

Ordinance No. 03-2024

AN ORDINANCE ADDING NEW CODE TO GOVERN AND REGULATE THE CITY'S FIBER OPTIC NETWORK. CITY CODE TITLE 7: PUBLIC WAYS & PROPERTY, CHAPTER 12: MUNICIPAL FIBER-OPTIC INTERNET SYSTEM USE AND SERVICE, SECTIONS: 1-15 .

WHEREAS UCA § 10-3-701 states, "except as otherwise specifically provided, the governing body of each municipality shall exercise its legislative power through ordinances." And

WHEREAS Providence City desires to provide for the health, safety, and welfare, and promote the prosperity, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values in areas that may be considered sensitive, including but not limited to fire danger, slope, and soil content.

WHEREAS, Providence City received and reviewed the Providence Fiber Feasibility Study prepared by Susan Becker, Zions Public Finance, Inc. back in 2020.

WHEREAS Providence City passed a resolution declaring the intent of the city council to proceed with the installation of fiber throughout the city which was approved on the 15th of July 2020.

WHEREAS Providence City contracted with Strata Networks for the installation of said fiber network throughout the city.

WHEREAS, the Providence City Council recognized the importance of technology and the ability to deliver bandwidth and speed to support advancing technologies and their data usage; and now recognizes the need to establish a department to manage and maintain that fiber network.

WHEREAS the purpose of this ordinance is to create and establish a municipal fiber-optic network department for and in behalf of Providence City and its residents.

WHEREAS, The Providence City Council held a public hearing regarding this proposed new code on February 21st, 2024, taking comments, questions, and recommendations from the public.

WHEREAS, the City Council desires to create a new code to establish provisions to regulate and govern the city's Fiber Optic System

WHEREAS, The City Council motions to approve this ordinance and have incorporated into the city code the attached code review that establishes the department, definitions,

requirements, services, limitations, prohibited acts etc. for the city's new fiber optic system.

THEREFORE, be it ordained by the Providence City Council;

- The attached code shall be approved and added to the city code.
- This ordinance shall become effective immediately upon passage.

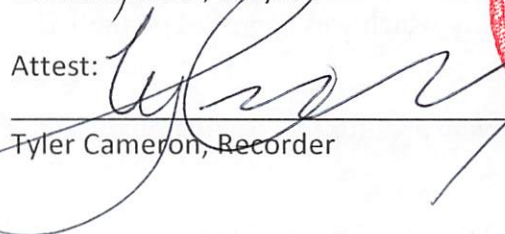
Passed by vote of the Providence City Council this 20th day of March 2024.

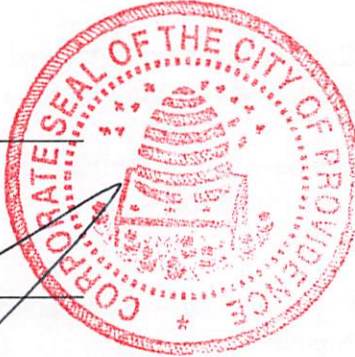
Council Vote:

Nebeker, Jeff	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent
Kirk, Carrie	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent
Kunz, David	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent
Sealy, Jeanell	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent
Speth, Brent	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent


Kathleen Alder, Mayor

Attest:


Tyler Cameron, Recorder



PCC 1-3-2 Definitions

Additions related to the fiber system.

Access means ~~to or~~ use of the fiber system ~~in the form of either broadband transport services.~~

Conduit means a tube, duct, structure, box~~es~~ or other device designed for enclosing ~~telecommunication~~ fiber optic transmission lines. ~~wires or cables.~~

Customer means a retail or wholesale user of the fiber-optic system.

Dark fiber means ~~excess capacity~~ unlit fiber optic ~~strands~~ transmission lines in the ~~metropolitan area~~ network that are ~~a~~ available for future use ~~by public agencies, telecommunications service companies, and customers.~~

Demarcation point means the point of connection on an Optical Network Terminal or Network Interface Device at which the municipal fiber-optic system ends, and a point of interconnection is established for the customer's use

Fiber f~~Facilities or infrastructure~~ means ~~wires, cables,~~ conduit, transmission lines, switches, transmission equipment or other equipment for use in transmitting ~~or processing telecommunications~~ services or for providing support or connection to such equipment.

