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ORDINANCE NO. 2175

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, AMENDING CHAPTER 12.14 OF THE REDMOND MUNICIPAL CODE RELATING TO TELECOMMUNICATIONS IN ORDER TO UPDATE THE SAME IN ACCORD WITH RECENT CHANGES IN STATE AND FEDERAL LAW AND IN ORDER TO IMPROVE THE SAME OPERATIONALLY; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, the City of Redmond enacted a comprehensive telecommunications ordinance in 1997 in response to the Federal Telecommunications Act of 1996, and

WHEREAS, since the enactment of Chapter 12.14 of the Redmond Municipal Code, the State of Washington has enacted a state telecommunications statute as Chapter 35.99 of the Revised Code of Washington, and several federal court decisions have been issued interpreting the federal act, and

WHEREAS, in response to these changes, the City Public Works Department, with the assistance of a consultant and the City Attorney, have drafted a comprehensive revision of Chapter 12.14 of the Redmond Municipal Code and have recommended that the City Council enact the same, and

WHEREAS, the Public Works Department has solicited input from telecommunication service providers concerning the updated regulations and has worked with the providers to address their concerns, and

WHEREAS, the City Council has reviewed the proposed revisions and has determined to approve the revisions attached to this ordinance, now, therefore,

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

**Section 1. Telecommunications.** Chapter 12.14 of the Redmond Municipal Code entitled, "Telecommunications," is hereby amended to read as set forth on Exhibit A attached to this ordinance and incorporated herein by this reference as if set forth in full.

**Section 2. Severability.** If any section, sentence, clause or phrase of this ordinance or any code provision adopted or amended herein should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance or any such code provision.

**Section 3. Effective Date.** This ordinance, being an administrative action, is not subject to referendum and shall take effect five (5) days after publication of a summary consisting of the title.


APPROVED:

  
MAYOR, ROSEMARIE M. IVES

ATTEST/AUTHENTICATED:

  
CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

  
BY: CITY ATTORNEY, JAMES E. HANEY

FILED WITH THE CITY CLERK: September 12, 2003

PASSED BY THE CITY COUNCIL: September 16, 2003  
SIGNED BY THE MAYOR: September 16, 2003  
PUBLISHED: September 22, 2003  
EFFECTIVE DATE: September 27, 2003  
ORDINANCE NO.: 2175

**Exhibit A**

**CHAPTER 12.14  
TELECOMMUNICATIONS**

**ARTICLE I.  
GENERAL PROVISIONS**

<b>Sections</b>	<b>12.14.010</b>	<b>Purpose.</b>
	<b>12.14.020</b>	<b>Definitions.</b>
	<b>12.14.030</b>	<b>Business License Required.</b>
	<b>12.14.040</b>	<b>Application to Existing Franchise Ordinances, Agreements, Leases, and Permits -- Effect of Other Laws.</b>
	<b>12.14.050</b>	<b>Relief.</b>
	<b>12.14.060</b>	<b>Other Remedies.</b>
	<b>12.14.070</b>	<b>Fees and Compensation Not a Tax.</b>

**Section 12.14.010 Purpose.** The purpose and intent of this Chapter is, consistent with applicable laws, to:

- A.** Establish a local policy concerning the use of Public ways and City properties by Telecommunications carriers;
- B.** Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of Telecommunications carriers;
- C.** Promote competition in telecommunications;
- D.** Minimize unnecessary local regulation of Telecommunications carriers;
- 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 the use of the Public ways and City property are paid for 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, Other ways and City property in accordance with Federal and State law;

J. Assure that all Telecommunications carriers constructing, repairing or maintaining Telecommunications facilities within the Public ways, Other ways and City property 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 legal and regulatory policies, industry competition and technological development.

**Section 12.14.020 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. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning:

**"Applicant"** means any Person or entity that applies for any Right-of-Use Authorization, Franchise, Facilities Lease, or Right-of-Way Use Permit pursuant to this Chapter;

**"Cable Act"** means the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as now existing or hereafter amended.

**"Cable service"** for the purpose of this Chapter shall have the same meaning provided by the Cable Act; a separate cable ordinance is currently found in the Redmond Municipal Code;

**"City"** means the City of Redmond, Washington;

**"City property"** means and includes all real property owned in fee by the City or dedicated for a specific purpose, other than Public ways and utility easements as those terms are defined herein City property shall not include property dedicated for a specific purpose that has an existing easement for utilities, and which is not intended to extend to other utility easements;

**"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;

**"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;

**"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 wireless Telecommunications facilities in, under, over (if permitted by City regulations), or across Public ways of the City and to also provide wireless Telecommunications service to Persons or areas in the City;

**"Grantee"** means any Person, firm, or corporation to whom a Right-of-Way Use Permit, Franchise, Right-of-Way Use Authorization or a Facilities Lease is granted by the City 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;

**"Master Permit"** means the agreement in whatever form whereby the City grants general permission to a service provider to enter, use and occupy the Public ways or Other ways for the purpose of locating Telecommunications facilities. This definition is not intended to limit, alter or change the extent of the existing authority of the City to require a Right-of-Way Use Authorization or Franchise, nor does it change the status of a service provider asserting an existing state-wide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution to occupy the right-of-way. For the purposes of this Ordinance, Right-of-Way Use Authorizations and Franchises are Master Permits, but a Master Permit does not include cable television franchises or Facilities Leases;

**"Other ways"** means the highways, streets, alleys, utility easements or other rights-of-way within the City as encompassed by RCW 47.24020 and 47.52090;

**"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; Person shall not include the City unless it offers or furnishes Telecommunications service for hire, sale or resale to the general public.

**"Personal wireless services"** means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services as defined by federal laws and regulations;

**"Public ways"** means and includes any highway, street, alley, utility easement (unless their use is otherwise restricted for other users), or other public right of way for motor vehicle or other use under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway or other purposes now or hereafter held by the City, but only to the extent of the City's right, title, interest or authority to grant a Right-of-Way Use Permit, Right-of-Way Use Authorization or Franchise to occupy and use the same for Telecommunications facilities;

**"Right-of-Way Use Authorization"** means the authorization in whatever form required of any Telecommunications carrier, Telecommunications provider or other Person who desires to occupy Public ways for the purpose of providing Telecommunications services (other than personal wireless services) to Persons or areas within or outside the City;

**"Right-of-Way Use Permit" or "Permit"** means the authorization in whatever form whereby the City may grant permission for construction to a Telecommunications provider or Telecommunications carrier to enter and use the specified Public ways or Other way for the purpose of installing, maintaining, repairing or removing identified Telecommunications facilities;

**"State"** means the State of Washington;

**"Telecommunications carrier"** means and includes every Person that directly or indirectly owns, controls, operates or manages Telecommunications facilities within the City, used or to be used for the purpose of offering or furnishing Telecommunications service for hire, sale, or resale to the general public. To the extent Telecommunications service is transmitted from private users to themselves or to other private users across Public ways or Other ways, the transmission by a Person shall be included within Telecommunications carrier and Telecommunications provider;

**"Telecommunications facilities" or "Facilities"** means all of the plant, equipment, fixtures, appurtenances, antennas, electronics and other facilities necessary to furnish and deliver Telecommunications services, including, but not limited to, poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults and all attachments, appurtenances and appliances necessary or incidental to the transmission, reception, distribution, provision, offering and use of Telecommunications services;

**"Telecommunications provider" or "provider"** means and includes every corporation, company, association, joint stock association, firm, partnership, Person, city or town owning, operating or managing any facilities used to provide and providing telecommunications for hire, sale or resale to the general public. This includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, Person, city or town;

**"Telecommunications service"** means the transmission of information by wire, radio, optical cable, electromagnetic or other similar means for hire, sale or resale to the general public or the transmission from private users to themselves or to other private Persons. For the purposes of this Ordinance, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds or any other symbols. For the purpose of this Ordinance, Telecommunications service excludes the over the air transmission of broadcast television or broadcast radio signals and cable service;

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

**"Utility easement"** means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with Telecommunications facilities. City utility easements shall not include easements dedicated for a specific purpose or easements acquired by prescription by a Telecommunications provider; and

**Section 12.14.030 Business License Required.** A City of Redmond Business License shall be required, and all other terms and conditions of this Ordinance must be adhered to by all Telecommunications carriers and Telecommunications providers.

**Section 12.14.040 Application to Existing Franchise Ordinances, Agreements, Leases, and Permits -- Effect of Other Laws.**

A. Except as otherwise provided herein or permitted by applicable federal or state law, this Chapter shall have no effect on any franchise ordinance, franchise agreement, lease, permit, or other authorization existing on or before the effective date of this Chapter, to use or occupy a Public ways or City property until:

1. The expiration of said franchise ordinance, franchise 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 12.14.050 Relief.**

**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. Violation of the terms of this Chapter may also result in the revocation of any Right-of-Way Use Authorization, Franchise, Facilities Lease, or Right-of-Way Use Permit issued or granted hereunder, as set forth in RMC 12.14.690 through 12.14.720.

