

ORDINANCE NO. 1927

ORIGINAL

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, RELATING TO TELECOMMUNICATIONS; ESTABLISHING REQUIREMENTS FOR TELECOMMUNICATION CARRIERS' AND PROVIDERS' USE OF THE PUBLIC RIGHTS-OF-WAY AND PUBLIC PROPERTY; DESCRIBING THE PROCEDURES FOR APPLICATION AND APPROVAL OF TELECOMMUNICATION BUSINESS REGISTRATIONS, TELECOMMUNICATIONS RIGHT-OF-WAY USE AUTHORIZATIONS, FRANCHISES, AND FACILITIES LEASES; DESCRIBING VIOLATIONS AND ESTABLISHING PENALTIES; ADDING A NEW CHAPTER 5.75 TO THE REDMOND MUNICIPAL CODE, AND ADDING A NEW CHAPTER 12.14 TO THE REDMOND MUNICIPAL CODE.

WHEREAS, RCW 35A.11.020 grants cities broad authority to regulate the use of the public rights-of way; and

WHEREAS, RCW 35A.47.040 grants cities broad authority to grant non-exclusive franchise agreements; and

WHEREAS, RCW 35A.82.020 authorizes code cities to impose business licensing requirements and excises upon business transacted within such a city to the extent permitted by the general laws; and

WHEREAS, Congress has adopted the Telecommunications Act of 1996 (hereinafter the "Act") in order to encourage the development of high-technology communications systems through increased competition among communications companies; and

WHEREAS, the Act provides for the removal of regulatory barriers, rate deregulation and relaxation of certain anti-trust provisions in an attempt to achieve this goal; and

WHEREAS, the Act is anticipated to have a significant effect on the range and type of services that telecommunications carriers will be delivering via cable and wireless technologies; and

WHEREAS, the Act contains numerous provisions which directly affect local taxation, zoning, franchise authority and public rights-of-way management; and

WHEREAS, the Act will likely place additional demands on the use of the City's public rights-of-way and public property; and

WHEREAS, the City currently has regulations which do not take account of the provisions of the Act; now therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. A new chapter 5.75 is hereby added to the Redmond Municipal Code to read as follows:

Chapter 5.75

**BUSINESS REGISTRATION OF TELECOMMUNICATIONS
CARRIERS AND PROVIDERS**

Section	5.75.010	Purpose of Telecommunications Business Registration.
	5.75.020	Definitions.
	5.75.030	Telecommunication Business Registration Required.
	5.75.040	Business Registration Fee.
	5.75.050	General Penalties.
	5.75.060	Other Remedies.
	5.75.070	Fees and Compensation Not a Tax.

Section 5.75.010 Purpose of Telecommunications Business Registration. The purpose of telecommunications business registration is to:

- A. Provide the City with accurate and current information concerning the cable operators and telecommunications carriers and providers who offer or provide services within the City, or who own or operate facilities within the City;
- B. Assist the City in enforcement of Chapter 12.14 of the Redmond Municipal Code;
- C. Assist the City in the collection and enforcement of any municipal taxes, fees or charges that may be due the City; and
- D. Assist the City in monitoring compliance with local, state and federal laws.

Section 5.75.020 Definitions. For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"Affiliate" means a person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person;

"Cable facilities" means equipment and wiring used to transmit audio and video signals to subscribers;

"Cable operator" means a telecommunications carrier providing or offering to provide "cable service" within the City as that term is defined in the Cable Act;

"Cable service" for the purpose of this Chapter shall have the same meaning provided by the Cable Act;

"City" means the City of Redmond, Washington;

"Operator" means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of Chapters 12.14 and/or 5.60 of the Redmond Municipal Code;

"Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers;

"Telecommunications carrier" means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service;

"Telecommunications facilities" means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services;

"Telecommunications provider" means and includes every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities; and

"Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

Section 5.75.030 Telecommunications Business Registration Required. All cable operators, telecommunications carriers, and telecommunications providers who offer or provide any cable service or telecommunications service for a fee directly to the public, either

within the City, or outside the corporate limits from cable or telecommunications facilities within the City, shall, on an annual basis, apply for and obtain a Telecommunications Business Registration from the City pursuant to this Chapter on forms to be provided by the City, which shall include the following:

- A. The identity and legal status of the applicant, including any affiliates;
- B. The name, address, telephone number, and title of the officer, agent or employee responsible for the accuracy of the telecommunications business registration application statement;
- C. A description of applicant's existing or proposed facilities within the City;
- D. A description of the service that the applicant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City, or to those outside the City limits using facilities located within the City;
- E. Information sufficient to determine whether the applicant is subject to the public way permitting and/or franchising requirements imposed by Chapters 5.60 and 12.14 of the Redmond Municipal Code;
- F. Information sufficient to determine whether the transmission, origination or receipt of the services provided or to be provided by the applicant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility tax or other occupation tax imposed by the City;
- G. Information sufficient to determine that the applicant has applied for and received any certificate of authority required by any federal or state agency to provide telecommunications services or facilities within the City; and
- H. Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide services or construct facilities within the City.

Section 5.75.040 Business Registration Fee. Each initial and all subsequent annual applications for a Telecommunications Business Registration shall be accompanied by an application fee to be set by resolution of the City Council for the purpose of reimbursing the City for administrative expenses associated with processing the application.

Section 5.75.050 General Penalties.

- A. **Civil Penalty.**

failing to comply with any of the provisions of this Chapter shall be subject to a penalty in an amount not less than \$100.00 nor more than \$1,000.00 per day for each violation from the date set for compliance until compliance with the order is achieved.

2. The penalty imposed by this section shall be collected by civil action brought by the City. The Mayor or designee shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the Mayor or designee, take appropriate action to collect the penalty.

3. The violator may show as full or partial mitigation of liability:

- a. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
- b. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by factors or circumstances beyond the control of the reasonable violator.

B. Criminal Penalties.

1. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the applicable provisions of this Chapter and who has had a judgment entered against him or her pursuant to Section 5.75.050(A) or its predecessors within the past 5 years shall be subject to criminal prosecution and upon conviction of such subsequent violation shall be fined in a sum not exceeding \$5,000.00 or be imprisoned for a term not exceeding 1 year or be both fined and imprisoned. Each day of noncompliance with any of the applicable provisions of the Chapter shall constitute a separate offense.

2. The above criminal penalty may also be imposed:

- a. For any other violation of this Chapter for which corrective action is not possible;
- b. For any wilful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this Chapter; and
- c. For any violation of a stop work or other order issued pursuant to this Chapter.

C. Additional Relief. The City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of

C. Additional Relief. The City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this Chapter when civil or criminal penalties are inadequate to effect compliance. Furthermore, violation of the terms of this Chapter shall be grounds for revocation of any authorization, approval, franchise, or lease issued or granted pursuant to Chapter 12.14 of the Redmond Municipal Code.

Section 5.75.060 Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

Section 5.75.070 Fees and Compensation Not a Tax. The fees, charges and fines provided for in this Chapter are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of telecommunications services.

Section 2. A new chapter 12.14 is hereby added to the Redmond Municipal Code, to read as follows:

**CHAPTER 12.14
TELECOMMUNICATIONS**

**ARTICLE I.
GENERAL PROVISIONS**

Sections	12.14.0010	Purpose.
	12.14.0020	Definitions.
	12.14.0030	Telecommunications Business Registration Required.
	12.14.0040	Telecommunications Right-of-Way Authorization Required.
	12.14.0050	Telecommunications Franchise Required.
	12.14.0060	Cable Television Franchise Required.
	12.14.0070	Facilities Lease Required.
	12.14.0080	Construction Permit Required.
	12.14.0090	Application to Existing Franchise Ordinances, Agreements, Leases, and Permits -- Effect of Other Laws.
	12.14.0100	Universal Service.
	12.14.0110	General Penalties.
	12.14.0120	Other Remedies.
	12.14.0130	Fees and Compensation Not a Tax.

Section 12.14.0010 Purpose. The purpose and intent of this Chapter is to:

B. Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services;

C. Promote competition in telecommunications;

D. Minimize unnecessary local regulation of telecommunications providers and services;

E. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;

F. Permit and manage reasonable access to the public ways of the City for telecommunications purposes on a competitively neutral basis;

G. Conserve the limited physical capacity of the public ways held in public trust by the City;

H. Assure that the City's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs;

I. Secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the public ways;

J. Assure that all telecommunications carriers providing facilities or services within the City comply with the ordinances, rules and regulations of the City;

K. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare; and

L. Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

Section 12.14.0020 Definitions. For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"Affiliate" means a person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person;

"Applicant" means any person or entity that applies for any authorization, franchise, lease, or permit pursuant to this Chapter;

"Cable facilities" means equipment and wiring used to transmit audio and video signals to subscribers;

"Cable operator" means a telecommunications carrier providing or offering to provide "cable service" within the City as that term is defined in the Cable Act;

"Cable service" for the purpose of this Chapter shall have the same meaning provided by the Cable Act;

"Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and other service to subscribers;

"City" means the City of Redmond, Washington;

"City property" means and includes all real property owned by the City, other than public streets and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right-of-way licensing and franchising as provided in this Chapter;

"Council" means the City Council of the City of Redmond, Washington acting in its official capacity;

"Data communication" means (1) the transmission of encoded information or (2) the transmission of data from one point to another;