Fiber-optic transmission line cable means a high-speed data transmission medium. It contains tiny glass or plastic filaments that carry light beams. ~~Digital data is transmitted through the cable via rapid pulses of light.~~

Internet service provider (ISP) means a retail broadband service provider.

Local area network means ~~a computer network that interconnects computers in a limited area such as a building or a utility facility.~~

Metropolitan area network means the city-wide broadband digital network comprised of municipal fiber-optic system facilities that are owned by the city that interconnects a number of local area networks ~~owned by the city, public agencies and customers.~~

Municipal fiber-optic system means the city owned fiber-optic system, including all fiber, facilities, equipment, and appurtenances.

Point of delivery means the physical point at which the metropolitan network ends, and the public agency's, the city's, or customer's local network begins.

Service means ~~any future or current, retail or customer broadband service which may be transported utilizing the fiber-optic system.~~

Services means those intangible goods or personal benefits offered, provided, or sold to a competent entity ~~individual of a residence.~~

Subscriber means a current ~~or potential provider~~ ISP customer.

Transport means ~~broadband transport service consisting of Ethernet services as supported by the municipal fiber-optic system.~~

CHAPTER 7-12 MUNICIPAL FIBER-OPTIC ~~INTERNET~~ SYSTEM USE AND WHOLESALE SERVICE

- 7-12-1 Intent and Purpose
- 7-12-2 Department Created and Enterprise Fund Established
- 7-12-3 ~~Definitions~~Reserved for Future Use
- 7-12-4 Applicability
- 7-12-5 No obligation to Provide Serve
- 7-12-6 Transfer of Rights Prohibited
- 7-12-7 Service Charges, Billing and Delinquency
- 7-12-8 Limitations
- 7-12-9 Rights of Way
- 7-12-10 Liability for Interruptions
- 7-12-11 Shut-Down for Repairs
- 7-12-12 Interference with the Fiber System
- 7-12-13 Tampering with Fiber System Prohibited
- 7-12-14 Protection of the Customer's Equipment
- 7-12-15 Theft of Access or Use

7-12-1 Intent and Purpose

- A. It is the intent and purpose of this chapter to provide a ~~municipal~~ fiber-optic ~~internet~~ system (fiber system) throughout the city which will:
 - 1. Operate as a utility.
 - 2. Make fiber optic infrastructure available ~~Provide broadband access~~ to meet the needs of residents, businesses, city departments, and public agencies within the city.
 - 3. Allow the city to manage and regulate competing demands for the use of the public right-of-way by minimizing the installation of duplicative communications lines and facilities on, over or under the public right-of-way.
 - 4. Foster competition among retail internet service providers (ISP) by providing open access to the city's municipal fiber system.
 - 5. Encourage economic development by attracting businesses that require large amount of bandwidth for their operations.
 - 6. Provide for higher amount of bandwidth in residential homes.

7-12-2 Department Created and Enterprise Fund Established.

The Municipal Fiber-Optic System Department ("Department") is hereby created and established as an enterprise fund to administer the operations and maintenance of the fiber system.

- A. The ~~Municipal Fiber-Optic System~~ Department shall perform the functions and have the authority, as set forth in this chapter, for managing, regulating, and controlling the city's fiber system ~~metropolitan area network, including, but not limited to, the power and authority:~~
 - 1. To operate, manage, and maintain fiber system facilities owned by the city ~~in the right-of-way to the point of delivery to public agencies, the city, telecommunications service companies, and customers within the city, either as a public-private partnership or solely operated by the city;~~
 - 2. To extend and improve a high capacity metropolitan area network, and to use excess capacity thereon to provide access to network services, high capacity internet, dark fiber, and other telecommunications services.
 - 3. To make such rules and regulations as ~~are~~ necessary for the operation of the fiber system ~~both inside and outside the city limits.~~
- B. All fiber system facilities, equipment, property, and property rights ~~and interests in the right-of-way to the point of delivery, owned or acquired by the city for the purpose of the institutional network, inasmuch as they relate to or concern the fiber system,~~ are hereby transferred to the fiber system utility department.
- C. Any future transfer or sale of the fiber system utility shall be conditioned upon continued ownership in perpetuity by the city of any joint use primary or secondary conduit.