**Section 12.14.060 Other Remedies.** Nothing in this Chapter shall be construed as limiting any judicial or other remedies that the City may have, at law, in equity, or otherwise for enforcement of this Chapter.

**Section 12.14.070 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 monetary or in-kind (to the extent permitted by law), are separate from, and additional to, any and all federal, state, local, and City taxes as may be lawfully levied, imposed or due from a Telecommunications carrier or Telecommunications provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of Telecommunications service.



**ARTICLE II.  
RIGHT-OF-WAY USE AUTHORIZATION**

Sections	12.14.080	<b>Right-of-Way Use Authorization.</b>
	12.14.090	<b>Designated Routes.</b>
	12.14.100	<b>Right-of-Way Use Authorization Application.</b>
	12.14.110	<b>Issuance/Denial of Right-of-Way Use Authorization.</b>
	12.14.120	<b>Appeal of Director's Decision.</b>
	12.14.130	<b>Term of Right-of-Way Use Authorization.</b>
	12.14.140	<b>Compensation to the City.</b>
	12.14.150	<b>Amendment of Right-of-Way Use Authorization.</b>
	12.14.160	<b>Renewal of Right-of-Way Use Authorization.</b>
	12.14.170	<b>Standards for Renewal of Right-of-Way Use Authorization.</b>
	12.14.180	<b>Obligation to Cure as a Condition of Renewal.</b>

**Section 12.14.080 Right-of-Way Use Authorization.** A Right-of-Way Use Authorization shall be required of any Telecommunications carrier or other Person who desires to occupy Public ways for the purpose of providing Telecommunications services (other than personal wireless services) to Persons or areas within or outside the City.

**Section 12.14.090 Designated Routes.** An applicant may request authority to use a designated route within specific Public ways or all Public ways within the City. In either case, the initial approval shall be based upon the Public Works Director's evaluation of the proposal based upon the application materials submitted pursuant to RMC 12.14.100 and the criteria set forth in RMC 12.14.110 and shall be limited to those Public ways identified by the applicant. Use of additional Public ways may be approved by the Public Works Director, through the Right-of-Way Use Permit process in Article VI of this Chapter applying the standards contained within said Article and the standards set forth in RMC 12.14.110. In evaluating requests for use of additional Public ways, the Public Works Director shall have the authority to require submission of any of the items or materials set forth in RMC 12.14.100.

**Section 12.14.100 Right-of-Way Use Authorization Application.** Any Person that desires a 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;
- B. A description of the transmission medium that will be used by the applicant to offer or provide such Telecommunications services;
- C. Preliminary engineering plans, specifications and a map showing where the Telecommunications facilities are to be located within the City, all in sufficient detail to identify:

1. The location and route requested for the applicant's proposed Telecommunications facilities;

2. The location of Applicant's overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the Public ways along the proposed route;

3. The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

D. If the 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;

2. Evidence that there is sufficient capacity within the Public ways for the proposed Telecommunications facilities;

E. A preliminary construction schedule and completion date;

F. Evidence that the applicant is registered to participate in the one-number locator service, as described in RCW Chapter 19.122;

G. Complete submittals of any other necessary environmental or construction permits, including, but not limited to, shorelines, SEPA, etc.;

H. Evidence demonstrating that the applicant has received all of the necessary zoning and land use permits and approvals from the City or evidence that complete applications for such permits and approvals have been submitted to the City and that the proposed Telecommunications facility meets all applicable zoning and land use codes; and

I. An application fee which shall be set by the City Council by resolution to recover City costs in accordance with applicable federal and state law.

**Section 12.14.110 Issuance/Denial of Right-of-Way Use Authorization.** Within 120 days after receiving a complete application under RMC 12.14.100, the Public Works Director or his or her designee shall issue a written determination granting, granting with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations relating to use and management of Rights-of-Way, or denying the Right-of-Way Use Authorization in whole or in part. The 120 day period may be extended with the agreement of the applicant. If the Right-of-Way Use Authorization is denied, the written determination shall include the reason(s) for denial. The decision to grant, grant with conditions consistent with this Chapter that are reasonably necessary to assure compliance with this Chapter or other applicable regulations relating to use and

management of the Rights-of-Way, or deny an application for a Right-of-Way Use Authorization shall be based upon the following standards:

- A. The capacity of the Public ways to accommodate the applicant's proposed Telecommunications facilities;
- B. The capacity of the Public ways to accommodate known additional public utility, cable, and Telecommunications facilities if the Right-of-Way Use Authorization is granted;
- C. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the Right-of-Way Use Authorization is granted;
- D. The need to minimize the impact and disruption of construction within the Public ways;
- E. The effect, if any, on public health, safety and welfare if the Right-of-Way Use Authorization is granted;
- F. The availability of alternative routes, if known, and if economically and technologically practical and/or locations for the proposed Telecommunications facilities;
- G. The scope of the City's authority to condition or deny the proposal under applicable federal and state laws;
- H. Whether the proposed use of the Public ways, Other ways and City property is in compliance or would be compliant with this Chapter and any other applicable regulations relating to the use and management of the Public ways, Other ways, and City property.

**Section 12.14.120 Appeal of Director's Decision.** An applicant aggrieved by the conditions or the denial of a Right-of-Way Use Authorization or the conditions of or denial of 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 ten (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 within ninety (90) days as per Section 20F.30.30-090 of the Redmond Community Development Guide;
- 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 City Council members 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 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 shall be filed with a court having jurisdiction over such action within thirty (30) calendar days of the final decision, or the expiration of the reconsideration period, whichever is later, and otherwise shall be barred. Pursuant to RCW 35.99.030, relief shall be limited to injunctive relief; and

J. No action to obtain judicial review shall be commenced unless all rights of appeal provided by this section are fully exhausted

**Section 12.14.130 Term of Right-of-Way Use Authorization.** Unless otherwise specified in a Right-of-Way Use Authorization, a Right-of-Way Use Authorization granted hereunder shall be in effect for a term up to five (5) years, subject to renewal as provided herein.

**Section 12.14.140 Compensation to the City.** Each Right-of-Way Use Authorization granted pursuant to this Chapter 12.14 to a "telephone business" as defined in RCW 82.04.065 is subject to the City's right, which is expressly reserved, to recover its actual administrative expenses incurred that are directly related to receiving and approving a permit, license and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Each Right-of-Way Use Authorization granted under this Chapter to a Telecommunications provider other than a telephone business, in addition to the expenses specified in the preceding sentence, shall be subject to the City's right, which is expressly reserved to recover

additional expenses, including but not limited to, traffic disruption fees, degradation costs, system maintenance, and record retention. Notwithstanding the foregoing, nothing in this Chapter shall prohibit the City and a Grantee from agreeing to the compensation to be paid.

**Section 12.14.150 Amendment of Right-of-Way Use 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 a Right-of-Way Use Authorization previously granted under this Chapter. If a Telecommunications carrier or provider is ordered by the City to locate or relocate its Telecommunications facilities in Public ways not included in a previously granted Right-of-Way Use Authorization, the City shall grant an amendment to the Right-of-Way Use Authorization without further application.

**Section 12.14.160 Renewal of Right-of-Way Use Authorization.** A Grantee that desires to renew its Right-of-Way Use Authorization under this Article for an additional term shall, not more than 180 days nor less than 120 days before expiration of the current Right-of-Way Use Authorization, file an application with the City for renewal which shall include the following:

- A. The information required pursuant to RMC 12.14.100;
- B. Any information required pursuant to the current Right-of-Way Use Authorization; and
- C. An application fee for recovery of City costs which shall be set by the City Council by resolution.

**Section 12.14.170 Standards for Renewal of Right-of-Way Use Authorization.** Within 120 days after receiving a complete application for renewal, the Public Works Director or his or her designee shall issue a written determination granting, granting with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations relating to use and management of Rights-of-Way or denying the renewal application in whole or in part. The 120 day time period may be extended with the agreement of the applicant. If the renewal application is denied, the written determination shall include the reason(s) for denial. The decision to grant, grant with conditions or deny an application for the renewal of a Right-of-Way Use Authorization shall, in addition to the standards set forth in RMC 12.14.110, be based upon the following standards:

The applicant's compliance with the requirements of this Chapter, the existing Right-of-Way Use Authorization and any other applicable lawful regulations with respect to the use and management of the Public ways, Other ways, and City property.

