

ORDINANCE NO. 2021-06

**ORDINANCE RENEWING A FRANCHISE FOR ZIPLY FIBER
NORTHWEST, LLC, A DELAWARE LIMITED LIABILITY CORPORATION,
TO CONDUCT A GENERAL TELECOMMUNICATIONS BUSINESS
AND GRANTING A RIGHT TO USE PUBLIC RIGHTS OF WAY
WITHIN THE CITY**

THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: The City of Forest Grove (City) hereby renews the franchise for Ziplly Fiber Northwest, LLC dba Ziplly Fiber, a Delaware Limited Liability Corporation (Ziplly), its successors and assigns, the right and privilege to conduct a general telecommunications business within the City and to place, erect, lay, maintain and operate in, upon, under and over public rights of way within the City poles, wires, cables, fiber optics, conduit and other appliances and conductors for the transmission of electricity for telecommunication purposes. Such wires, cables, fiber optics, conduit and other appliances and conductors may be strung upon poles and other fixtures (facilities) above ground or may be laid underground in pipes and conduits or otherwise protected. Whenever possible for new development, underground telephone facilities will use a common trench located by the Forest Grove Light & Power Department. This Ordinance does not grant Ziplly authority to use its facilities to provide cable services.

Section 2: Ziplly is granted authority to make all needed and necessary excavations in any public right of way. All excavation and construction work must comply with City Ordinances, resolutions, rules and orders now in effect or that take effect during the term of this franchise. City will enter discussions with Ziplly to achieve acceptable solutions to issues identified by Ziplly regarding proposed changes to City Ordinances, resolutions, rules or orders whenever such discussions are practicable. Ziplly does not waive its right to challenge the legality, validity or enforceability of any changes to City Ordinances, resolutions, rules or orders adopted after this Ordinance takes effect. This Ordinance does not require Ziplly to comply with future Ordinances, resolutions, rules or orders that conflict with any specific provision of this Ordinance or that apply only to Ziplly. Ziplly is not required to use any City-owned conduit or appurtenances for which the city imposes any fee, tax or other charges for its use. City will require developers to allow Ziplly to place its facilities within residential, industrial or business developments.

Section 3: Whenever Ziplly disturbs any public right of way for the purpose of excavation or construction, it must restore as soon as practicable the public right of way to at least as good a condition as existed prior to excavation or construction. If Ziplly fails to restore the public right of way within a reasonable time after receipt of written notice from City, then City will make such restoration and Ziplly must reimburse City for the costs of such restoration. Restoration to the condition that existed before excavation or construction does not require Ziplly to restore areas larger than the areas

of excavation and construction, except to the extent that such disturbance by Ziplly causes any damage to the right of way beyond the area of excavation and construction.

Section 4: This Ordinance does not limit the authority of the City to sewer, grade, pave, repair, alter or improve any public right of way in or upon whicsah Ziplly may place poles, wires, conductors, pipes or other apparatus. To the extent possible all such City work or improvements will be done in a manner that does not obstruct or prevent the free use of Ziplly poles, wires, conductors, conduits, pipes or other apparatus.

Section 5: Whenever it becomes necessary to temporarily rearrange, remove, lower or raise Ziplly wires, cables or other plant for the passage of buildings, machinery or other objects, Ziplly will temporarily rearrange, remove, lower or raise its wires, cables or other plant as required. The person moving any such buildings, machinery or other objects must pay the entire actual cost to Ziplly of changing, altering, moving, removing or replacing its wires, cables or other plant so as to permit such passage. The person must deposit in advance with Ziplly a sum equal to the cost as estimated by Ziplly and must pay all damages and claims of any kind, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of wires, cables or other plant, except damages or claims resulting from the sole negligence of Ziplly. Ziplly will be given not less than 96 hours written notice by the person desiring to move a building or other object. This notice must state the route of movement of such building or other objects over and along the public rights of way and must be approved by the City. Such moving must be done as quickly as possible without unnecessary delay to limit expense and inconvenience to Ziplly. In cases where it becomes necessary to temporarily rearrange, remove, lower or raise Ziplly wires, cables or other plant for the passage of buildings, machinery or other objects because of a City project or undertaking, Ziplly will temporarily rearrange, remove, lower or raise its wires, cables or other plant as required at its own expense. If Ziplly fails to temporarily rearrange, remove, lower or raise Ziplly wires, cables or other plant for the passage of buildings, machinery or other objects within a reasonable time after receipt of written notice from City, then City will undertake such temporarily rearrangement, removal, lowering or raising of Ziplly wires, cables or other plant to allow for the passage of buildings, machinery or other objects and Ziplly must reimburse City for all its costs related to undertaking such work.