- D. ~~Rates and charges for the use of the city's fiber system by public agencies, the city, and customers shall be set at a level to ensure full cost recovery, including not less than the city's costs of operation and maintenance of the fiber system, future capital needs, and fund resiliency.~~
- E. The city staff may adopt policies, consistent with this chapter and any ordinances and/or resolutions adopted by the city council, to assist in the application, administration and interpretation of this chapter ~~and any ordinance and/or resolution related to the fiber system.~~

7-12-3. ~~Definitions for this chapter are found in Chapter 1-3 Definitions and Construction of this Code~~Reserved for Future Use.

7-12-4. Applicability

The provisions of this chapter shall apply only to the delivery of access to and related services for the city owned fiber system. Nothing herein shall be construed or deemed to be an offering by the City to provide retail service, or to regulate the delivery of communications or data services over or across lines, facilities, or equipment owned by a private communications provider, or which may be in the public right of way pursuant to a franchise, lease, or other license or privilege granted by the city.

7-12-5. No Obligation to Provide Service.

The city shall have no obligation to provide access to any provider or subscriber. The city reserves the right to limit or refuse access at its sole discretion, provided access shall not be limited or denied in a manner that is inconsistent with applicable federal, state or local law or regulations.

7-12-6 Transfer of Rights Prohibited

All rights to access and any rights or privileges arising under the provisions of this chapter shall not be transferred to any person or entity without the express written approval of the city.

7-12-7 Service Charges, Billing and Delinquency.

A. Service rates and fees.

1. The service rates, penalty fee for delinquency in payment, inspection fee and other charges incidental for fiber services shall be fixed from time to time by resolution enacted by the city council.
2. The city council may from time to time promulgate rules for levying, billing, guaranteeing and collecting charges for fiber services and all other rules necessary for the management and control of the utility.
3. The city council may establish exemptions, surcharges and credits to the fiber utility fee by resolution.
4. The city council may from time to time fix by resolution ~~special~~ rates and conditions for users making use of the fiber system ~~under exceptional circumstances, upon such terms and conditions as they may deem proper.~~

B. Billing.

1. The fiber system service charges imposed by this chapter shall be added to the monthly utility billing.
2. The city shall furnish to each customer, electronically, or by mail , or leave at the user's place of residence or usual place of business, a written or printed statement listing, the amount of fiber service charges assessed, the place of payment and date due, once each month or at such other regular interval as the city council shall direct.
3. If any customer fails to pay the fiber system charges within 30 days of the due date, the city may disconnect the fiber service.

C. Delinquency

1. If the fiber service is disconnected for nonpayment of charges, before the service may be resumed, all delinquent fiber system charges must be paid to the city or arrangements made for their payment in a manner satisfactory to the city.

2. In the event the fiber service is disconnected for nonpayment, before the fiber service can be reconnected, the customer shall pay, in addition to all delinquent charges, such extra charge for turning the fiber service off and on as the city council may have established by resolution or ordinance.
 - a. Furthermore, in addition to such payments and penalties, a delinquent customer may be required to make and file a new application and deposit if the previous deposit has theretofore been applied to the payment of delinquent bills.
3. The city is hereby authorized and empowered to take all action necessary to enforce collection, including, but not limited to, the commencement of legal proceedings in a court of proper jurisdiction seeking judgement for all of the amount of the delinquent fees and service charges and all costs of collection, including court costs and reasonable attorney fees.