**Section 12.14.180 Obligation to Cure as a Condition of Renewal.** No Right-of-Way Use Authorization shall be renewed until any ongoing violations or defaults in the Grantee's performance under the Right-of-Way Use Authorization, the requirements of this Chapter and any other lawful applicable regulations with respect to use and management of the Public ways, Other ways, and City property, have been cured, or a plan detailing the corrective action to be taken by the Grantee has been approved by the City.

**ARTICLE III.  
FRANCHISES**

Sections	12.14.190	<b>Franchise.</b>
	12.14.200	<b>No Pre-Application Conference.</b>
	12.14.210	<b>Franchise Application.</b>
	12.14.220	<b>Determination by the City.</b>
	12.14.230	<b>Term of Franchise.</b>
	12.14.240	<b>Compensation to the City.</b>
	12.14.250	<b>Amendment of Franchise Grant.</b>
	12.14.260	<b>Renewal Application.</b>
	12.14.270	<b>Renewal Determination.</b>
	12.14.280	<b>Obligation to Cure as a Condition of Renewal.</b>

**Section 12.14.190 Franchise.** A Franchise shall be required of any Telecommunications provider or carrier or other Person who desires to place Telecommunications facilities within the Public ways for the purpose of providing personal wireless services to any Person or area within or outside the City.

**Section 12.14.200 No Pre-Application Conference.** Unless otherwise specifically required by the Public Works Director or Planning Director, no pre-application conference shall be necessary.

**Section 12.14.210 Franchise Application.** Any Person seeking a Franchise pursuant to this Chapter shall file an application with the City which, in addition to the information required by RMC 12.14.100, shall include the following:

**A.** An accurate map showing the location of proposed Telecommunications facilities in the City that applicant intends to use;

**B.** Evidence demonstrating that the applicant has received all of the necessary zoning and land use permits and approvals from the City or evidence that complete applications for such permits and approvals have been submitted to the City and that the proposed facility meets all applicable zoning and land use codes. However, any Person seeking a Franchise pursuant to this Chapter may elect to make application for the Franchise prior to seeking land use or zoning approvals. In this case, the Franchise must be approved by the City Council before application can be made for any associated land use or zoning permits and approvals.;

**C.** The location and/or area of wireless sites requested for the Applicant's proposed Telecommunications facilities;

**D.** The location of Applicant's overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the Public ways in the Telecommunications facility location and the affected area;

E. The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, in the vicinity that applicant proposes to temporarily or permanently remove or relocate; and

F. An application fee which shall be set by the City Council to recover City costs.

**Section 12.14.220 Determination by the City.** Within 120 days after receiving a complete application under RMC 12.14.210, the City shall issue a written determination granting, granting with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations relating to use and management of Rights-of-Way or denying the application in whole or in part. The decision to grant, grant with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations relating to use and management of Rights-of-Way, or deny the Franchise shall be 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 scheduled Council meeting following its introduction at a City Council study session or meeting or at a public hearing. If the application is denied, the written determination shall include the reason for denial. In the event that a Franchise is approved by the City Council and the zoning and land use permits for the facility are denied or subsequently revoked by the City, the franchisee's rights under the Franchise shall terminate simultaneously with the denial or revocation.

A. The capacity of the Public ways to accommodate the applicant's proposed Telecommunications facilities;

B. The capacity of the Public ways to accommodate known additional public utility and Telecommunications facilities if the Franchise is granted;

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

D. The need to minimize the impact and disruption of construction within the Public ways;

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

F. The availability of alternative locations for the proposed Telecommunications facilities if economically or technologically practical;

G. Whether the proposed use is in compliance or would be compliant with this Chapter and any other lawful applicable regulations with respect to use and management of Public ways, Other ways or City property; and

H. The apparent consistency of the proposal with applicable regulations set forth in the Redmond Community Development Guide and policies set forth in the Redmond Comprehensive Plan.

**Section 12.14.230 Term of Franchise.** Unless otherwise specified in the Franchise, a Franchise granted hereunder shall be valid for a term of up to five (5) years, subject to renewal as provided herein.

**Section 12.14.240 Compensation to the City.** In the event that a Telecommunications carrier or provider desires to place Telecommunications facilities for personal wireless services within the Public ways, the Telecommunications carrier or provider and the City shall negotiate an agreement which includes a site-specific charge for the following: (1) the placement of new structures in the Public ways regardless of height, unless the new structure is the result of a mandated relocation; (2) replacement structures when the replacement structure is necessary for the attachment of wireless Telecommunications facilities and the overall height of the replacement structure and the wireless facility is more than sixty (60) feet; or (3) the placement of personal wireless Telecommunications facilities on structures owned by the City and located within the Public ways. In the event that the parties cannot agree to a site-specific charge, the amount shall be determined in accordance with RCW 35.21.860. Compensation to the City for Telecommunications facilities not addressed in this section shall be governed by RCW 35.21.860.

**Section 12.14.250 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 amend a Franchise previously granted under this Article or to substantially modify or expand the Telecommunications facilities permitted by such a Franchise. 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, provided that a suitable location that would otherwise be consistent with this Chapter exists within the nearby Public ways, and provided further, that the Franchisee complies with all applicable requirements set forth in the Redmond Community Development Guide related to relocation of such wireless facility.

**Section 12.14.260 Renewal Application.** A Grantee 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 RMC 12.14.210;
- B. Any information required pursuant to the Franchise agreement between the City and the Grantee; and
- C. An application fee which shall be set by the City Council by resolution to recover City costs.

**Section 12.14.270 Renewal Determination.** Within 120 days after receiving a complete application for renewal under RMC 12.14.260, the City shall issue a written determination granting, granting with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations relating to use and management of Rights-of-Way, or denying the



renewal application in whole or in part. Prior to granting, granting with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations relating to use and management of Rights-of-Way, or denying renewal of a Franchise under this Article, the City Council shall conduct a public hearing. The City Council's decision shall be based upon the standards set forth in RMC 12.14.220 and those below. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

A. The applicant's compliance with the requirements of this Chapter, the existing Franchise agreement and any other lawful applicable regulations with respect to use and management of Public ways, Other ways and City property.

B. Applicable federal, state and local telecommunications laws, rules and policies.

**Section 12.14.280 Obligation to Cure as a Condition of Renewal.** No Franchise shall be renewed until any ongoing violations or defaults in the Grantee's performance of the Franchise, the requirements of this Chapter and any other lawful applicable regulations with respect to use and management of Public ways, Other ways and City property have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the City.

#### ARTICLE IV. FACILITIES LEASE

Sections	12.14.290	Facilities Lease.
	12.14.300	Lease Application.
	12.14.310	Determination by the City.
	12.14.320	Term of Facilities Lease.
	12.14.330	Interference with Other Users.
	12.14.340	Ownership and Removal of Improvements.
	12.14.350	Cancellation of Lease by Lessee.
	12.14.360	Compensation to the City.
	12.14.370	Amendment of Facilities Lease.
	12.14.380	Renewal.
	12.14.390	Obligation to Cure as a Condition of Renewal.

**Section 12.14.290 Facilities Lease.** The City Council may, in its sole discretion which is hereby reserved, approve Facilities Leases ("Facilities Leases" or "Leases") for the location of Telecommunications 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, regardless of whether or not a lease application has been submitted to or accepted by the City. Each Person who utilizes Telecommunications facilities upon City property (including, but not limited to, Persons who locate or colocate) must first obtain a Facilities Lease from the City.

**Section 12.14.300 Lease Application.** Any Person that desires to solicit the City's approval of a Facilities Lease pursuant to this Article shall file an application with the City which, in addition to the information required by RMC 12.14.100, 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 lines or equipment upon the City property.
  - 2. The location and source of electric and other utilities required for the installation and operation of the proposed Telecommunications 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. An accurate map showing the location of any existing Telecommunications facilities in the City that applicant intends to use or lease;
- F. Such other and further information as may be reasonably requested by the City;
- G. Evidence demonstrating that the applicant has received all of the necessary zoning and land use permits and approvals from the City or evidence that complete applications for such permits and approvals have been submitted to the City and that the proposed Telecommunications facility meets all applicable zoning and land use codes; and
- H. An application fee to recover City costs which shall be set by the City Council by resolution.

**Section 12.14.310 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 (if required by federal law) granting, granting with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations relating to use and management of Rights-of-Way, 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. In the event that a Lease is approved by the City Council and the zoning and land use permits for the facility are denied or subsequently revoked by the City, the lessee's rights under the Lease shall terminate simultaneously with the denial or revocation.