Section 6: Ziplly must pay to the City a privilege tax in the amount of seven percent (7%) of the gross revenues as defined in ORS 221.515 for local exchange service provided subscribers within the City, such revenue to be determined in accordance with the lawful rates and rate groupings applicable to the exchange, exclusive of extended area service. The privilege tax shall be payable annually on or before March 15 for the twelve month period ending December 31, and the first and last payments must be for that fractional part of the calendar year during which this franchise is in effect. The City may change the compensation rate by Ordinance consistent with applicable state and federal law, but no more frequently than annually.

Section 7: The rights, privileges and franchise granted will continue and be in full force for a period of 5 years from the date of enactment of this Ordinance or until the

date a City Ordinance establishing regulation of the right-of-way (ROW) becomes effective, whichever comes first. If there is a change in applicable law that materially effects or alters the provisions of this franchise, the City and Ziply will enter good faith negotiations to agree to new provisions that implement the change in law in accordance with Federal and State law, Oregon Public Utility Commission Rules and Regulations and Ziply's tariff. This Ordinance does not grant a franchise unless it is accepted in writing by the Ziply within 60 days after its enactment.

Section 8: This Ordinance repeals, and renders null and void Ordinance No. 2006-~~12~~ and all previous franchises granted by City to Ziply or its predecessors in interest.

PRESENTED AND PASSED the first reading this 13th day of December, 2021.

PASSED the second reading this 10th day of January, 2022.



Anna Ruggles, City Recorder

APPROVED by the Mayor this 10th day of January, 2022.



Peter B. Truax, Mayor



A place where families and businesses thrive.

<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	_____
MEETING DATE:	12/13/2021
FINAL ACTION:	First Reading ORD 2021-06

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *December 13, 2021*

PROJECT TEAM: *Paul Downey, Administrative Services Director*

SUBJECT TITLE: *Zipty Franchise Renewal Ordinance*

ACTION REQUESTED: Ordinance Order Resolution Motion Informational

X all that apply

ISSUE STATEMENT: Zipty’s telecommunication franchise with the City expires December 27, 2021. City staff and Zipty staff have been working on the language to renew the franchise ordinance. The ordinance to renew the franchise is being presented to the Council tonight for first reading with the second reading scheduled to occur on January 10, 2022.

BACKGROUND: Verizon Northwest was originally granted a fifteen year franchise effective December 21, 2006. The franchise was originally transferred to Frontier and more recently to Zipty Northwest LLC. This franchise is for the telecommunications services (land lines) that Zipty provides. It does not address cable services which are managed by a separate franchise agreement through the Metropolitan Area Communications Commission (MACC) on behalf of the City. It does not address internet services to residences or businesses. It is a non-exclusive franchise which means another entity could ask to provide land-line telephone service in the City.

The terms of the proposed franchise renewal ordinance are largely unchanged from the original ordinance. The main changes are:

- Changing the name on the ordinance to Zipty Fiber Northwest, LLC
- Reducing the term of the franchise to five years or until the date a City Right-of-Way (ROW) ordinance becomes effective, whichever comes first
- Changing the payment date of the franchise fee to once a year based on the calendar year

FISCAL IMPACT: There is no fiscal impact as franchise revenue is currently being collected.

STAFF RECOMMENDATION: Staff recommends Council approve the ordinance.

ATTACHMENT(s): Franchise Renewal Ordinance

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PRESENTED AND PASSED the first reading this 13th day of December, 2021.

PASSED the second reading this 10th day of January, 2022.

Anna Ruggles, City Recorder

APPROVED by the Mayor this 10th day of January, 2021.

Peter B. Truax, Mayor