

City of St. Helens
RESOLUTION NO. 2016

A RESOLUTION REQUIRING LUMEN TECHNOLOGIES INC. TO RELOCATE
ITS FACILITIES UNDERGROUND WITHIN THE WATERFRONT PUBLIC
IMPROVEMENT CONSTRUCTION PROJECT AREAS

WHEREAS, the City of St. Helens has identified the public improvement projects, S. 1st Street – Strand Street Road and Utilities Extension Project and the S. 1st Street – St. Helens Street Intersection Improvements, on the St. Helens Waterfront as a catalyst for redevelopment of the prime riverfront property (former Boise Veneer Property) along the Columbia River; and

WHEREAS, the Waterfront public improvements projects include constructing joint utility trenches to relocate overhead utilities underground; and

WHEREAS, the work of relocating overhead utilities underground also includes the work of undergrounding of the existing customer services in the project area; and

WHEREAS, Lumen Technologies, Inc. has communication lines, service lines, fixtures, and facilities located above ground within the portion of the Waterfront public improvement projects; and

WHEREAS, the City of St Helens has complied with the requirements of ORS 758.025 for the relocation of utilities in highway right-of-ways, including providing notice and coordinating scope and schedule, and has discussed the plans, goals, options and objectives of the projects with Lumen Technologies, Inc.; and

WHEREAS, Lumen Technologies, Inc. does not have an operative franchise agreement with the City of St. Helens; and

WHEREAS, Lumen Technologies, Inc., despite multiple oral and written requests to do so, has failed to move its communication lines, service lines, fixtures, and facilities located within the portion of the Waterfront public improvement projects underground; and

WHEREAS, Lumen Technologies, Inc.'s failure to locate its communication lines, service lines, fixtures, and facilities underground is negatively impacting the S. 1st Street – Strand Street Road and Utilities Extension Project and the S. 1st Street – St. Helens Street Intersection Improvements, to the detriment of the public interest; and

WHEREAS, SHMC 12.20.010(3) defines "public rights-of-way" to include, but not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including subsurface and air space over these areas; and

WHEREAS, SHMC 12.20.020 grants the City of St. Helens jurisdiction and regulatory control over all public rights-of-way within the City under the authority of the City Charter and state law; and

WHEREAS, under SHMC 12.20.040, no person may occupy or encroach on a public right-of-way without the permission of the City of St. Helens, and the City grants permission to use rights-of-way by franchises, licenses, and permits; and

WHEREAS, under SHMC 12.20.045, no person may place any obstruction on, in, or over a public right-of-way; and

WHEREAS, under SHMC 3.12.010 (1) & (3), all persons, firms, co-partnerships, associations, corporations, districts, or people's utility districts operating a within the corporate limits of the City of St. Helens shall obtain a franchise regulating use of city streets and rights-of-way, and if any utility operates unregulated upon streets and rights-of-way within the corporate limits of the City without a franchise, the City Council may take action to refuse to allow such utility the use of City streets and rights-of-way; and

WHEREAS, the St. Helens City Council, in the interest of the public, wishes to order Lumen Technologies, Inc. to relocate its communication lines, service lines, fixtures, and facilities within the portion of the Waterfront public improvement projects; now therefore,

NOW, THEREFORE, THE CITY OF ST. HELENS RESOLVES AS FOLLOWS:

- Section 1.** IT IS HEREBY ORDERED that Lumen Technologies, Inc. is denied permission to occupy the airspace over any public right-of-way within the portion of the Waterfront public improvement project areas that is inconsistent with the plans, goals, and objectives of the projects.
- Section 2.** IT IS HEREBY ORDERED that Lumen Technologies, Inc. is granted temporary permission to use the public right-of-way within the portion of the Waterfront public improvement project only as is consistent with the plans, goals, and objectives of the projects.
- Section 3.** IT IS HEREBY ORDERED that Lumen Technologies, Inc. shall relocate its communication lines, service lines, fixtures, and facilities within the portion of the Waterfront public improvement project areas consistent with the plans, goals, and objectives of the projects within 30 days of the date of this order.
- Section 4.** IT IS FURTHER ORDERED that if Lumen Technologies, Inc. fails to relocate its communication lines, service lines, fixtures, and facilities within the portion of the Waterfront public improvement project areas within 30 days of the date of this order, Lumen Technologies, Inc. communication lines, service lines, fixtures, and facilities within the portion of the Waterfront public improvement project areas that are inconsistent with the plans, goals, and objectives of the projects are deemed a nuisance and shall be abated accordingly. The City may cause Lumen Technologies, Inc.'s communication lines, service lines, fixtures, and facilities to be removed, relocated, altered, or undergrounded at Lumen Technologies, Inc.'s sole expense. Upon receipt of a detailed invoice from the City, Lumen Technologies, Inc. shall reimburse the City for the costs the City incurred within 180 days.

Section 5. IT IS FURTHER ORDERED that Lumen Technologies, Inc. shall obtain a franchise agreement from the City of St. Helens to cover its use of all right of ways in the City of St. Helens.

Section 6. This Resolution is effective immediately upon its adoption.

APPROVED AND ADOPTED by the City Council on July 16, 2024, by the following vote:

Ayes:

Nays:

Rick Scholl, Mayor

ATTEST:

Kathy Payne, City Recorder