A. The capacity of the City property to accommodate the applicant's proposed Telecommunications facilities;

B. The capacity of the City property to accommodate additional future City Telecommunications facilities and public projects and/or additional public utility and City 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, impact, and disruption of construction upon City property;

E. The effect, if any, on public health, safety, and welfare if the Lease requested is approved;

F. The availability of alternative locations for the proposed Telecommunications facilities;

G. The potential for radio frequency and other interference with existing public and private Telecommunications facilities or other lines and equipment located upon the City property;

H. Subject to zoning laws, the potential for radio frequency and other interference or impacts upon residential, commercial, and other uses located within the vicinity of the City property;

I. Whether the proposed use is in compliance or would be compliant with this Chapter and any other lawful applicable regulations with respect to use and management of Public ways, Other ways and City property; and

J. Such other factors as may demonstrate that the Lease to use the City property will serve the community interest; and

K. The apparent consistency of the proposal with applicable regulations set forth in the Redmond Community Development Guide and policies set forth in the Redmond Comprehensive Plan.

**Section 12.14.320 Term of Facilities Lease.** Unless otherwise specified in a Lease agreement, a Facilities Lease granted hereunder shall be valid for a term of up to five (5) years, subject to renewal as provided herein.

**Section 12.14.330 Interference with Other Users.** No Facilities Lease shall be granted under this Chapter unless it contains a provision which provides that: the City shall not be responsible for interference with the lessee's Telecommunications facilities caused by the

electronics equipment of the City or any senior lessee; that a lessee may cancel its Lease if such interference cannot be remedied; that the lessee has an obligation to cooperate with other users to remedy interference; that a lessee may not cause interference with the equipment of senior lessees or the City; and, that the lessee shall remedy interference caused to radio or television equipment in the vicinity of the subject property.

**Section 12.14.340 Ownership and Removal of Improvements.** No Facilities Lease shall be granted under this Chapter unless it contains a provision which states that all buildings, landscaping and all other affixed 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 12.14.350 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 Telecommunications 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 12.14.360 Compensation to the City.** Each Facilities Lease granted under this Article is subject to the City's right, which is expressly reserved, to 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 annually from the effective date of the Lease.

**Section 12.14.370 Amendment of Facilities Lease.** Except as provided within a specific Lease agreement, a new lease application and Lease agreement shall be required of any Telecommunications carrier, provider or other entity that desires to expand, modify, or relocate its Telecommunications facilities or other equipment located upon City property or to otherwise amend the provisions of such a Lease. 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 12.14.380. Renewal.**

A. Subject to the provisions of this section, all leases granted by the City pursuant to this Chapter and/or Ordinance No. 1927 may automatically renew for an additional

lease term without further action by either party unless a renewal application is required as provided herein.

**B.** The Public Works Director may determine that a renewal application shall be submitted by a lessee. In such event, the City shall give the lessee at least 120 days written notice prior to the end of the Lease's then relevant term stating that a renewal application will be required. In considering said renewal application, subsection C of this section shall be applied. When such notice is given, the lessee shall file an application for renewal at least 90 days before expiration of the Lease. The renewal application shall include the following:

1. The information required pursuant to RMC 12.14.300;
2. Any information required pursuant to the Lease; and
3. The fee required for filing a Lease application to recover City costs.

**C.** Recognizing that the City is under no obligation to grant a renewal of a Lease, the City shall consider and take action on renewal applications within 60 days after receiving a complete application. When such action is taken, the City Council shall issue a written determination granting, granting with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations, or denying 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 City fails to take action within the 60 days, renewal will be deemed to have occurred automatically. In considering renewal of the Lease, the City, among other issues, will consider:

1. The continuing capacity of the City property to accommodate existing and future City facilities, lines and equipment and projects and the applicant's existing Telecommunications facilities, and the Telecommunications facilities of additional utility and Telecommunications carriers and providers;

2. The applicant's compliance with the requirements of this Chapter, the Lease agreement and any other applicable regulations relating to use and management of the City property;

3. Such other factors as may demonstrate that the continued grant to use the City property will serve the public health, safety and welfare.

**Section 12.14.390 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 and any other lawful applicable regulations relating to the use and management of City property, 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 RIGHT-OF-WAY USE AUTHORIZATIONS,  
RIGHT-OF-WAY USE PERMITS, FRANCHISES,**

## AND FACILITIES LEASES

Sections	12.14.400	Purpose.
	12.14.410	Non-Exclusive Grant.
	12.14.420	Rights Granted.
	12.14.430	Annual Fee for Recovery of City Costs.
	12.14.440	Other City Costs.
	12.14.450	Acceptance.
	12.14.460	Police Power.
	12.14.470	Rules and Regulations by the City.
	12.14.480	Location of Telecommunications Facilities.
	12.14.490	Compliance with One-Number Locator Service.
	12.14.500	Interference with the Public ways.
	12.14.510	Damage to Property.
	12.14.520	Notice of Work.
	12.14.530	Maintenance of Telecommunications Facilities.
	12.14.540	Relocation or Removal of Telecommunications Facilities.
	12.14.550	Building Moving.
	12.14.560	Removal of Unauthorized Telecommunications Facilities.
	12.14.570	Emergency Removal or Relocation of Telecommunications Facilities.
	12.14.580	Damage to Telecommunications Facilities.
	12.14.590	Restoration of Public ways, Other ways, and City Property.
	12.14.600	Duty to Provide Information.
	12.14.610	Leased Capacity.
	12.14.620	Insurance.
	12.14.630	General Indemnification.
	12.14.640	Security Fund.
	12.14.650	Restoration/Performance Bond.
	12.14.660	Coordination of Construction Activities.
	12.14.670	Assignments or Transfers of Grant.
	12.14.680	Transactions Affecting Control of Grant.
	12.14.690	Revocation or Termination of Grant.
	12.14.700	Notice and Duty to Cure.
	12.14.710	Hearing.
	12.14.720	Standards for Revocation or Lesser Sanctions.
	12.14.730	Incorporation by Reference.
	12.14.740	Notice of Entry on Private Property.
	12.14.750	Safety Requirements.
	12.14.760	Exceptions.
	12.14.770	Responsibilities of the Owner.
	12.14.780	Additional Ducts or Conduits. *

**Section 12.14.400 Purpose.** The purpose of 12.14.400-12.14.790 is to set forth certain terms and conditions which are common to all Right-of-Way Use Authorizations, Right-of-Way Use Permits (to the extent such terms and conditions are deemed applicable by the Public Works Director), Franchises, and Facilities Leases. Except as otherwise provided in this Chapter or in such an agreement or Permit, the provisions of this Article apply to all such agreements and Permits approved or granted by the City.

**Section 12.14.410 Non-Exclusive Grant.** No Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise or Facilities Lease granted under this Chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the Public ways or City property for delivery of Telecommunications services or any other purposes.

**Section 12.14.420 Rights Granted.** No Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise or Facilities Lease granted under this Chapter shall convey any right, title or interest in Public ways or on City property, but shall be deemed a license only to use and occupy the same for the limited purposes and term stated in said agreement or Permit. Further, no such agreement or Permit shall be construed as any warranty of title.

**Section 12.14.430 Annual Fee for Recovery of City Costs.** Each Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise and Facilities Lease granted under this Chapter 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 and/or City property on behalf of the public and existing or future users and in accordance with RCW 35.21.860.

**Section 12.14.440 Other City Costs.** All Grantees shall, within 30 days after written demand, reimburse the City for all expenses incurred by the City. A "telephone business" as defined in RCW 82.04.065, is subject to the City's right, which is expressly reserved, to recover its actual administrative expenses incurred that are directly related to receiving and approving a permit, license and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Each Right-of-Way Use Authorization granted under this Chapter to a Telecommunications provider other than a telephone business, in addition to the expenses specified in the preceding sentence, shall be subject to the City's right, which is expressly reserved to recover additional expenses, including but not limited to, traffic disruption fees, degradation costs, system maintenance, and record retention. Notwithstanding the foregoing, nothing in this Chapter shall prohibit the City and a Grantee from agreeing to the compensation to be paid.

**Section 12.14.450 Acceptance.** No Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise or Facilities Lease granted pursuant to the provisions of this Chapter shall become effective unless and until the grant has been unconditionally accepted by the Grantee following its approval by the City. A Right-of-Way Use Authorization or Lease shall be accepted by filing executed copies of the agreement related thereto, together with the bonds, insurance policies, and security fund required by this Chapter with the City Clerk of Redmond. A Franchise shall be accepted by filing an executed copy of the City's approved acceptance form, together with the bonds, insurance policies, and security fund required by this Chapter with the City Clerk of

Redmond within 60 days after the effective date of the ordinance granting the Franchise, or within such shorter or extended period of time as may be required or authorized by the City.