" Dwelling units " means residential living facilities as distinguished from temporary lodging facilities such as hospitals, hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes, extended care facilities and other multiple family residential units;

"Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars;

"Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities;

"FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level;

"Fiber Optics" means the technology of guiding and projecting light for use as a communications medium;

"Franchise" shall mean the initial authorization, or renewal thereof, approved by an ordinance of the City, which authorizes the franchisee to construct, install, operate, or maintain telecommunications facilities in, under, over, or across public ways of the City and to also provide telecommunications service to persons or areas in the City;

"Franchisee" means the person, firm or corporation to whom or which a franchise, as defined in this Section, is granted by the Council under this Chapter and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in this Chapter;

"Operator" means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of this Chapter;

"Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City;

"Overhead facilities" means utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities;

"Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers;

"Property of franchisee" means all property owned, installed or used by a Franchisee in the conduct of its business in the City under the authority of a franchise granted pursuant to this Chapter;

"Proposal" means the response, by an individual or organization, to a request by the City regarding the provision of cable services; or an unsolicited plan submitted by an individual or organization seeking to provide cable services in the City;

"Public street" means any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway purposes;

"Public way" means and includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for telecommunications facilities;

"State" means the State of Washington;

"Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the federal or state orders and regulations, to allow its use by a telecommunications carrier for a pole attachment;

"Telecommunications carrier" means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service;

"Telecommunications facilities" means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services;

"Telecommunications provider" means and includes every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities;

"Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium;

"Telecommunications system" See **"Telecommunications facilities"**;

"Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities;

"Universal service" means a level of and definition of telecommunications services as the term is defined by the FCC through its authority granted pursuant to Section 254 of the Act;

"Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in any federal or state orders and regulations;

"Utility easement" means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities; and

"Utility facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the City and used or to be used for the purpose of providing utility or telecommunications services.

Section 12.14.0030 Telecommunications Business Registration Required. Except as otherwise provided herein, all cable operators, telecommunications carriers, and telecommunications providers engaged in the business of transmitting, supplying or furnishing of telecommunications service of any kind originating or terminating in the City shall apply for and obtain a Telecommunications Business Registration from the City pursuant to Chapter 5.75 of the Redmond Municipal Code.

Section 12.14.0040 Telecommunications Right-of-Way Use Authorization Required. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any public way of the City for the sole purpose of providing telecommunications service to persons and areas outside the City shall first obtain a Telecommunications Right-of-Way Use Authorization granting the use of such public ways from the City pursuant to Article II of this Chapter.

Section 12.14.0050 Telecommunications Franchise Required. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in, under, over or across any public way of the City, and to also provide telecommunications service to persons or areas in the City, shall first obtain a Telecommunications Franchise granting the use of such public ways from the City pursuant to Article III of this Chapter.

Section 12.14.0060 Cable Television Franchise Required. Except as otherwise provided herein, any telecommunications carrier or other person who desires to construct, install, operate, maintain or locate cable or telecommunications facilities in any public way in the City for the purpose of providing cable service to persons in the City shall first obtain a Cable Franchise from the City pursuant to Chapter 5.60 of the Redmond Municipal Code.

Section 12.14.0070 Facilities Lease Required. No telecommunications carrier or other entity who desires to locate telecommunications or other equipment on City property shall locate such facilities or equipment on City property unless granted a Facilities Lease from the City pursuant to Article IV of this Chapter. The City Council reserves unto itself the sole discretion to lease City property for telecommunications and other facilities, and no vested or other right shall be created by this Section or any provision of this Chapter applicable to such Facilities Leases.

Section 12.14.0080 Construction Permits Required. Except as otherwise provided herein, the holder of an authorization, franchise, or lease granted pursuant to this Chapter, and the holders of Cable Franchises granted pursuant to Chapter 5.60 of the Redmond Municipal Code, shall, in addition to said authorization, franchise, or lease, be required to obtain a

Construction Permit from the City pursuant to Article VI of this Chapter. No work, construction, development, excavation, or installation of any equipment or facilities shall take place within the public ways or upon City property until such time as the Construction Permit is issued.

Section 12.14.0090 Application to Existing Franchise Ordinances, Agreements, Leases, and Permits – Effect of other Laws.

A. This Chapter shall have no effect on any existing franchise ordinance, franchise agreement, lease, permit, or other authorization to use or occupy a public way in the City until:

1. The expiration of said franchise ordinance, agreement, lease, permit, or authorization; or

2. The amendment to an unexpired franchise ordinance, franchise agreement, lease, permit, or authorization, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

B. Nothing in this Chapter shall be deemed to create an obligation upon any person for which the City is forbidden to require pursuant to federal, state, or other law.

Section 12.14.0100 Universal Service. Except as otherwise provided herein, all cable operators, telecommunications carriers, and telecommunications providers engaged in the business of transmitting, supplying or furnishing telecommunications service of any kind originating or terminating in the City are subject to the City's right, which is expressly reserved, to require said operator, carrier, or provider to make an equitable and non-discriminatory contribution to the preservation and advancement of universal service to the extent permitted by state and federal law.

Section 12.14.0110 General Penalties.

A. Civil Penalty.

1. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the provisions of this Chapter shall be subject to a penalty in an amount not less than \$100.00 nor more than \$1,000.00 per day for each violation from the date set for compliance until compliance with the order is achieved.

2. In addition to any penalty which may be imposed by the City, any person violating or failing to comply with any of the provisions of this Chapter shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

3. The penalty imposed by this Section shall be collected by civil action brought by the City. The Mayor or designee shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the Mayor or designee, take appropriate action to collect the penalty.

4. The violator may show as full or partial mitigation of liability:

- a. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
- b. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the violator.

B. Criminal Penalty.

1. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the applicable provisions of this Chapter and who has had a judgment entered against him or her pursuant to Section 12.14.011.(A) or its predecessors within the past 5 years shall be subject to criminal prosecution and upon conviction of such subsequent violation shall be fined in a sum not exceeding \$5,000.00 or be imprisoned for a term not exceeding 1 year or be both fined and imprisoned. Each day of noncompliance with any of the applicable provisions of the Chapter shall constitute a separate offense.

2. The above criminal penalty may also be imposed:

- a. For any other violation of this Chapter for which corrective action is not possible;
- b. For any wilful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this Chapter; and
- c. For any violation of a stop work or other order issued pursuant to this Chapter.

C. Additional Relief. The City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this Chapter when civil or criminal penalties are inadequate to effect compliance. In addition to the penalties set forth in this Section, violation of the terms

of this Chapter may also result in the revocation of any authorization, franchise, approval, lease, or permit issued or granted hereunder, as set forth in Sections 12.14.930 through 12.14.960 of the Redmond Municipal Code.

Section 12.14.0120 Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

Section 12.140.0130 Fees and Compensation Not a Tax. The fees, charges and fines provided for in this Chapter and any compensation charged and paid for the public ways provided for herein, whether fiduciary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of telecommunications services.

**ARTICLE II.
TELECOMMUNICATIONS RIGHT-OF-WAY USE AUTHORIZATIONS**

Sections	12.14.0140	Telecommunications Right-of-Way Use Authorization.
	12.14.0150	Telecommunications Right-of-Way Use Authorization Application.
	12.14.0160	Issuance/Denial of Telecommunications Right-of-Way Use Authorization.
	12.14.0170	Appeal of Director's Decision.
	12.14.0180	Agreement.
	12.14.0190	Nonexclusive Grant.
	12.14.0200	Rights Granted.
	12.14.0210	Term of Telecommunications Right-of-Way Use Authorization.
	12.14.0220	Specified Route.
	12.14.0230	Service to City Users.
	12.14.0240	Compensation to the City.
	12.14.0250	Amendment of Authorization.
	12.14.0260	Renewal of Telecommunications Right-of-Way Use Authorization.
	12.14.0270	Standards for Renewal of Authorization.
	12.14.0280	Obligation to Cure as a Condition of Renewal.
	12.14.0290	Universal Service.
	12.14.0300	Annual Fee for Recovery of City Costs.
	12.14.0310	Other City Costs.

Section 12.14.0140 Telecommunications Right-of-Way Use Authorization. A Telecommunications Right-of-Way Use Authorization shall be required of any telecommunications carrier or provider who desires to occupy specific public ways of the City for the sole purpose of providing telecommunications services to persons or areas outside the City.