7-12-8 Limitations

- A. Fiber system access may be supplied under a given rate schedule provided that the fiber system can meet the requirements of the rate schedule applicable thereto. The city shall not be obligated to construct extensions ~~or~~ install additional facilities necessary to meet a customer's needs, except as explicitly authorized by the city.
- B. ~~Nothing herein shall be construed or deemed to prevent the city from negotiating separate contracts with any customer solely for the purpose of obtaining assistance in constructing or installing additional infrastructure for the benefit of said customer.~~

7-12-9 Rights of Way

- A. At the city's discretion in order to receive access, transport, or infrastructure services, the city may require the customer and/or the land owner's dedication or the conveyance of a utility easement in order to facilitate the installation, operation, and maintenance of the city's fiber system, over, across and upon property owned or controlled by the customer/land owner.
- B. Such utility easement may also be used for the purpose of connecting and providing access to other customers of the city. Such utility easement shall permit access thereto by authorized representatives of the city both for initial installation and for maintenance and/or repairs thereafter at all reasonable hours or at any time in any emergency.

7-12-10 Liability for Interruptions

- A. The city shall not be liable for any loss, injury, or damage of any kind, including but not limited to consequential, special, and punitive damages, resulting from the interruption, reduction, loss or restoration of access from any cause, including without limitation any loss by fire, flood, accident, casualty, sabotage, terrorist act, strike, labor slow-down, act of God or the public enemy or failure or inadequacy of the fiber system.
- B. The city disclaims any express or implied warranty of merchantability or fitness for a particular purpose and the delivery of access to any customer shall not be construed as or deemed to be the delivery of goods under the Utah Uniform Commercial Code.
- C. By acceptance of transport or infrastructure, the customer agrees to, and shall be deemed to, waive all claims for damage or loss to the customer's lines, facilities or communications equipment caused by any act or commission of the city, ~~however, nothing herein shall be deemed or construed as a waiver of any claim for damage or liability arising out of the gross negligence or malicious act of the city, or its agents.~~

7-12-11 Shut-Down for Repairs

For the purpose of making necessary repairs, upgrades, or changes to the fiber system, or to avoid damage to property or to persons, the city may without prior notice to the customer suspend access for such periods as may be reasonable necessary to make such repairs, upgrades or changes and the city shall not be liable for damage of any kind, direct or indirect, because of such discontinuance of access.

7-12-12 Interference with the Fiber System

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New chapter – Chapter 7-12 Municipal Fiber-Optic ~~Internet~~ System

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- A. The city may refuse to supply access where there is a possibility that the delivery of such may seriously impair or disrupt any other customers, or which may disrupt the operation of the fiber system.
- B. The city may discontinue or disconnect access for a customer if the customer, by their use of the fiber system, impairs any other customer's use of the fiber system.
- C. The city may, without prior notice, suspend or disconnect any customer using the fiber system for the purposes of delivering any virus, spam, spyware, denial of service attacks, or any other illegal or malicious purpose which has the effect of or is intended to impair or impede the operation of the fiber system, the internet, or any public or private computer or computer network connected thereto or for the purpose of obtaining illegal or unauthorized access to other computers or networks connected to the fiber system.

7-12-13 Tampering with Fiber System Prohibited

- A. No person shall connect to, adjust, tamper with or make any alteration or addition to the fiber system owned by the city, without having first obtained written permission from the city.
- B. Any person who causes damage to the fiber system owned by the city shall be liable to the city for any damage proximately caused by such unauthorized connection, adjustment, tampering, alteration or addition to such fiber system.

7-12-14 Protection of the Customer's Equipment

The customer is solely responsible for the selection, installation and maintenance of all equipment and wiring on the customer side of the demarcation point. The customer shall install and maintain suitable protective devices and equipment to protect life and property from harm or injury and the city assumes no duty to warn or otherwise assist the customer in the selection or use of such protective devices.

7-12-15 Theft of Access or Use

It shall be unlawful for any person to make any connection to or install or construct any facility or equipment with the specific intent of obtaining access from or making use of the fiber system, without paying for such access or without paying the fees and charges established by the provisions set forth in this chapter.

7-12-16 Violations and Penalties

Any violation of the provisions of this chapter shall be deemed a Class B misdemeanor and shall be subject to the penalties prescribed for such violations under Chapter 1-4 of this code.