**Section 12.14.460 Police Power.** In accepting any Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise or Facilities Lease, the Grantee acknowledges that its rights thereunder 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, it being understood that such exercise must be done in accordance with applicable law and be related to use and management of the Public ways, Other ways and City property.

**Section 12.14.470 Rules and Regulations by the City.** In addition to the inherent powers of the City to regulate and control any Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise or Facilities Lease it issues, and those powers expressly reserved by the City, or agreed to and provided for in any Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise or Facilities Lease, the right and power is hereby reserved by the City to adopt such additional regulations as it may find necessary in the exercise of its lawful powers to manage the Public ways, Other ways and City property giving due regard to the rights of Grantees hereunder. The City reserves the right to delegate its authority for Right-of-Way Use Authorization, Franchise, Lease and Right-of-Way Use Permit administration to a designated agent.

**Section 12.14.480 Location of Telecommunications Facilities.** All Telecommunications facilities shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise or Facilities Lease.

A. A Grantee with permission to occupy the Public ways must, to the extent practicable and in accordance with RCW 35.99.060, locate all new Telecommunications facilities underground. For purposes of this Section, new facilities shall not include maintenance or replacement of existing aerial facilities.

B. Whenever any new or existing electric utilities, cable facilities, or Telecommunications facilities are located or relocated underground within a Public ways, a Grantee that currently occupies the same Public ways shall relocate its Telecommunications facilities underground if so ordered by the City. Absent extraordinary circumstances or undue hardship as determined by the Public Works Director, such relocation shall be made concurrently to minimize the disruption of the Public ways. No such extension granted by the Public Works Director under this subsection shall exceed a period of 12 months. The costs and expenses of such relocations shall be allocated as set forth in RMC 12.14.540.

**Section 12.14.490 Compliance with One-Number Locator Service.** All Grantees shall, before commencing any construction in the Public ways, comply with all regulations of Chapter 19.122 RCW, the One Number Locator Service.

**Section 12.14.500 Interference with the Public ways.** No Person may locate or maintain its Telecommunications facilities so as to unreasonably interfere with the use of the Public ways by the City, by the general public or other Persons authorized to use or be present in or upon the Public



ways. All such Telecommunications facilities shall be moved by the Grantee or other Person at its own cost, temporarily or permanently, as determined by the Public Works Director.

**Section 12.14.510 Damage to Property.** No Grantee or other Person shall take any action or permit any action to be done which may impair or damage any City property, Public ways, Other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto.

**Section 12.14.520 Notice of Work.**

**A.** Unless otherwise provided in a Right-of-Way Use Authorization or Franchise, no Grantee or other Person shall commence any non-emergency work in or about the Public ways or Other ways without ten (10) working days advance notice to the City and after first having obtained a Right-of-Way Use Permit.

**B.** In the event of an unexpected repair or emergency, a Grantee may commence such repair and emergency response work as required under the circumstances, provided the Grantee 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 12.14.530 Maintenance of Telecommunications Facilities.** Each Grantee shall maintain its Telecommunications facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

**Section 12.14.540 Relocation or Removal of Telecommunications Facilities.**

**A.** A Grantee shall temporarily or permanently remove, relocate, change, or alter the position of any Telecommunications facilities within the Public ways whenever the Public Works Director has determined that such removal, relocation, change, or alteration is reasonably necessary for the construction, alteration, repair or improvement of the Public ways for purposes of public welfare, health or safety. Except as otherwise provided in this section or by state law, such relocation shall be performed at the cost and expense of the Grantee.

**B.** When the Public Works Director orders relocations under this section, the Grantee shall be given reasonable advance notice thereof, which period of time shall be no less than thirty (30) days except for emergency situations. The actual number of days shall be specified by the Public Works Director in the relocation notice.

**C.** The Grantee may, after receipt of said notice, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if any one or more of the alternatives, including the amount of time required to safely complete such relocation, is suitable to accommodate the work which would otherwise necessitate relocation of the Telecommunications facilities as stated in the City's order. If requested, the Grantee shall submit additional information to assist the City in making such an evaluation. The City shall give each alternative proposed full and fair consideration, within a reasonable period of time, so as to allow the relocation work to be performed in a timely manner. In the event that the

City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its Telecommunications facilities as otherwise provided in the order.

**D.** The costs and expenses associated with relocation of Telecommunication facilities shall be the responsibility of Grantee unless: (1) the Grantee has paid for the relocation cost of the same Telecommunications facilities at the request of the City within the past five (5) years; (2) aerial to underground relocation of Telecommunications facilities is required by the City and the Grantee has an ownership share of the aerial supporting structures, in which case the City shall be responsible for the additional incremental cost of aerial to underground relocation compared to aerial to aerial relocation, or as provided for in a telecommunication carrier's tariff, if said amount is less; or, (3) when the City requests relocation solely for aesthetic purposes, unless the Grantee agrees to be responsible for the costs thereof.

**E.** In the event that the City orders a Grantee to relocate its Telecommunications facilities for a project which is primarily for private benefit, the private party or parties causing the need for such project shall reimburse the Grantee for the cost of relocation in the same proportion as their contribution to the cost of the project.

**F.** In the event of an unforeseen emergency which creates a threat to the public health, safety, or welfare, the City may require a Grantee to relocate its Telecommunications facilities at its own expense, any other portion of this section notwithstanding.

**G.** If payment of the costs of relocation is in dispute, Grantee shall still commence and complete the relocation as provided herein on a timely basis for public works projects undertaken by the City and as provided by RCW 35.99.060. Grantees shall indemnify, hold harmless, and pay the costs of defending the City against claims or liabilities for delay or delays on public improvement projects caused by their failure to relocate their Telecommunications facilities in a timely manner, unless caused by circumstances beyond their control.

**Section 12.14.550 Building Moving.** Whenever any Person shall have obtained permission from the City to use any street or Public ways for the purpose of moving any building, a Grantee upon seven (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's Telecommunications 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 and remit the applicable cost of raising or removing Grantee's Telecommunications facilities prior to Grantee's commencement of such work.

**Section 12.14.560 Removal of Unauthorized Telecommunications Facilities.** Within 90 days following written notice from the City, any Grantee or other Person who owns, controls, or maintains any unauthorized Telecommunications facilities or related appurtenances within the Public ways shall, at its own expense, remove such Telecommunications facilities or appurtenances from the Public ways. Telecommunications facilities are unauthorized and subject to removal in the following circumstances:

A. Upon abandonment of the Telecommunications facilities within the Public ways of the City, or if a Grantee does not respond within one hundred twenty (120) days after notice from the City such property shall be deemed abandoned

B. If the Telecommunications facilities were constructed or installed without the prior grant as authorized by RCW 35.99.030 of a Right-of-Way Use Authorization or Franchise;

C. If the Telecommunications facilities were constructed or installed without the prior issuance of a required Right-of-Way Use Permit; or

D. If the Telecommunications facilities were constructed or installed at a location not permitted by a Right-of-Way Use Permit, Right-of-Way Use Authorization, Franchise or Facilities Lease.

Provided, however, that the City may, in its sole discretion, allow a Grantee or other such Persons who may own, control, or maintain Telecommunications facilities within the Public ways of the City to abandon such Telecommunications facilities in place. No Telecommunications facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment or removal of such Telecommunications 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 a Right-of-Way Use Authorization, Franchise, Right-of-Way Use Permit or Facilities Lease granted under this Chapter.

**12.14.570 Emergency Removal or Relocation of Telecommunications Facilities.** The City retains the right and privilege to cut or move any 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 Telecommunications carrier or provider, or any other Person 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. The City shall attempt to contact the Telecommunications carrier or provider and provide an opportunity for the Telecommunications carrier or provider to perform the necessary cutting or moving unless the emergency necessitates City action prior to such contact.

**Section 12.14.580 Damage to Telecommunications Facilities.** Unless directly and proximately caused by the sole negligence, willful, intentional, or malicious acts by the City, the City shall not be liable for any damage to or loss of any Telecommunications facilities upon City property or within the Public ways 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 nor shall the City be liable with respect to any actions in connection with Section 12.14.570 above.

**Section 12.14.590 Restoration of Public ways, Other ways, and City Property.**

A. When a Grantee or other Person 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 Public ways, Other ways and City property to the 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 shall temporarily restore the affected Public ways, Other ways and City property. Such temporary restoration shall be at the Grantee's sole expense and the Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. A Grantee or other Person acting in its behalf shall use suitable barricades, flags, flaggers, 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 Public ways, Other ways or City property.

D. The Public Works Director shall be responsible for inspection and final approval of the condition of the Public 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 a Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities Lease granted pursuant to this Chapter.