Section 12.14.0150 Telecommunications Right-of-Way Use Authorization Application. Any person that desires a Telecommunications Right-of-Way Use Authorization pursuant to this Chapter shall file an application with the City which shall include the following information:

- A.** The identity of the applicant, including all affiliates of the applicant;
- B.** A description of the telecommunications services that are or will be offered or provided by the applicant over its telecommunications facilities;
- C.** A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services;
- D.** Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:
 - (1) The location and route requested for applicant's proposed telecommunications facilities;
 - (2) The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;
 - (3) The location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers; and
 - (4) The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
- E.** If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route;
- F.** If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:
 - (1) The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;
 - (2) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities; and

(3) Evidence of ownership or a right to use such ducts or conduits.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

(1) The location proposed for the new ducts or conduits; and

(2) The excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

H. A preliminary construction schedule and completion date;

I. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the telecommunications services, including, but not limited to, evidence that the applicant has registered the Washington Utilities and Transportation Commission;

J. All deposits or charges required pursuant to this Chapter; and

K. An application fee which shall be set by the City Council by resolution.

Section 12.14.0160 Issuance/Denial of Telecommunications Right-of-Way Use Authorization. Within 120 days after receiving a complete application under Section 12.14.0150 hereof, the Public Works Director or her or his designee shall issue a written determination granting or denying the authorization in whole or in part. If the authorization is denied, the written determination shall include the reason(s) for denial. The decision to grant or deny an application for a Telecommunications Right-Of-Way Use Authorization shall be based upon the following standards:

A. Whether the applicant has received all requisite licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by the applicant;

B. The capacity of the public ways to accommodate the applicant's proposed facilities;

C. The capacity of the public ways to accommodate additional utility, cable, and telecommunications facilities if the authorization is granted;

D. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the authorization is granted;

E. The public interest in minimizing the cost and disruption of construction within the public ways;

F. The service that applicant will provide to the community and region;

G. The effect, if any, on public health, safety and welfare if the authorization is granted;

H. The availability of alternate routes and/or locations for the proposed facilities;

I. Applicable federal and state telecommunications laws, regulations and policies; and

J. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

Section 12.14.0170 Appeal of Director's Decision. Any person aggrieved by the granting or denying of a Telecommunications Right-of-Way Authorization or the renewal thereof pursuant to this Article shall have the right to appeal to the City Council as follows:

A. All appeals filed pursuant to this Section must be filed in writing with the Public Works Director within 10 working days of the date of the decision appealed from;

B. All appeals filed pursuant to this Section shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the Public Works Director's decision, which shall constitute the basis of the appeal;

C. Upon receipt of a timely written notice of appeal, the Public Works Director shall advise the City Council of the pendency of the appeal and request that a date for considering the appeal be established;

D. The City Council shall have the option of directing that the appeal be heard before the Hearing Examiner who shall forward a recommendation to the City Council which shall take final action on the appeal. Referral to the Hearing Examiner may be made by motion approved by a majority of the Councilmembers present at the time of voting;

E. At the time of notifying the City Council of the pendency of the appeal, the Public Works Director shall make his or her recommendation to the City Council as to whether the appeal should be heard by the Hearing Examiner or the City Council. The recommendation shall be based upon relevant considerations including, but not limited to, the time expected to be required to hear the appeal and the need to create a full, formal record;

F. Regardless of whether the appeal is heard by the City Council or Hearing Examiner, all relevant evidence shall be received during the hearing on the appeal;

G. Unless substantial relevant information is presented which was not considered by the Public Works Director, such decision shall be accorded substantial weight, but may be reversed or modified by the City Council if, after considering all of the evidence in light of the applicable goals, policies, and provisions of this Chapter, the City Council determines that a mistake has been made. Where substantial new relevant information which was not considered in the making of the decision appealed from has been presented, the City Council shall make its decision only upon the basis of the facts presented at the hearing of the appeal, or may elect to remand the matter for reconsideration by the Public Works Director in light of the additional information;

H. For all appeals decided pursuant to this Section, the City shall provide for a record that shall consist of written findings and conclusions and a taped or written transcript;

I. Unless otherwise provided by state statute or other law, all actions seeking review of a final action of the City, whether in the form of an appeal, declaratory judgment action, petition for writ of review, or other extraordinary writ, or in any other form shall be filed with a court having jurisdiction over such action within 14 working days of the decision, or the expiration of the reconsideration period, whichever is later, and otherwise shall be barred; and

J. No action to obtain judicial review shall be commenced unless all rights of appeal provided by this Section are fully exhausted. The cost of transcription of all records ordered certified by the court for such review shall be borne by the party seeking such review. A copy of each transcript prepared by such party shall be submitted to the City for confirmation of its accuracy.

Section 12.14.0180 Agreement. No authorization shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the grantee has been granted the right to occupy and use public ways of the City.

Section 12.14.0190 Nonexclusive Grant. No authorization granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.

Section 12.14.0200 Rights Granted. No authorization granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed an authorization only to use and occupy the public ways for the limited purposes and term stated in the authorization. Further, no authorization shall be construed as any warranty of title.

Section 12.14.0210 Term of Telecommunications Right-of-Way Use Authorization. Unless otherwise specified in an authorization, no authorization granted

hereunder shall be in effect for a term exceeding 5 years, which shall be revocable upon 30 days notice by the City to the grantee.

Section 12.14.0220 Specified Route. A Telecommunications Right-of-Way Use Authorization granted under this Article shall be limited to a grant of specific public ways and defined portions thereof.

Section 12.14.0230 Service to City Users. A grantee shall be permitted to offer or provide telecommunications services to persons or areas within the City upon approval of an application for a Telecommunications Franchise pursuant to Article III of this Chapter.

Section 12.14.0240 Compensation to the City. Each authorization granted pursuant to this Article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the right to occupy and use the public ways of the City granted under such authorization; provided, that nothing in this Chapter shall prohibit the City and a grantee from agreeing to the compensation to be paid. Provided further that the compensation required from any telecommunications provider or carrier engaged in the "telephone business," as defined in RCW 82.04.065 shall be consistent with RCW 35.21.860.

Section 12.14.0250 Amendment of Authorization. A new application shall be required of any telecommunications carrier or provider who desires to extend or locate its telecommunications facilities in public ways of the City which are not included in an authorization previously granted under this Chapter. If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted authorization, the City shall grant an amendment to the authorization without further application.

Section 12.14.0260 Renewal of Telecommunications Right-of-Way Use Authorization. A grantee that desires to renew its authorization under this Article for an additional term shall, not more than 180 days nor less than 90 days before expiration of the current authorization, file an application with the City for renewal which shall include the following:

- A. The information required pursuant to Section 12.14.0150 of this Chapter;
- B. Any information required pursuant to the authorization agreement between the City and the grantee;
- C. All deposits or charges required pursuant to this Chapter; and
- D. An application fee which shall be set by the City Council by resolution.

Section 12.14.0270 Standards for Renewal of Authorization. Within 90 days after receiving a complete application for renewal, the Public Works Director or her or his designee

shall issue a written determination granting or denying the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reason(s) for denial. The decision to grant or deny an application for the renewal of a Telecommunications Right-Of-Way Use Authorization shall, in addition to the standards set forth in Section 12.14.0160 of this Chapter, be based upon the following standards:

A. The continuing capacity of the public ways to accommodate the applicant's existing facilities; and

B. The applicant's compliance with the requirements of this Chapter and the authorization.

Section 12.14.0280 Obligation to Cure as a Condition of Renewal. No authorization shall be renewed until any ongoing violations or defaults in the grantee's performance under the authorization, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

Section 12.14.0290 Universal Service. Each Telecommunications Right-of-Way Use Authorization granted under this Article is subject to the City's right, which is expressly reserved, to require the telecommunication carrier or provider to make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service to the extent permitted by state and federal law.

Section 12.14.0300 Annual Fee for Recovery of City Costs. Each authorization granted under this Article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid as reimbursement for the City's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways on behalf of the public and existing or future users.

Section 12.14.0310 Other City Costs. All grantees shall, within 30 days after written demand, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the authorization or any authorization agreement. In addition, all grantees shall, within 30 days after written demand, reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving the grantee's telecommunications facilities. All grantees shall, within 30 days after written demand, reimburse the City for the grantee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility as a result of the construction or the presence in the right-of-way of the grantee's telecommunications facilities.

**ARTICLE III.
TELECOMMUNICATIONS FRANCHISE**

Sections 12.14.0320 Telecommunications Franchise.

12.14.0330	Franchise Application.
12.14.0340	Determination by the City.
12.14.0350	Agreement.
12.14.0360	Nonexclusive Grant.
12.14.0370	Term of Franchise Grant.
12.14.0380	Rights Granted.
12.14.0390	Franchise Territory.
12.14.0400	Compensation to the City.
12.14.0410	Nondiscrimination.
12.14.0420	Amendment of Franchise Grant.
12.14.0430	Renewal Application.
12.14.0440	Renewal Determination.
12.14.0450	Obligation to Cure as Condition of Renewal.
12.14.0460	Universal Service.
12.14.0470	Annual Fee for Recovery of City Costs.
12.14.0480	Other City Costs.

Section 12.14.0320 Telecommunications Franchise. A Telecommunications Franchise shall be required of any telecommunications provider or carrier or other person who desires to occupy public ways of the City and to provide telecommunications services to any person or area in the City. Provided, however, that a Telecommunications Right-of-Way Use Authorization may, with the approval of the Public Works Director, be substituted for a Telecommunications Franchise in the following circumstances:

A. Privately owned telecommunications networks or systems which are operated solely for purposes other than offering telecommunications services to other persons or the general public. An example of such a network or system includes, but is not limited to, a telecommunications network connecting two business facilities under common ownership or control, when said facilities are not offered to other business entities or persons.

B. De minimus uses of public ways made in conjunction with a wireless telecommunications facility located entirely upon publicly or privately owned property.

