through 23-121 pursuant to Arizona or Federal Law must notify the City of its claim and the nature and basis thereof. If the City Engineer is satisfied that an exemption applies and the City Council approves, the City may issue a license to use the rights-of-way pursuant to such law. Any such license issued must be strictly limited in scope to allow the provision of only those services that the City Engineer has found to be exempted from Sections 23-107 through 23-121 by law.

Subject to written approval of the City Engineer, a license granted under subsection (a) may be combined with a Fiber Optic Communications License.

The provisions of Sections 23-107 through 23-121 do not apply to the installation of up to twenty-five (25) linear feet of conduit in the right-of-way that is directly associated with a Wireless Facility that is separately licensed by the City.