E. A Grantee that has determined to discontinue its operations in the City must submit to the City, within ninety (90) days of the planned date for discontinuance of operation, a proposal and instruments for transferring ownership of its Telecommunications facilities to the City. If a Grantee proceeds under this clause, the City may at its option:

1. Purchase the Telecommunications facilities at a mutually determined price or the Grantee may seek bids from other Persons; or
2. Require the Grantee, at its own expense, to remove the Telecommunications facilities.

Telecommunications facilities of a Grantee who fails to comply with the preceding paragraph and which, for one hundred twenty (120) days, remains unused, shall be deemed to be abandoned. Abandoned Telecommunications facilities are deemed to be a nuisance. After the lapsing of such one hundred twenty (120) days and upon thirty (30) days notice to the occupant, the City may exercise any remedies or rights it has at law or in equity, including but not limited to:

1. Abating the nuisance;
2. Requiring removal of the Telecommunications facilities at the expense of the Grantee; or

3. Removing abandoned Telecommunications facilities in conjunction with a proposed construction project.

**Section 12.14.600 Duty to Provide Information.** Within 10 days of a written request from the City, each Grantee shall furnish the City with information sufficient to demonstrate:

A. That the Grantee has complied with all requirements of this Chapter; and

B. All books, records, maps and other documents, maintained by the Grantee with respect to the location of its Telecommunications 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 to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require a Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

**Section 12.14.610 Leased Capacity.** A Grantee shall have the right, without prior City approval, to offer or provide fiber capacity or bandwidth to other carriers, resellers, customers, or subscribers consistent with such Right-of-Way Use Authorization, Right-of-Way Use Permit, Facilities Lease or Franchise; provided, however, that the Grantee shall remain responsible for compliance with this Chapter and such Right-of-Way Use Authorization, Right-of-Way Use Permit, Facilities Lease or Franchise, and provided the collocator or other user must obtain any necessary agreement or authorization from the City if Telecommunications facilities are made available to the collocator or other user.

**Section 12.14.620 Insurance.** Unless otherwise provided in a Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities Lease, each Grantee shall secure and maintain the following liability insurance policies insuring both the Grantee and the City against claims for injuries to Persons, death or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the Grantee:

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

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

and

B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000.00 for each Person and \$2,000,000.00 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; and

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$2,000,000.00.

E. The liability insurance policies required by this section shall be maintained by the Grantee throughout the term of the Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities Lease, and such other period of time during which the Grantee is operating without a Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities Lease hereunder, or is engaged in the removal of its Telecommunications facilities. Failure to maintain such insurance shall be grounds for cancellation. The Grantee 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 Telecommunications facilities pursuant to said Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities 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. 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's insurance shall be primary insurance as respects the City, its elected and appointed officers, officials, employees, agents, representatives, engineers, consultants, and volunteers. Any insurance maintained by the City, its elected and appointed officers, officials, employees, consultants, agents, representatives, engineers and volunteers shall be in excess of the Grantee's insurance and shall not contribute with it.

F. In addition to the coverage requirements set forth in this section, each such insurance certificate shall contain endorsement which provides as follows:

"Should any of the required policies be canceled or reduced as to coverage before the expiration date thereof, the issuing company will mail sixty (60) days written notice to the certificate holder, the City of Redmond, an additional insured."

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 shall obtain and furnish to the City a replacement insurance certificate meeting the requirements of this section.

**Section 12.14.630 General Indemnification.** No Right-of-Way Use Authorization, Franchise, or Facilities Lease shall be deemed to be granted under this Chapter unless it includes an indemnity clause substantially conforming to the following:

A. Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers and representatives from any and all claims, costs, judgments, awards or liability to any Person arising from injury, sickness, or death of any Person or damage to property:

1. For which the negligent acts or omissions of Grantee, its agents, servants, officers or employees in performing the activities authorized are the proximate cause;

2. By virtue of Grantee's exercise of the rights granted herein;

3. By virtue of the City's permitting Grantee's use of the Public ways or other City property;

4. Based upon the City's inspection or lack of inspection of work performed by Grantee, its agents and servants, officers or employees in connection with work authorized on a Telecommunications Facility, Public ways or other City property over which the City has control pursuant to any Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise or Facilities Lease issued;

5. Arising as a result of the negligent acts or omissions of Grantee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work upon a Telecommunications Facility, in any Public ways, Other ways or other City property in performance of work or services;

6. Based upon radio frequency emissions or radiation emitted from Grantee's equipment located upon a Telecommunications Facility, regardless of whether Grantee's equipment complies with applicable federal statutes and/or FCC regulations related thereto.

**B.** Grantee's indemnification obligations pursuant to Subsection A of this section shall include assuming potential liability for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is with respect to claims against the City arising by virtue of Grantee's exercise of its rights. The obligations of Grantee under this Subsection B shall be mutually negotiated between the parties. Grantee shall acknowledge that the City would not enter into an agreement without Grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Grantee will waive its immunity under Title 51 RCW as provided in RCW 4.24.115.

**C.** Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Grantee has been given prompt written notice by the City of any such claim, said indemnification obligations shall also 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. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

**D.** In the event that Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this section, and said refusal is subsequently

determined by a court having jurisdiction (or such other tribunal that the parties agree to decide the matter), to have been a wrongful refusal on the part of Grantee, then Grantee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees, reasonable attorneys' fees, the reasonable costs of the City, and reasonable attorneys' fees of recovering under this Subsection.

E. The obligations of Grantee under the indemnification provisions of this section shall apply regardless of whether liability for damages arising out of bodily injury to Persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this section, however, are not to be construed to require the Grantee to hold harmless, defend or indemnify the City as to any claim, demand, suit or action which arises out of the sole negligence of the City. In the event that a court of competent jurisdiction determines that this Agreement is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to provide that the Grantee's obligation to indemnify the City hereunder shall extend only to the extent of Grantee's negligence.

F. Notwithstanding any other provisions of this section, Grantee assumes the risk of damage to its Telecommunications facilities located in the Public ways, Other ways and upon City property from activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from any sole negligence, willful or malicious action on the part of the City, its officers, agents, employees or contractors. Grantee releases and waives any and all such claims against the City, its officers, agents, employees and contractors. Grantee 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 Grantee's Telecommunications facilities as the result of any interruption of service due to damage or destruction of Grantee's Telecommunications 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.

G. The provisions of this section shall survive the expiration, revocation, or termination of a Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise or Facilities Lease.

#### **Section 12.14.640 Security Fund.**

A. Prior to issuance of a Right-of-Way Use Permit, Right-of-Way Use Authorization, Franchise or Facilities Lease pursuant to this Chapter, each Grantee 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, bond or an unconditional letter of credit, based upon operating history in Public ways, Other ways and City property which fund shall be maintained at the sole expense of the Grantee so long as any of the Grantee's Telecommunications facilities are located within the Public ways, Other ways or upon City property.



**B.** 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 to comply with the codes, ordinances, rules, regulations, or permits of the City applicable to the construction, maintenance, repair or removal of Telecommunications facilities in the Public ways, Other ways or upon City property.

**C.** Before any sums are withdrawn from the security fund, the City shall give written notice to the Grantee:

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's act or default regarding the installation, maintenance, repair or removal of Telecommunications facilities in the Public ways, Other ways or upon City property or in connection with restoration of the foregoing;

2. Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure regarding the installation, maintenance, repair or removal of Telecommunications facilities in the Public ways, Other ways, or upon City property or in connection with the restoration of the foregoing, if applicable;

3. Providing a reasonable opportunity for Grantee 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 will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

**D.** Grantees 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 12.14.650 Restoration/Performance Bond.** Unless otherwise provided in a Right-of-Way Use Permit, Right-of-Way Use Authorization, Franchise, or Facilities Lease, a performance bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of completing or removing the Grantee's Telecommunications facilities and restoring the Public ways or City 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 or upon City property, and shall warrant all such restoration work for a period of one (1) year. The purpose of this bond is to guarantee completion or removal of partially completed or non-conforming Telecommunications facilities and to fully restore the Public ways and City property to their pre-construction condition.

**Section 12.14.660 Coordination of Construction Activities.**

**A.** All Grantees are required to cooperate with the City and with each other in coordination of construction activities and monthly meetings and joint trenching activities. As an option to monthly meetings, by February 1st of each year, Grantees shall provide the City with a schedule of their proposed construction activities in, around, or that may affect Public ways. Each

Grantee shall also meet with the City and other Grantees and users of the Public ways monthly, quarterly, or as determined by the City to schedule and coordinate construction activities within the Public ways. The Public Works Director shall coordinate all construction locations, activities, and schedules to minimize public inconvenience, disruption, or damage to the Public ways. Notwithstanding the foregoing, if proposed activities are of a confidential or proprietary nature, Grantee shall not be required to disclose such information.