Section 12.14.0330 Franchise Application. Any person who desires a Telecommunications Franchise pursuant to this Chapter shall file an application with the City which, in addition to the information required by Section 12.14.0150 of this Chapter, shall include the following:

A. Whether the applicant intends to provide cable service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising;

B. An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease;

C. A description of the services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions;

D. A description of applicant's access and line extension policies;

E. The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire franchise area;

F. All fees, deposits or charges required pursuant to this Chapter;

G. Such other and further information as may be requested by the City; and

H. An application fee which shall be set by the City Council by resolution.

Section 12.14.0340 Determination by the City. Within 120 days after receiving a complete application under Section 12.14.0330 hereof, the City shall issue a written determination granting or denying the application in whole or in part. Prior to granting or denying a franchise under this Article, the City Council shall conduct a public hearing and make a decision based upon the standards set forth below. Pursuant to RCW 35A.47.040, the City Council shall not approve any franchise hereunder until the next regularly scheduled Council meeting following the public hearing. If the application is denied, the written determination shall include the reason for denial.

A. Whether the applicant has received all requisite licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by the applicant.

B. The capacity of the public ways to accommodate the applicant's proposed facilities.

C. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted.

D. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.

E. The public interest in minimizing the cost and disruption of construction within the public ways.

F. The service that applicant will provide to the community and region.

G. The effect, if any, on public health, safety and welfare if the franchise requested is granted.

H. The availability of alternate routes and/or locations for the proposed facilities.

I. Applicable federal and state telecommunications laws, regulations and policies.

J. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

Section 12.14.0350 Agreement. No Telecommunications Franchise shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchisee has been granted the right to occupy and use public ways of the City.

Section 12.14.0360 Nonexclusive Grant. No franchise granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.

Section 12.14.0370 Term of Franchise Grant. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of 5 years.

Section 12.14.0380 Rights Granted. No franchise granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

Section 12.14.0390 Franchise Territory. Unless otherwise provided in the franchise ordinance, a Telecommunications Franchise granted under this Article shall be limited to the specific geographic area of the City to be served by the franchisee, and the specific public ways necessary to serve such areas.

Section 12.14.0400 Compensation to the City. Each franchise granted under this Article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the franchise rights granted to the franchisee; provided, that nothing in this Chapter shall prohibit the City and a franchisee from agreeing to the compensation to be paid. Provided, further, that the compensation required from any telecommunications provider or carrier engaged in the "telephone business," as defined in RCW 82.04.065 shall be consistent with RCW 35.21.860.

Section 12.14.0410 Nondiscrimination. A franchisee which purports to serve the general public shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for the franchisee's services; provided, however, that nothing in

this Chapter shall prohibit a franchisee from making any reasonable classifications among differently situated customers.

Section 12.14.0420 Amendment of Franchise Grant. Except as otherwise provided within a franchise ordinance, a new franchise application and grant shall be required of any telecommunications carrier or provider that desires to extend its franchise territory or to locate its telecommunications facilities in public ways of the City which are not included in a franchise previously granted under this Article. If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted franchise, the City shall grant a franchise amendment without further application.

Section 12.14.0430 Renewal Application. A franchisee that desires to renew its franchise under this Article for an additional term shall, not more than 180 days nor less than 120 days before expiration of the current franchise, file an application with the City for renewal of its franchise which shall include the following:

- A. The information required pursuant to Section 12.14.0330 of this Chapter;
- B. Any information required pursuant to the franchise agreement between the City and the grantee;
- C. All deposits or charges required pursuant to this Chapter; and
- D. An application fee which shall be set by the City Council by resolution.

Section 12.14.0440 Renewal Determination. Within 120 days after receiving a complete application for renewal under Section 12.14.0430 hereof, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying renewal of a franchise under this Article, the City Council shall conduct a public hearing and make a decision based upon the standards set forth below. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

- A. The continuing capacity of the public ways to accommodate the applicant's existing facilities.
- B. The applicant's compliance with the requirements of this Chapter and the franchise agreement.
- C. Applicable federal, state and local telecommunications laws, rules and policies.
- D. Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

Section 12.14.0450 Obligation to Cure as a Condition of Renewal. No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the City.

Section 12.14.0460 Universal Service. Each franchise granted under this Article is subject to the City's right, which is expressly reserved, to require the franchisee to make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service to the extent permitted by state and federal law.

Section 12.14.0470 Annual Fee for Recovery of City Costs. Each franchise granted under this Article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid as reimbursement for the City's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways on behalf of the public and existing or future users.

Section 12.14.0480 Other City Costs. All franchisees shall, within 30 days after written demand, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement. In addition, all franchisees shall, within 30 days after written demand, reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving the franchisee's telecommunications facilities. Finally, all franchisees shall, within 30 days after written demand, reimburse this City for the franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility as a result of the presence in the right-of-way of the franchisee's telecommunications facilities.

**ARTICLE IV.
FACILITIES LEASE**

Sections	12.14.0490	Facilities Lease.
	12.14.0500	Lease Application.
	12.14.0510	Determination by City.
	12.14.0520	Agreement.
	12.14.0530	Nonexclusive Lease.
	12.14.0540	Term of Facilities Lease.
	12.14.0550	Rights Granted.
	12.14.0560	Interference with other users.
	12.14.0570	Ownership and removal of improvements.
	12.14.0580	Cancellation of Lease by Lessee.
	12.14.0590	Compensation to the City.
	12.14.0600	Amendment of Facilities Lease.
	12.14.0610	Renewal Application.
	12.14.0620	Renewal Determination.
	12.14.0630	Obligation to Cure as a Condition of Renewal.

Section 12.14.0490 Facilities Lease. The City Council may, in its sole discretion which is hereby reserved, approve Facilities Leases for the location of telecommunications facilities and other facilities upon City property, as that term is defined in this Chapter. Neither this Section, nor any other provision of this Chapter shall be construed to create an entitlement or vested right in any person or entity of any type.

12.14.0500 Lease Application. Any person that desires to solicit the City's approval of a Facilities Lease pursuant to this Article shall file a lease proposal with the City which, in addition to the information required by Section 12.14.0150, shall include the following:

A. A description of the telecommunications facilities or other equipment proposed to be located upon City property;

B. A description of the City property upon which the applicant proposes to locate telecommunications facilities or other equipment;

C. Preliminary plans and specifications in sufficient detail to identify:

(1) The location(s) of existing telecommunications facilities or other equipment upon the City property, whether publicly or privately owned.

(2) The location and source of electric and other utilities required for the installation and operation of the proposed facilities.

D. Accurate scale conceptual drawings and diagrams of sufficient specificity to analyze the aesthetic impacts of the proposed telecommunications facilities or other equipment;

E. Whether the applicant intends to provide cable service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising;

F. An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease;

G. A description of the services or facilities that the applicant will offer or make available to the City and other public, educational, and governmental institutions;

H. Such other and further information as may be requested by the City; and

I. An application fee which shall be set by the City Council by resolution.

Section 12.14.0510 Determination by the City. Recognizing that the City is under no obligation to grant a Facilities Lease for the use of City property, the City shall strive to consider and take action on applications for Facilities Leases within 120 days after receiving a complete application for such a lease. When such action is taken, the City shall issue a written determination granting or denying the lease in whole or in part, applying the standards set forth below, or any other such criteria as the City Council may choose to apply. If the lease application is denied, the written determination shall include the reason for denial, if any.

A. The capacity of the City property and public ways to accommodate the applicant's proposed facilities.

B. The capacity of the City property and public ways to accommodate additional utility and telecommunications facilities if the lease is granted.

C. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the lease is granted.

D. The public interest in minimizing the cost and disruption of construction upon City property and within the public ways.

E. The service that applicant will provide to the community and region.

F. The effect, if any, on public health, safety, and welfare if the lease requested is approved.

G. The availability of alternate routes and/or locations for the proposed facilities.

H. Whether the applicant is in compliance with applicable federal and state telecommunications laws, regulations and policies, including, but not limited to, the registration requirements administered by the Washington Utilities and Transportation Commission.

I. The potential for radio frequency and other interference with existing public and private telecommunications or other facilities located upon the City property.

J. The potential for radio frequency and other interference or impacts upon residential, commercial, and other uses located within the vicinity of the City property.

K. Such other factors as may demonstrate that the lease to use the City property will serve the community interest.

Section 12.14.0520 Agreement. No Facilities Lease shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the lessee has been granted the right to occupy and use the City property.

Section 12.14.0530 Nonexclusive Lease. No Facilities Lease granted under this Article shall confer any exclusive right, privilege, license, or franchise to occupy or use City property for delivery of telecommunications services or any other purposes.

Section 12.14.0540 Term of Facilities Lease. Unless otherwise specified in a lease agreement, a Facilities Lease granted hereunder shall be valid for a term of 1 year, subject to annual renewal as provided in this Article.

Section 12.14.0550 Rights Granted. No Facilities Lease granted under this Article shall convey any right, title or interest in the City property, but shall be deemed a license only to use and occupy the City property for the limited purposes and term stated in the lease agreement. Further, no Facilities Lease shall be construed as any warranty of title.

Section 12.14.0560 Interference with Other Users. No Facilities Lease shall be granted under this Article unless it contains a provision which is substantially similar to the following:

The City has previously entered into leases with other tenants for their equipment and antennae facilities. Lessee acknowledges that the City is also leasing the City property for the purposes of transmitting and receiving telecommunication signals from the City property. The City, however, is not in any way responsible or liable for any interference with Lessee's use of the City property which may be caused by the use and operation of any other tenant's equipment, even if caused by new technology. In the event that any other tenant's activities interfere with the Lessee's use of the City property, and the

Lessee cannot work out this interference with the other tenants, the Lessee may, upon 30 days notice to the City, terminate this lease and restore the City property to its original condition, reasonable wear and tear excepted. The Lessee shall cooperate with all other tenants to identify the causes of and work towards the resolution of any electronic interference problem. In addition, the Lessee agrees to eliminate any radio or television interference caused to City-owned facilities or surrounding residences at Lessee's own expense and without installation of extra filters on City-owned equipment. Lessee further agrees to accept such interference as may be received from City operated telecommunications or other facilities located upon the City property subject to this lease.

Section 12.14.0570 Ownership and Removal of Improvements. No Facilities Lease shall be granted under this Article unless it contains a provision which states that all buildings, landscaping, and all other improvements, except telecommunications equipment, shall become the property of the City upon expiration or termination of the lease. In the event that the City requires removal of such improvements, such removal shall be accomplished at the sole expense of the lessee and completed within 90 days after receiving notice from the City requiring removal of the improvements. In the event that telecommunications facilities or other equipment are left upon City property after expiration or termination of the lease, they shall become the property of the City if not removed by the lessee upon 30 days written notice from the City.

Section 12.14.0580 Cancellation of Lease by Lessee.

A. All Facilities Leases are contingent upon the prospective lessee obtaining all necessary permits, approvals, and licenses for the proposed facilities. In the event that the prospective lessee is unable to obtain all such permits, approvals, and licenses, it may cancel its lease, and obtain a pro rata refund in any rents paid, without further obligation by giving 30 days prior written notice to the City.

B. In the event that the holder of a Facilities Lease determines that the City property is unsuitable for its intended purpose, the Lessee shall have the right to cancel the lease upon 120 days written notice to the City. However, no prepaid rent shall be refundable.

Section 12.14.0590 Compensation to the City. Each Facilities Lease granted under this Article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the rights granted to the lessee; provided, nothing in this Chapter shall prohibit the City and a lessee from agreeing to the compensation to be paid. Such compensation shall be payable in advance of the effective date of the lease and on or before January 31 of each calendar year. Any payments received after the due date shall include a late payment penalty of 2% of the annual rental fee for each day or part thereof past the due date.

Section 12.14.0600 Amendment of Facilities Lease. Except as provided within an existing lease agreement, a new lease application and lease agreement shall be required of any telecommunications carrier or other entity that desires to expand, modify, or relocate its telecommunications facilities or other equipment located upon City property. If ordered by the City to locate or relocate its telecommunications facilities or other equipment on the City property, the City shall grant a lease amendment without further application.

Section 12.14.0610 Renewal Application. A lessee that desires to renew its Facilities Lease under this Article shall, not more than 120 days nor less than 60 days before expiration of the current Facilities Lease, file an application with the City for renewal of its Facilities Lease which shall include the following:

- A. The information required pursuant to Section 12.14.0500 of this Chapter;
- B. Any information required pursuant to the Facilities Lease agreement between the City and the lessee;
- C. All deposits or charges required pursuant to this Chapter; and
- D. An application fee which shall be set by the City Council by resolution.

Section 12.14.0620 Renewal Determination. Recognizing that the City is under no obligation to grant a renewal of a Facilities Lease for the use of City property, the City shall strive to consider and take action on applications for renewal of such leases within 60 days after receiving a complete application for such a lease renewal. When such action is taken, the City shall issue a written determination granting or denying the lease renewal in whole or in part, applying the standards set forth below, or any other such criteria as the City Council may choose to apply. If the renewal application is denied, the written determination shall include the reason for denial, if any.

- A. The financial and technical ability of the applicant.
- B. The legal ability of the applicant.
- C. The continuing capacity of the City property to accommodate the applicant's existing facilities.
- D. The applicant's compliance with the requirements of this Chapter and the lease agreement.
- E. Applicable federal, state and local telecommunications laws, rules and policies.

F. Such other factors as may demonstrate that the continued grant to use the City property ways will serve the community interest.

Section 12.14.0630 Obligation to Cure as a Condition of Renewal. No Facilities Lease shall be renewed until any ongoing violations or defaults in the lessee's performance of the lease agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the lessee has been approved by the City.

**ARTICLE V.
 CONDITIONS OF TELECOMMUNICATIONS RIGHT-OF-WAY USE
 AUTHORIZATIONS, TELECOMMUNICATIONS FRANCHISES, AND
 FACILITIES LEASES**

Sections	12.14.0640	Purpose.
	12.14.0650	Acceptance.
	12.14.0660	Police Power.
	12.14.0670	Rules and Regulations by City.
	12.14.0680	Location of Facilities.
	12.14.0690	Compliance with One Number Locator Service.
	12.14.0700	Construction Permits.
	12.14.0710	Interference with the Public Ways.
	12.14.0720	Damage to Property.
	12.14.0730	Notice of Work.
	12.14.0740	Repair and Emergency Work.
	12.14.0750	Maintenance of Facilities.
	12.14.0760	Relocation or Removal of Facilities.
	12.14.0770	Building Moving.
	12.14.0780	Removal of Unauthorized Facilities.
	12.14.0790	Emergency Removal or Relocation of Facilities.
	12.14.0800	Damage to Facilities.
	12.14.0810	Restoration of Public Ways, Other Ways, and City
	12.14.0820	Property.
	12.14.0830	Facilities Maps.
	12.14.0840	Duty to Provide Information.
	12.14.0850	Leased Capacity.
	12.14.0860	Insurance.
	12.14.0870	General Indemnification.
	12.14.0880	Performance and Construction Surety.
	12.14.0890	Security Fund.
	12.14.0900	Restoration Bond.
	12.14.0910	Coordination of Construction Activities.
	12.14.0920	Assignments or Transfers of Grant.
	12.14.0930	Transactions Affecting Control of Grant.
	12.14.0940	Revocation or Termination of Grant.
	12.14.0950	Notice and Duty to Cure.
	12.14.0960	Hearing.
	12.14.0970	Standards for Revocation or Lesser Sanctions.
	12.14.0980	Incorporation by Reference.
	12.14.0990	Notice of Entry on Private Property.
	12.14.1000	Safety Requirements.
		Most Favored Community.

Section 12.14.0640 Purpose. The purpose of this Article is to set forth certain terms and conditions which are common to all Telecommunications Right-of-Way Use Authorizations, Telecommunications Franchises, and Facilities Leases. Except as otherwise provided in this Chapter or in such an authorization, franchise, or lease, the provisions of this Article apply to all such authorizations, franchises, and leases approved or granted by the City.

Section 12.14.0650 Acceptance. No authorization, franchise, or lease granted pursuant to the provisions of this Chapter shall become effective unless and until the ordinance or other City action granting the same has become effective. Within 30 days after the effective date of the ordinance or other City action granting an authorization, franchise, or lease, or within such extended period of time as the Council in its discretion may authorize, the applicant shall file with the Mayor or designee an unconditional written acceptance of the authorization, franchise, or lease, in a form satisfactory to the City Attorney, together with the bonds, insurance policies, and security fund required by this Article.

Section 12.14.0660 Police Power. In accepting any authorization, franchise or lease, the grantee, franchisee, or lessee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and it agrees to comply with all applicable general laws enacted by the City pursuant to such power.

Section 12.14.0670 Rules and Regulations by the City. In addition to the inherent powers of the City to regulate and control any authorization, franchise, or lease it issues, the authority granted to it by the Cable Act and the Telecommunications Act of 1996, and those powers expressly reserved by the City, or agreed to and provided for in any authorization, franchise, or lease, the right and power is hereby reserved by the City to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers giving due regard to the rights of grantees, franchisees, and lessees. Except as provided in this Chapter, the foregoing does not allow for amendment by the City of material terms of any authorization, franchise, or lease it issues without the consent of the grantee, franchisee, or lessee. The City reserves the right to delegate its authority for authorization, franchise, and lease administration to a designated agent.

Section 12.14.0680 Location of Facilities. All facilities shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in an authorization, franchise, or lease agreement.

A. Unless otherwise provided in an authorization, franchise, or lease, a grantee, franchisee, or lessee with permission to occupy a public way must locate its cable or telecommunications facilities underground.

B. Whenever any new or existing electric utilities, cable facilities, or telecommunications facilities are located or relocated underground within a public way of the City, a grantee, franchisee, or lessee that currently occupies the same public way shall relocate its facilities underground at no expense to the City. Absent extraordinary circumstances or

undue hardship as determined by the City Public Works Director, such relocation shall be made concurrently to minimize the disruption of the public ways. No extension granted by the Director of Public Works under this Subsection shall exceed a period of 12 months.

C. Whenever new cable or telecommunications facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future cable or telecommunications carriers or facilities, the grantee, franchisee, or lessee and all other occupants of the public way shall provide additional ducts, conduits, manholes, and other facilities for nondiscriminatory access to future operators and carriers at their own expense.

Section 12.14.0690 Compliance with One Number Locator Service. All grantees, franchisees, and lessees shall, before commencing any construction in the public ways, comply with all regulations of Chapter 19.122 RCW, the One Number Locator Service.