**B.** In order to facilitate coordination of construction activities within the Public ways, the City shall provide reasonable advance notice to Grantees of public street improvements. Grantees and other parties interested in placing Telecommunications facilities within the Public ways that desire to receive notification of such projects shall, annually, file notice with the City Clerk and the Public Works Director of their desire to receive such notices. In the event that a Grantee or other party desiring to place Telecommunication facilities within the Public ways is mailed such a notice and fails to coordinate installation of its Telecommunication facilities within the public improvement project, the Public Works Director may deny Right-of-Way Use Authorizations, Franchises, Facilities Leases, and Right-of-Way Use Permit applications for a period of up to five (5) years for those portions of a project which seeks to disrupt the surface of said Public ways, as reasonably determined by the Public Works Director for the purpose of protecting the City's investment and said public improvement projects. In the alternative, the Public Works Director may require such Persons to fully restore the surface and sub-surface areas of such Public ways to the condition they were in (to the satisfaction of the Public Works Director) immediately after completion of the public improvement project.

**Section 12.14.670 Assignments or Transfers of Grant.**

Ownership or control of a Right-of-Way Use Permit, Right-of-Way Use Authorization, Franchise, or Facilities Lease granted hereunder may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of a Grantee, by operation of law or otherwise unless notice is given by the transferee or assignee to the City in writing within sixty (60) days of approval by the appropriate State agency.

**Section 12.14.680 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 or of the ownership or working control of the Grantee's Telecommunications facilities within the City, or of the ownership or working control having ownership or working control of the Grantee or of the Grantee's Telecommunications facilities within the City, or of control of the capacity or bandwidth of the Grantee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Chapter. Transactions between affiliated entities are not exempt from notice requirements. A Grantee shall promptly notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Grantee. Notice shall not be required for mortgaging purposes.

**Section 12.14.690 Revocation or Termination of Grant.** A Right-of-Way Use Permit, Right-of-Way Use Authorization, Franchise, or Facilities Lease granted by the City to use or occupy Public ways, Other ways or City property may be revoked for the following reasons:

A. Construction or operation in the Public ways, Other ways or upon City property without a Right-of-Way Use Permit, Right-of-Way Use Authorization, Franchise, or Facilities Lease;

B. Construction or operation at an unauthorized location;

C. Misrepresentation or lack of candor by or on behalf of a Grantee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities Lease, pursuant to this Chapter;

D. Unauthorized abandonment of Telecommunications facilities in the Public ways, Other ways or upon City property;

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

F. Failure to pay undisputed compensation, fees or costs in accordance with RCW 35.21.860 when and as due the City;

G. Violation of any bonding, insurance, indemnification and restoration provisions of this Chapter.

**Section 12.14.700 Notice and Duty to Cure.** In the event that the City believes that grounds exist for revocation of a Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities Lease, the Grantee 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 a reasonable period of time not exceeding 45 calendar 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 12.14.710 Hearing.** In the event that a Grantee fails to provide evidence reasonably satisfactory to the City as provided in section 12.14.700 hereof, the apparent violation or non-compliance (except for those dealing with Right-of-Way Use Permits) shall be referred to the City Council. The City Council shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

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 City Council members present at the time of voting.

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 required to hear the appeal and the need to create a full, formal record.

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.

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.

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.

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 thirty (30) calendar days of the decision, or the expiration of the reconsideration period, whichever is later, and otherwise shall be barred.

**Section 12.14.720 Standards for Revocation or Lesser Sanctions.** If the City Council determines that a Grantee willfully violated or failed to comply with any of the provisions of this Chapter or a Right-of-Way Use Authorization, Franchise, or Facilities Lease granted under this Chapter, or through willful misconduct or gross negligence failed to heed or comply with any notice given the Grantee by the City under the provisions of this Chapter, then the Grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and the Right-of-Way Use Authorization, Franchise, or Facilities 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 to comply with the provisions of this Chapter and any Right-of-Way Use Authorization, Franchise, or Facilities Lease granted hereunder, and to recover damages and costs incurred by the City by reason of the Grantee's failure to comply. The City Council shall consider the following factors in analyzing the nature, circumstances, extent, and gravity of the violation and in making its 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 12.14.730 Incorporation by Reference.** The provisions of this Chapter shall be incorporated by reference in any Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities Lease approved hereunder. However, in the event of any conflict between this Chapter, and the foregoing, the Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities Lease shall be the prevailing document.

**Section 12.14.740 Notice of Entry on Private Property.** If directed by the City, at least 48 hours prior to entering private property or Public ways or utility easements adjacent to or on such private property to perform new construction or reconstruction, or otherwise entering or impacting access or services to the private property, 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. A door hanger may be used to comply with the notice and posting requirements of this section. A Grantee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations consistent with sound engineering practices. Provided, however, that nothing in this Chapter shall permit a Grantee to unlawfully enter or construct improvements upon the property or premises of another.

**Section 12.14.750 Safety Requirements.** A Grantee in accordance with applicable federal, state, and local safety requirements shall, at all times, employ reasonable and 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 Public Ways, Other ways, City property or places permitted by a Right-of-Way Use Authorization, Franchise, Facilities Lease or Right-of-Way Use Permit, 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 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 establish a reasonable time for a Grantee 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.

**Section 12.14.760 Exceptions.** Unless otherwise provided in a Right-of-Way Use Permit, Right-of-Way Use Authorization, Franchise, or Facilities Lease, all Telecommunications carriers and providers are subject to the requirements of this Chapter.

**Section 12.14.770 Responsibilities of the Owner.** The owner of the Telecommunications facilities to be constructed and, if different, the permittee and Grantee are responsible for performance of and compliance with all provisions of this Chapter.

**Section 12.14.780 Additional Ducts or Conduits.** The City may require that a Telecommunications carrier or provider or cable operator that is constructing, relocating, or placing ducts or conduits in the Public ways provide the City with additional ducts or conduits in related structures necessary to access the same. The terms and conditions under which such additional ducts and/or conduits shall be provided shall be consistent with RCW 35.99.070.

## **ARTICLE VI. CONSTRUCTION STANDARDS**

<b>Sections</b>	<b>12.14.800</b>	<b>General Construction Standards.</b>
	<b>12.14.810</b>	<b>Right-of-Way Use Permits Required.</b>
	<b>12.14.820</b>	<b>Construction Codes.</b>
	<b>12.14.830</b>	<b>Applications.</b>
	<b>12.14.840</b>	<b>Engineer's Certification.</b>
	<b>12.14.850</b>	<b>Traffic Control Plan.</b>
	<b>12.14.860</b>	<b>Issuance of Permit.</b>
	<b>12.14.870</b>	<b>Appeal of Director's Decision.</b>
	<b>12.14.880</b>	<b>Compliance with Right-of-Way Use Permit.</b>
	<b>12.14.890</b>	<b>Display of Right-of-Way Use Permit.</b>
	<b>12.14.900</b>	<b>Survey of Underground Telecommunications Facilities.</b>
	<b>12.14.910</b>	<b>Noncomplying Work.</b>
	<b>12.14.920</b>	<b>Completion of Construction.</b>
	<b>12.14.930</b>	<b>Record Drawings.</b>
	<b>12.14.940</b>	<b>Restoration After Construction, Installation, Maintenance, Repair or Replacement.</b>
	<b>12.14.950</b>	<b>Landscape Restoration.</b>
	<b>12.14.960</b>	<b>Construction Surety.</b>
	<b>12.14.970</b>	<b>Above-Ground Telecommunications Facilities.</b>
	<b>12.14.980</b>	<b>Severability.</b>

**Section 12.14.800 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 any Telecommunications facilities within Public ways or upon City property, except as provided in this Chapter.

**Section 12.14.810 Right-of-Way Use Permits Required.** The holder of a Right-of-Way Use Authorization, Franchise, or Facilities Lease granted pursuant to this Chapter shall obtain Right-of-Way Use Permits from the City prior to commencement of work, construction,

development, excavation, or installation, maintenance, operation or repair or replacement of any Telecommunications facilities within the Public ways or upon City property. However, nothing in this Chapter shall prohibit the City and a Grantee from agreeing to alternative plan review and construction procedures for Telecommunications facilities to be built, installed, constructed, developed, excavated, maintained, operated, repaired or replaced pursuant to a Right-of-Way Use Authorization, Franchise, or Facilities Lease granted under this Chapter, provided such alternative procedures provide for substantially equivalent safeguards and responsible construction practices. Even if a Right-of-Way Use Authorization, Franchise or Facilities Lease is not required under State law, a Right-of-Way Use Permit shall still be required. No work, construction, development, excavation or installation, maintenance, operation, repair or replacement of any Telecommunications facilities shall take place within the Public Ways, Other ways or upon City property until such time as the Right-of-Way Use Permit is issued.