Section 12.14.0700 Construction Permits. All grantees, franchisees, and lessees are required to obtain Construction Permits for cable and telecommunications facilities as required in Article VI of this Chapter. However, nothing in this Chapter shall prohibit the City and a grantee, franchisee, or lessee from agreeing to alternative plan review, permit, and construction procedures for an authorization, franchise, or lease granted under this Chapter, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

Section 12.14.0710 Interference with the Public Ways. No grantee, franchisee, or lessee may locate or maintain its cable or telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the grantee, franchisee, or lessee, at the grantee, franchisee, or lessee's cost, temporarily or permanently, as determined by the City Public Works Director.

Section 12.14.0720 Damage to Property. No grantee, franchisee, or lessee, nor any person acting on a grantee, franchisee, or lessee's behalf shall take any action or permit any action to be done which may impair or damage any City property, public ways of the City, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto.

Section 12.14.0730 Notice of Work. Unless otherwise provided in an authorization, franchise, or lease agreement, no grantee, franchisee, or lessee, nor any person acting on the grantee, franchisee, or lessee's behalf, shall commence any non-emergency work in or about the public ways of the City, other ways, or upon City property without 10 working days advance notice to the City.

Section 12.14.0740 Repair and Emergency Work. In the event of an unexpected repair or emergency, a grantee, franchisee, or lessee may commence such repair and emergency response work as required under the circumstances, provided the grantee, franchisee, or lessee shall notify the City as promptly as possible, before such repair or

emergency work commences or as soon thereafter as possible if advance notice is not practicable.

Section 12.14.0750 Maintenance of Facilities. Each grantee, franchisee, or lessee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

Section 12.14.0760 Relocation or Removal of Facilities. Within 30 days following written notice from the City, a grantee, franchisee, or lessee shall, at its own expense, temporarily or permanently remove, relocate, change, or alter the position of any cable or telecommunications facilities within the public ways or upon City property whenever the City Public Works Director shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:

A. The construction, repair, maintenance, or installation of any City or other public improvement in or upon the public ways; and

B. The operations of the City or other governmental entity in or upon the public ways.

Section 12.14.0770 Building Moving. Whenever any person shall have obtained permission from the City to use any street or public way for the purpose of moving any building, a grantee, franchisee, or lessee, upon 7 days written notice from the City, shall raise or remove, at the expense of the person desiring to move the building, any of the grantee, franchisee, or lessee's facilities which may obstruct the removal of such building; provided, that the person desiring to move the building shall comply with all requirements of the City for the movement of buildings.

Section 12.14.0780 Removal of Unauthorized Facilities. Within 90 days following written notice from the City, any telecommunications carrier or provider or other person who owns, controls, or maintains any unauthorized cable or telecommunications system, facility, or related appurtenances within the public ways of the City shall, at its own expense, remove such facilities or appurtenances from the public ways of the City. A cable or telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

A. Upon expiration or termination of the grantee or franchisee's authorization or franchise;

B. Upon abandonment of a facility within the public ways of the City. Any property of a grantee or franchisee shall be deemed abandoned if left in place 90 days after expiration or termination of an authorization or franchise;

C. If the system or facility was constructed or installed without the prior grant of an authorization or franchise;

D. If the system or facility was constructed or installed without the prior issuance of a required Construction Permit; and

E. If the system or facility was constructed or installed at a location not permitted by the authorization or franchise.

Provided, however, that the City may, in its sole discretion, allow a grantee, franchisee, or other such persons who may own, control, or maintain cable or telecommunications facilities within the public ways of the City to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment or removal of a grantee or franchisee's facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment of the property of such persons in place, the property shall become that of the City, and such persons shall submit to the City an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. The provisions of this Section shall survive the expiration, revocation, or termination of an authorization or franchise granted under this Chapter.

Section 12.14.0790 Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any cable or telecommunications facilities located within the public ways of the City and upon City property, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to any cable operator, telecommunications carrier or provider, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

Section 12.14.0800 Damage to Facilities. Unless directly and proximately caused by the willful, intentional, or malicious acts by the City, the City shall not be liable for any damage to or loss of any cable or telecommunications facility upon City property or within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such City property or within the public ways by or on behalf of the City.

Section 12.14.0810 Restoration of Public Ways, Other Ways, and City Property.

A. When a grantee, franchisee, lessee, or any person acting on its behalf, does any work in or affecting any public ways, other ways or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

B. If weather or other conditions do not permit the complete restoration required by this Section, the grantee, franchisee, or lessee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the grantee, franchisee, or

lessee's sole expense and the grantee, franchisee, or lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. A grantee, franchisee, lessee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle, or property by reason of such work in or affecting such ways or property.

D. The Public Works Director shall be responsible for inspection and final approval of the condition of the public ways, other ways, and City property following any construction and restoration activities therein. Further, the provisions of this Section shall survive the expiration, revocation, or termination of an authorization, franchise, lease, or other agreement granted pursuant to this Chapter.

Section 12.14.0820 Facilities Maps. Each grantee, franchisee, and lessee shall provide the City with a map or maps accurately reflecting the horizontal and vertical location and configuration of all of their telecommunications facilities within the public ways and upon City property. Each grantee, franchisee, and lessee shall provide the City with updated maps annually or upon request by the City.

Section 12.14.0830 Duty to Provide Information. Within 10 days of a written request from the City, each grantee, franchisee, or lessee shall furnish the City with information sufficient to demonstrate:

A. That the grantee, franchisee, or lessee has complied with all requirements of this Chapter; and

B. That all sales, utility and/or telecommunications taxes due the City in connection with the cable or telecommunications services and facilities provided by the grantee, franchisee, or lessee have been properly collected and paid by the grantee, franchisee, or lessee.

All books, records, maps and other documents, maintained by the grantee, franchisee, or lessee with respect to its facilities within the public ways and upon City property shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section shall be construed to require a grantee, franchisee, or lessee to violate state or federal law regarding subscriber privacy, nor shall this Section be construed to require a grantee, franchisee, or lessee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

Section 12.14.0840 Leased Capacity. A grantee, franchisee, or lessee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with such permit, franchise, or lease; provided:

A. The grantee, franchisee, or lessee shall furnish the City with a copy of any such lease or agreement between the grantee, franchisee, or lessee and the customer or lessee; and

B. The customer or lessee has complied, to the extent applicable, with the requirements of this Chapter.

Section 12.14.0850 Insurance. Unless otherwise provided in an authorization, franchise, or lease agreement, each grantee, franchisee, or lessee shall, as a condition of the permit or grant, secure, and maintain the following liability insurance policies insuring both the grantee, franchisee, or lessee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as co-insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the grantee, franchisee, or lessee:

A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

- (1) \$5,000,000.00 for bodily injury or death to each person;
- (2) \$5,000,000.00 for property damage resulting from any one accident; and
- (3) \$5,000,000.00 for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 for each person and \$3,000,000.00 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00;

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.00;

E. The liability insurance policies required by this Section shall be maintained by the grantee, franchisee, or lessee throughout the term of the authorization, franchise, or lease, and such other period of time during which the grantee, franchisee, or lessee is operating without an authorization, franchise, or lease hereunder, or is engaged in the removal of its telecommunications facilities. The grantee, franchisee, or lessee shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any facilities pursuant to said authorization, franchise, or lease. Any deductibles

or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of the grantee, franchisee, or lessee. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The grantee, franchisee, or lessee's insurance shall be primary insurance as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the grantee, franchisee, or lessee's insurance and shall not contribute with it;

F. In addition to the coverage requirements set forth in this Section, each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 60 days after receipt by the City, by registered mail, of a written notice addressed to the Public Works Director of such intent to cancel or not to renew."

G. Within 30 days after receipt by the City of said notice, and in no event later than 15 days prior to said cancellation or intent not to renew, the grantee, franchisee, or lessee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

Section 12.14.0860 General Indemnification. No authorization, franchise, or lease shall be deemed to be granted under this Chapter unless it includes an indemnity clause substantially conforming to the following:

The grantee, franchisee, or lessee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person, including claims by the grantee, franchisee, or lessee's own employees to which the grantee, franchisee, or lessee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the grantee, franchisee, or lessee, its agents, servants, officers, or employees in performing under this authorization, franchise, or lease are the proximate cause. The grantee, franchisee, or lessee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person including claims by the grantee, franchisee, or lessee's own employees, including those claims to which the grantee, franchisee, or lessee might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other

public properties, by virtue of the grantee, franchisee, or lessee's exercise of the rights granted herein, or by virtue of the City's permitting the grantee, franchisee, or lessee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the grantee, franchisee, or lessee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this authorization, franchise, or lease, or pursuant to any other permit or approval issued in connection with this authorization, franchise, or lease. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of the grantee, franchisee, or lessee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this authorization, franchise, or lease.

Inspection or acceptance by the City of any work performed by the grantee, franchisee, or lessee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the grantee, franchisee, or lessee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of the grantee, franchisee, or lessee, then the grantee, franchisee, or lessee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the grantee, franchisee, or lessee, and the City, its officers, employees and agents, the grantee, franchisee, or lessee's liability hereunder shall be only to the extent of the grantee, franchisee, or lessee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the grantee, franchisee, or lessee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this Section shall survive the expiration or termination of this authorization, franchise, or lease agreement.

Notwithstanding any other provisions of this Section, the grantee, franchisee, or lessee assumes the risk of damage to its facilities located in the City's public ways, rights-of-way, easements, and property from activities conducted by the City, its officers, agents, employees, and contractors. The grantee, franchisee, or lessee releases and waives any and all claims against the City, its officers, agents, employees, or contractors for damage to or destruction of the grantee, franchisee, or lessee's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, and contractors, in the public ways, rights-of-way, easements, or property subject to this authorization, franchise, or lease, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious action on the part of the City, its officers, agents, employees, or contractors. The grantee, franchisee, or lessee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the grantee, franchisee, or lessee's facilities as the result of any interruption of service due to damage or destruction of the user's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious actions on the part of the City, its officers, agents, employees, or contractors.

Section 12.14.0870 Performance and Construction Surety. Before an authorization, franchise, or lease granted pursuant to this Chapter is effective, and as necessary thereafter, the grantee, franchisee, or lessee shall provide and deposit such monies, bonds, letters of credit, or other instruments in form and substance acceptable to the City as may be required by this Chapter or by an applicable authorization, franchise, or lease agreement.

Section 12.14.0880 Security Fund. Each grantee, franchisee, or lessee shall establish a permanent security fund with the City by depositing the amount of \$50,000, or such lesser amount as deemed necessary by the Public Works Director, with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund shall be maintained at the sole expense of the grantee, franchisee, or lessee so long as any of the grantee, franchisee, or lessee's cable or telecommunications facilities are located within the public ways of the City or upon City property.

A. The fund shall serve as security for the full and complete performance of this Chapter, including any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to the grantee, franchisee, or lessee to comply with the codes, ordinances, rules, regulations, or permits of the City.

B. Before any sums are withdrawn from the security fund, the City shall give written notice to the grantee, franchisee, or lessee:

- (1) Describing the act, default or failure to be remedied, or the damages, costs or expenses which the City has incurred by reason of grantee, franchisee, or lessee's act or default;
- (2) Providing a reasonable opportunity for grantee, franchisee, or lessee to first remedy the existing or ongoing default or failure, if applicable;
- (3) Providing a reasonable opportunity for grantee, franchisee, or lessee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and
- (4) That the grantee, franchisee, or lessee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

C. Grantees, franchisees and lessees shall replenish the security fund within 14 days after written notice from the City that there is a deficiency in the amount of the fund.

Section 12.14.0890 Restoration Bond. Unless otherwise provided in an authorization, franchise, or lease agreement, a performance bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of removing the grantee, franchisee, or lessee's telecommunications equipment and facilities and restoring the public ways of the City and/or City-owned property to its pre-construction condition shall be deposited before any construction is commenced. Said bond shall be required to remain in full force until 60 days after completion of the construction and/or improvements within the public ways of the City or upon City-owned property, and shall warrant all such restoration work for a period of 1 year. The purpose of this bond is to guarantee removal of partially-completed and/or non-conforming telecommunications facilities and to fully restore the public ways of the City and City-owned property to its pre-construction condition.

Section 12.14.0900 Coordination of Construction Activities. Section 12.14.090 notwithstanding, all grantees and franchisees are required to cooperate with the City and with each other.

A. By February 1 of each year, grantees and franchisees shall provide the City with a schedule of their proposed construction activities in, around, or that may affect the public ways.

B. Each grantee and franchisee shall meet with the City, other grantees and franchisees and users of the public ways annually or as determined by the City to schedule and coordinate construction in the public ways.

C. All construction locations, activities and schedules shall be coordinated, as ordered by the City Public Works Director, to minimize public inconvenience, disruption or damages.

Section 12.14.0910 Assignments or Transfers of Grant. Ownership or control of a cable or telecommunications system, license, authorization, franchise, or lease may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee or franchisee, by operation of law or otherwise, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

A. No authorization, franchise, lease, or other grant shall be assigned or transferred in any manner within 12 months after the initial grant of the authorization or franchise, unless otherwise provided in the authorization or franchise agreement.

B. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.

C. The grantee, franchisee, or lessee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the City not less than 150 days prior to the proposed date of transfer:

- (1) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
- (2) All information required of an authorization, franchise, or lease applicant pursuant to Articles II, III, and IV of this Chapter with respect to the proposed transferee or assignee;
- (3) Any other information reasonably required by the City; and
- (4) An application fee which shall be set by the City Council by resolution.

D. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to own, hold and operate the cable or telecommunications system pursuant to this Chapter.

E. Unless otherwise provided in an authorization, franchise, or lease agreement, the grantee, franchisee, or lessee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or

assign an authorization, franchise, or lease. No approval shall be deemed approved until all such costs and expenses have been paid.

F. Any transfer or assignment of an authorization, franchise, lease, system, or integral part of a system without prior written approval of the City under this Section or pursuant to an authorization, franchise, or lease agreement shall be void and is cause for revocation of the grant.

Section 12.14.0920 Transactions Affecting Control of Grant. Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control of the grantee, franchisee, lessee, of the ownership or working control of a cable or telecommunications system, of the ownership or working control of affiliated entities having ownership or working control of the grantee, franchisee, or lessee or of a telecommunications system, or of control of the capacity or bandwidth of the grantee, franchisee, or lessee's cable or telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to Section 12.14.0920 hereof. Transactions between affiliated entities are not exempt from City approval. A grantee, franchisee, or lessee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of a grantee, franchisee, or lessee's company. Every change, transfer, or acquisition of control of a grantee, franchisee, or lessee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution or other appropriate order denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the authorization, franchise, or lease. Approval shall not be required for mortgaging purposes or if said transfer is from a grantee, franchisee, or lessee to another person or entity controlling, controlled by, or under common control with a grantee, franchisee, or lessee.

Section 12.14.0930 Revocation or Termination of Grant. An authorization, franchise, or lease granted by the City to use or occupy public ways of the City or City property may be revoked for the following reasons:

- A. Construction or operation in the City or in the public ways of the City or upon City property without a grant of authority from an authorization, franchise, or lease;
- B. Construction or operation at an unauthorized location;
- C. Unauthorized substantial transfer of control of a grantee, franchisee, or lessee;
- D. Unauthorized assignment of an authorization, franchise, or lease;
- E. Unauthorized sale, assignment or transfer of a grantee, franchisee, or lessee's authorization, franchise, lease, assets, or a substantial interest therein;

F. Misrepresentation or lack of candor by or on behalf of a grantee, franchisee, or lessee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any authorization, franchise, or lease pursuant to this Chapter;

G. Abandonment of cable or telecommunications facilities in the public ways or upon City property;

H. Failure to relocate or remove facilities as required in this Chapter;

I. Failure to pay taxes, compensation, fees or costs when and as due the City;

J. Insolvency or bankruptcy of the grantee, franchisee, or lessee;

K. Violation of any material provision of this Chapter; and

L. Violation of the material terms of an authorization, franchise, or lease agreement.

Section 12.14.0940 Notice and Duty to Cure. In the event that the City believes that grounds exist for revocation of an authorization, franchise, or lease, the grantee, franchisee, or lessee shall be given written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee, franchisee, or lessee a reasonable period of time not exceeding 30 days to furnish evidence:

A. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

B. That rebuts the alleged violation or noncompliance; and

C. That it would be in the public interest to impose some penalty or sanction less than revocation.

Section 12.14.0950 Hearing. In the event that a grantee, franchisee, or lessee fails to provide evidence reasonably satisfactory to the City as provided in Section 12.14.0940 hereof, the City shall refer the apparent violation or non-compliance to the City Council. The City Council shall provide the grantee, franchisee, or lessee with notice and a reasonable opportunity to be heard concerning the matter.

Section 12.14.0960 Standards for Revocation or Lesser Sanctions. If the City Council determines that a grantee, franchisee, or lessee willfully violated or failed to comply with any of the provisions of this Chapter or an authorization, franchise, or lease granted under this Chapter, or through willful misconduct or gross negligence failed to heed or comply with any notice given the grantee, franchisee, or lessee by the City under the provisions of this

Chapter, then the grantee, franchisee, or lessee shall, at the election of the City Council, forfeit all rights conferred hereunder and the authorization, franchise, or lease may be revoked or annulled by the City Council. The City Council may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order from the Superior Court having jurisdiction compelling the grantee, franchisee, or lessee to comply with the provisions of this Chapter and any authorization, franchise, or lease granted hereunder, and to recover damages and costs incurred by the City by reason of the grantee, franchisee, or lessee's failure to comply. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the violation and in making it's determination under this Section:

- A. Whether the misconduct was egregious;
- B. Whether substantial harm resulted;
- C. Whether the violation was intentional;
- D. Whether there is a history of prior violations of the same or other requirements;
- E. Whether there is a history of overall compliance; and
- F. Whether the violation was voluntarily disclosed, admitted or cured.

Section 12.14.0970 Incorporation By Reference. The provisions of this Chapter shall be incorporated by reference in any authorization, franchise, or lease approved hereunder. The provisions of any proposal submitted and accepted by the City shall be incorporated by reference in the applicable authorization, franchise, or lease. However, in the event of any conflict between the proposal, this Chapter, and the authorization, franchise, or lease, the authorization, franchise, or lease shall be the prevailing document.

Section 12.14.0980 Notice of Entry on Private Property. If directed by the City, at least 24 hours prior to entering private property or streets or public easements adjacent to or on such private property to perform new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by the grantee or franchisee. A door hanger may be used to comply with the notice and posting requirements of this Section. A grantee or franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Provided, however, that nothing in this Chapter shall permit a grantee or franchisee to unlawfully enter or construct improvements upon the property or premises of another.