**Section 12.14.820 Construction Codes.** Construction of Telecommunications facilities with respect to Public ways, Other ways and City property shall be developed, installed, excavated, maintained, repaired and replaced in accordance with all applicable federal, state and local codes, rules and regulations.

**Section 12.14.830 Applications.**

A. Applications for Right-of-Way Use Permits to install, maintain, repair and remove 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:

1. That the installation, maintenance repair or removal of Telecommunications facilities will be in accordance with all applicable codes, rules and regulations;

2. The location, route, and configuration of all Telecommunications 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;

3. The location of Applicant's existing underground utilities, conduits, ducts, pipes, mains, and installations which are within the Public ways along the underground route proposed by the applicant. Vertical location shall be provided for proposed crossings of all existing utilities that will be crossed;

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

5. 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;

6. Proposed construction schedule and work hours which may be limited by the City (including the requirement of working at night for traffic flow and other public health, safety and welfare related issues);

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

8. Whether the proposed use is in compliance or would be compliant with this Chapter and any other applicable regulations with respect to use and management of Public ways, Other ways and City property.

**B.** All applications for Right-of-Way Use Permits shall be submitted at least thirty (30) days prior to the need for the Right-of-Way Use Permit. Applications for complex projects should be submitted at least one hundred twenty (120) days prior to the planned need for the Right-of-Way Use Permit. If unforeseen conditions or circumstances require expedited processing time, the City will reasonably attempt to cooperate where practicable, but additional fees to cover additional costs to the City shall be charged.

**Section 12.14.840 Engineer's Certification.** Where required by the Public Works Director and if in accordance with State law, Right-of-Way Use Permit applications shall be accompanied by drawings, plans and specifications bearing the certification of a registered professional engineer.

**Section 12.14.850 Traffic Control Plan.** All Right-of-Way Use 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 the Manual on Uniform Traffic Control Devices, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

**Section 12.14.860 Issuance of Permit.**

**A.** Subject to 12.14.830 B above, applications for Right-of-Way Use Permits shall be approved or denied within a reasonable time after submission of a complete application therefore, generally not to exceed thirty (30) days, unless otherwise provided by State law or unless the applicant consents to a longer period of time or the applicant has not obtained a Right-of-Way Use Authorization, Franchise or Facilities Lease as required by RCW 35.99.030. In the event that processing a Right-of-Way Use Permit takes longer than the time periods specified herein, the City shall notify the applicant in writing of the amount of time required to process the Right-of-Way Use Permit and the reasons therefore.

**B.** After submission of all plans and documents required of the applicant and payment of the Right-of-Way Use Permit fees required by this Chapter, and when the Public Works Director, is satisfied that the applications, plans and documents comply with all requirements of this Article, and to the extent applicable, the criteria set forth in RMC 12.14.110, he or she shall issue the Right-of-Way Use Permit subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he or she may deem reasonably necessary or



appropriate. In the event that a Right-of-Way Use Permit is denied, the Public Works Director shall set forth the reasons therefore in writing.

**Section 12.14.870 Appeal of Director's Decision.** An applicant aggrieved by the denial or conditioning of a Right-of-Way Use Permit pursuant to this Article shall have the right to appeal to the City Council pursuant to the procedures set forth in RMC 12.14.120.

**Section 12.14.880 Compliance with Right-of-Way Use Permit.** All construction practices and activities shall be in accordance with the Right-of-Way Use Permit and approved final plans and specifications for the Telecommunications facilities. The Public Works Director and his or her representatives shall be provided access to the work and such further information regarding construction activities in the Public ways, Other ways and City property as he or she may require to ensure compliance with such requirements.

**Section 12.14.890 Display of Right-of-Way Use Permit.** The permittee shall maintain a copy of the Right-of-Way Use Permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Public Works Director at all times when construction work is occurring.

**Section 12.14.900 Survey of Underground Telecommunications Facilities.** If the approved plans or Right-of-Way Use Permit specifies the location of Telecommunications facilities by depth, line, grade, proximity to other Telecommunications facilities or other standard and if requested by the City, the permittee, at its cost, shall cause the location of such Telecommunications facilities to be verified by record drawings, pre-construction locates, a state-registered land surveyor or by other means of locating as agreed upon by the City and permittee. The permittee may be required to relocate any Telecommunications facilities which are not located in compliance with the approved plans or Right-of-Way Use Permit requirements.

**Section 12.14.910 Noncomplying Work.** Upon order of the Public Works Director, all work which does not comply with the Right-of-Way Use Permit, the approved plans and specifications for the work, the requirements of this Chapter, or other applicable regulations relating to the use and management of the Public ways, Other ways and City property shall be remedied or removed.

**Section 12.14.920 Completion of Construction.** The permittee shall promptly complete all construction activities so as to minimize disruption of the Public ways and Other ways, City property and other private property. All construction work authorized by a Right-of-Way Use Permit within Public ways, Other ways and City property, including restoration, must be completed within 120 days of the date of issuance unless an extension of such period is granted by the Public Works Director. There may be a 30 day extension if Grantee can adequately demonstrate to the Public Works Director that the extension is necessitated due to inclement weather with such approval not to be unreasonably withheld.

**Section 12.14.930 Record Drawings.** Within 60 days after completion of construction, the permittee shall furnish the City with complete sets of plans, drawn to scale and certified to the City as accurately as reasonably possible and depicting the horizontal and vertical location and

configuration of all Telecommunications facilities constructed pursuant to the Right-of-Way Use Permit. The Public Works Director shall have the discretion to prescribe the number of copies and format of said record drawings, consistent with City codes and policies, and to require submission of such record drawings in a digital format.

**Section 12.14.940 Restoration After Construction, Installation, Maintenance, Repair or Replacement.** Upon completion of any construction, maintenance, repair or replacement work, the permittee shall promptly repair any and all public and private property improvements, fixtures, structures, and Telecommunications facilities in the Public ways, Other ways or City property or otherwise damaged during the course of construction, installation, maintenance, repair or replacement, restoring the same as nearly as practicable to its condition before the start of construction, installation, maintenance, repair or replacement. 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 one (1) year.

**Section 12.14.950 Landscape Restoration.**

A. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair, or replacement of Telecommunications facilities, whether such work is done pursuant to a Right-of-Way Use Authorization, Right-of-Way Use Permit, Franchise, or Facilities 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 Public Works Director.

**Section 12.14.960 Construction Surety.** Prior to issuance of a Right-of-Way Use Permit, the permittee shall provide a performance bond, as provided in this Chapter and the RMC.

**Section 12.14.970 Above-Ground Telecommunications Facilities.** Installation in the Public ways, Other ways and City property of numerous above-ground Telecommunications facilities by Grantees may create safety hazards and adverse visual impacts. Consequently, the Public Works Director is authorized to impose reasonable conditions in order to mitigate those potential adverse impacts that may result, whether on an individual or a cumulative basis, from permitted above-ground Telecommunications facilities. Those conditions may include or relate to, without limitation the following:

A. Prior to issuance of the requisite Right-of-Way Use Permits, all above-ground Telecommunications facilities proposed to be installed by a Grantee in the Public ways, Other ways or City property must be clearly delineated on the plans when they are submitted for the City's review.

**B.** The subsequent design and installation by qualified professionals of landscaping and barriers to minimize public view per City development guidelines of those above-ground Telecommunications facilities (while maintaining necessary sight lines for motorists and pedestrians).

**C.** The maintenance of all above-ground Telecommunications facilities in good condition, including compliance with the City's requirements or ordinances regarding graffiti removal. In this regard, a Grantee may be required to affix to its above-ground Telecommunications facilities a coded label or marker that identifies the specific facility and sets forth a telephone number that may be called to report any damage, destruction, or graffiti vandalism involving that Facility.

**D.** The placement of above-ground Telecommunications facilities, such as overhead drops, as close as possible to other utility drops, consistent with all applicable electrical codes.

**E.** Reasonable limitations upon the number of above-ground Telecommunications facilities that may be installed within a designated geographical area.

**F.** Reasonable limitations upon the dimensions or volumes, or both, of above-ground Telecommunications facilities.

**G.** The specification of colors of above-ground Telecommunications facilities reasonably requested by the City to ensure that these Telecommunications facilities blend with the surrounding environment to the maximum extent possible and taking into account the manufacturer's available color selection.

**H.** Such additional conditions regulating the time, place, and manner of installations of above-ground Telecommunications facilities as will reasonably mitigate potential safety hazards and adverse visual impacts attributable to these Telecommunications facilities.

**Section 12.14.980 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.