Section 12.14.0990 Safety requirements. A grantee, franchisee, or lessee, in accordance with applicable federal, state, and local safety requirements shall, at all times,

employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of a permit, franchise, or lease area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The City reserves the general right to see that the system of a grantee, franchisee, or lessee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with a grantee, franchisee, or lessee, establish a reasonable time for a grantee, franchisee, or lessee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a grantee, franchisee, or lessee.

Section 12.14.01000 Most Favored Community. In the event that a grantee, franchisee, or lessee enters into any agreement, franchise or other understanding with any other city, town or county in the State of Washington which provides terms or conditions more favorable to the city, town or county than those provided in its agreement with the City, such as, but not limited to, free or reduced fee hookups, access or service, the City shall be entitled to request at the City's option, and the grantee, franchisee, or lessee in question shall be required to execute, an amendment to its agreement which incorporates the more favorable terms and conditions.

VI. CONSTRUCTION STANDARDS

Sections	12.14.1010	General Construction Standards.
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Section 12.14.01010 General Construction Standards. Notwithstanding any provision of Chapter 12.08 of the Redmond Municipal Code, no person shall commence or continue with the construction, installation, maintenance, or repair of cable or telecommunications facilities within public ways of the City or upon City-owned property, except as provided in this Chapter.

Section 12.14.01020 Construction Codes. Cable and telecommunications facilities shall be constructed, installed, operated, and maintained in accordance with all applicable federal, state and local codes, rules and regulations.

Section 12.14.01030 Construction Permits. No person shall construct, install, repair, or maintain any cable or telecommunications facilities within the public ways of the City or upon City property without first obtaining the appropriate Construction Permit therefor, provided, however:

A. No Construction Permit shall be issued for the construction or installation of cable or telecommunications facilities within the City unless the cable operator or telecommunications carrier has filed an application for a Telecommunications Business Registration pursuant to Chapter 5.75 of the Redmond Municipal Code;

B. No permit shall be issued for the construction or installation of telecommunications facilities in the public ways unless the cable operator or telecommunications carrier or provider has applied for and received an authorization or franchise pursuant to this Chapter;

C. No permit shall be issued for the construction or installation of cable or telecommunications facilities without payment of any applicable construction permit fee; and

D. No permit shall be issued for the construction or installation of telecommunications or other equipment on City property unless the telecommunications carrier or provider has applied for and received a Facilities Lease from the City. The City Council reserves unto itself the sole discretion to lease City property for telecommunications and other facilities, and no vested or other rights shall be created by this Section or any provision of this Chapter applicable to such Facilities Leases.

Section 12.14.01040 Applications. Applications for permits to construct cable or telecommunications facilities shall be submitted to the Public Works Director upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations;

B. The location and route of all facilities to be installed on existing utility poles;

C. The location; route, and configuration of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways;

D. The location of all existing underground utilities, conduits, ducts, pipes, mains, and installations which are within the public ways along the underground route proposed by the applicant;

E. The location of all other facilities to be constructed within the City, but not within the public ways;

F. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public ways;

G. The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction;

H. Proposed construction schedule and work hours; and

I. The location of all survey monuments which may be displaced or disturbed by the proposed construction.

Section 12.14.01050 Engineer's Certification. Where required by the Public Works Director, permit applications shall be accompanied by drawings, plans and specifications bearing the certification of a registered professional engineer.

Section 12.14.01060 Traffic Control Plan. All permit applications which involve work on, in, under, across, or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

Section 12.14.01070 Issuance of Permit. After submission of all plans and documents required of the applicant and payment of the permit fees required by this Article, the Public Works Director, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he or she may deem necessary or appropriate.

Section 12.14.01080 Appeal of Director's Decision. Any person aggrieved by the granting or denying of a Construction Permit pursuant to this Article shall have the right to appeal to the City Council as follows:

A. All appeals filed pursuant to this Section must be filed in writing with the Public Works Director within 10 working days of the date of the decision appealed from;

B. All appeals filed pursuant to this Section shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the Public Works Director's decision, which shall constitute the basis of the appeal;

C. Upon receipt of a timely written notice of appeal, the Public Works Director shall advise the City Council of the pendency of the appeal and request that a date for considering the appeal be established;

D. The City Council shall have the option of directing that the appeal be heard before the Hearing Examiner who shall forward a recommendation to the City Council which shall take final action on the appeal. Referral to the Hearing Examiner may be made by motion approved by a majority of the Councilmembers present at the time of voting;

E. At the time of notifying the City Council of the pendency of the appeal, the Public Works Director shall make his or her recommendation to the City Council as to whether the appeal should be heard by the Hearing Examiner or the City Council. The recommendation shall be based upon relevant considerations including, but not limited to, the time expected to be required to hear the appeal and the need to create a full, formal record;

F. Regardless of whether the appeal is heard by the City Council or hearing Examiner, all relevant evidence shall be received during the hearing on the appeal;

G. Unless substantial relevant information is presented which was not considered by the Public Works Director, such decision shall be accorded substantial weight, but may be reversed or modified by the City Council if, after considering all of the evidence in light of the applicable goals, policies, and provisions of this Chapter, the City Council determines that a mistake has been made. Where substantial new relevant information which was not considered in the making of the decision appealed from has been presented, the City Council shall make its decision only upon the basis of the facts presented at the hearing of the appeal, or may elect to remand the matter for reconsideration by the Public Works Director in light of the additional information;

H. For all appeals decided pursuant to this Section, the City shall provide for a record that shall consist of written findings and conclusions and a taped or written transcript;

I. Unless otherwise provided by state statute or other law, all actions seeking review of a final action of the City, whether in the form of an appeal, declaratory judgment action, petition for writ of review or other extraordinary writ, or in any other form shall be filed with a court having jurisdiction over such action within 14 working days of the

decision, or the expiration of the reconsideration period, whichever is later, and otherwise shall be barred; and

J. No action to obtain judicial review shall be commenced unless all rights of appeal provided by this Section are fully exhausted. The cost of transcription of all records ordered certified by the court for such review shall be borne by the party seeking such review. A copy of each transcript prepared by such party shall be submitted to the City for confirmation of its accuracy.

Section 12.14.01090 Compliance with Permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City Public Works Director and his or her representatives shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

Section 12.14.01100 Display of Permit. The permittee shall maintain a copy of the Construction Permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Public Works Director or his or her representatives at all times when construction work is occurring.

Section 12.14.01110 Survey of Underground Facilities. If the Construction Permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a state-registered land surveyor. The permittee may be required to relocate any facilities which are not located in compliance with permit requirements.

Section 12.14.01120 Noncomplying Work. Upon order of the City Public Works Director, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be remedied or removed.

Section 12.14.01130 Completion of Construction. The permittee shall promptly complete all construction activities so as to minimize disruption of the public and other ways and other public and private property. All construction work authorized by a permit within public and other ways, including restoration, must be completed within 120 days of the date of issuance.

Section 12.14.01140 As-Built Drawings. Within 60 days after completion of construction, the permittee shall furnish the City with 2 complete sets of plans, drawn to scale and certified to the City as accurately depicting the horizontal and vertical location and configuration of all cable or telecommunications facilities constructed pursuant to the permit. The Public Works Director shall have the discretion to prescribe the format and/or media of said as-built drawings, consistent with City codes and policies.

Section 12.14.01150 Restoration After Construction. Upon completion of any construction, maintenance, or repair work, the permittee shall promptly repair any and all

public and private property improvements, fixtures, structures, and facilities in the public or other ways or otherwise damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction. All survey monuments disturbed or displaced shall be referenced and replaced as required by WAC 332-120 and the Redmond Benchmark System second order, first class specifications. The referencing and replacement of survey monuments shall be performed by a licensed land surveyor. The Public Works Director shall have final approval of the completeness of all restoration work and all permittees shall warrant said restoration work for a period of 1 year.

Section 12.14.01160 Landscape Restoration.

A. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation maintenance, repair, or replacement of cable or telecommunications facilities, whether such work is done pursuant to a franchise, permit, or lease shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

B. All landscape restoration work within the public ways shall be done in accordance with landscape plans approved by the City Public Works Director.

Section 12.14.01170 Construction Surety. Prior to issuance of a Construction Permit, the permittee shall provide a performance bond, as provided in Section 12.14.0890 of this Chapter.

Section 12.14.01180 Exceptions. Unless otherwise provided in an authorization, franchise, or lease agreement, all cable operators and telecommunications carriers are subject to the requirements of this Article.

Section 12.14.01190 Responsibilities of the Owner. The owner of the facilities to be constructed and, if different, the grantee, franchisee, or lessee, are responsible for performance of and compliance with all provisions of this Article.

Section 3. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Ordinance, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

Section 4. Effective date. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect 30 days after passage and publication of an approved summary thereof consisting of the title.

CITY OF REDMOND



MAYOR ROSEMARIE IVES

ATTEST/AUTHENTICATED:



CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: 

FILED WITH THE CITY CLERK:	February 14, 1997
PASSED BY THE CITY COUNCIL:	March 4, 1997
SIGNED BY THE MAYOR:	March 12, 1997
PUBLISHED:	March 8, 1997
EFFECTIVE DATE:	April 7, 1997
ORDINANCE NO. <u>1927</u>	