

## **Title 12**

### **PUBLIC WAYS<sup>1</sup>**

#### **Chapters:**

**12.05 Road Excavations**

**12.10 Right-of-Way Use**

**12.15 Arterial Streets**

**12.18 Telecommunications**

**12.20 Private Streets in Fairweather Basin Plat**

**12.25 Maintaining Clean Streets**

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1. For provisions on the permit application process, see Chapter 11.10 HPMC.



**Chapter 12.05****ROAD EXCAVATIONS<sup>1</sup>**

## Sections:

- 12.05.010 Permit – Required.
- 12.05.020 Permits – Contents.
- 12.05.030 Town rights.
- 12.05.040 Conditions.
- 12.05.050 Fees.

**12.05.010 Permit – Required.**

(1) The placing or construction of any structure, device or natural or artificial thing, or the collection, channeling and discharging of storm or surface water, which threatens or endangers the whole or any portion of any street or public right-of-way within the town of Hunts Point, or which tends to endanger persons traveling thereon, or obstructs or tends to obstruct or constitutes a hazard to vehicles or persons traveling thereon, when placed or constructed on or in close proximity to said street or roadway; and

(2) The digging or cutting into or marring, defacing or altering of the surface of any street or public right-of-way, including both the improved and unimproved portions thereof, within the town of Hunts Point, without first obtaining permission therefor from the town engineer, shall be unlawful, and such act or acts shall constitute a misdemeanor, the penalty for which shall not exceed a fine in the amount of \$1,000 or imprisonment for a period of 90 days, or both. [Ord. 434 § 1, 2004; Ord. 143 § 1, 1978]

**12.05.020 Permits – Contents.**

Any permit issued hereunder shall contain the following:

- (1) The location of the proposed action and the reason or reasons for such action being taken;
- (2) Whether or not warning or protective structures, signs, signals or devices shall be maintained and their approximate locations;
- (3) The time within which the street or roadway surface must be restored;

(4) The amount of the deposit or bond, if any, required to guarantee the restoration of the street or roadway surface;

(5) For all permits issued for work within the Hunts Point Road right-of-way, a determination by the town engineer that the work will not require any pavement cuts or other pavement damage, and if any portion of the work is to occur beneath the pavement, approval of the proposed construction method. [Ord. 434 § 1, 2004; Ord. 143 § 5, 1978]

**12.05.030 Town rights.**

The provisions of this chapter shall in no way preclude the town of Hunts Point from exercising its rights pertaining to abatement of the act or acts described herein on the basis of public nuisance and shall not prevent or make unlawful the use, placing or construction of any warning or protective structure, sign, signal or device in relation to an act or acts performed on the surface of any street or roadway within the town of Hunts Point: (1) pursuant to permission requested and obtained from the town engineer; or (2) at the request of, or as a necessary incident to, any contract with the council of the town of Hunts Point. [Ord. 434 § 1, 2004; Ord. 143 § 2, 1978]

**12.05.040 Conditions.**

Permission to do the acts referred to in HPMC 12.05.010 shall be subject to the following conditions:

(1) That adequate warning or protective structures, signs, signals or devices will be maintained in relation to the activity for which permission has been given, until the roadway or street has been restored to a condition which will allow vehicles or persons to travel thereon in safety;

(2) That restoration of said street or roadway surface will be accomplished in a reasonable length of time, and as specified by the town engineer;

(3) That said street or roadway surface will be restored to at least as good condition as that existing at the time the work of the permittee commenced thereon and to the satisfaction of the town engineer;

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1. Prior legislation: Ord. 12.

## 12.05.050

(4) That no cutting or other damage to the pavement of Hunts Point Road is allowed;

(5) In performing work pursuant to such permit, applicant agrees to indemnify and hold the town harmless from any and all claims of any kind, nature or description that may arise by reason of such work, and further agrees to indemnify and hold the town harmless from any and all claims of damage or injury to applicant's property or facilities that may arise by reason of work performed pursuant to such permit. [Ord. 434 § 1, 2004; Ord. 143 § 3, 1978]

### 12.05.050 Fees.

A street opening permit application for permission to do any of the acts referred to in HPMC 12.05.010 shall be accompanied by the fee outlined in HPMC 3.05.100, and no permission shall be granted by the town engineer until such fee has been paid to the town of Hunts Point. The town engineer may require an applicant to furnish the town with either a bond or cash deposit, in a sum to be established by the town engineer, which bond or cash deposit shall guarantee restoration of street or roadway surfaces in accordance with the provisions of this chapter. Said bond or cash deposit shall be delivered to the clerk of the town prior to commencement of any activity authorized by permission granted by the town engineer and shall be retained by the town for a period of one year following completion of the work involved. In the event it is necessary that said work be inspected by the town engineer or his representatives, the cost of such inspection shall be deducted from any such cash deposit. [Ord. 434 § 1, 2004; Ord. 365 § 2, 1999; Ord. 143 § 4, 1978]

## Chapter 12.10

### RIGHT-OF-WAY USE<sup>1</sup>

Sections:

#### Article I. Obstructions

- 12.10.010 Purpose.
- 12.10.020 Documentation.
- 12.10.030 Prohibited.
- 12.10.040 Exceptions.
- 12.10.050 Removal.
- 12.10.060 Traffic-control devices.
- 12.10.070 Violation – Penalty.

#### Article II. Mail Boxes

- 12.10.080 Purpose.
- 12.10.090 Location determinations.
- 12.10.100 Restrictions.
- 12.10.110 Nonconforming receptacles.
- 12.10.120 Town duties.
- 12.10.130 Violation – Penalty.

#### Article I. Obstructions

##### 12.10.010 Purpose.

It is the purpose of this article to regulate the use of the public rights-of-way adjacent the improved or traveled portion of the public roads of the town of Hunts Point, Washington, in a manner to promote the public safety, the objectives of the comprehensive plan (Ordinance No. 57), to provide for pedestrian and vehicle safety, off-street parking, facilitate installation, repair and replacement of underground utilities, and to enhance the suburban, sylvan character of the town. [Ord. 186 § 1, 1984]

##### 12.10.020 Documentation.

Permitted uses of the rights-of-way along the public roads of the town of Hunts Point shall be controlled and documented by the town engineer. The addition or change of driveway entrances, the location of all public utilities and any changes affecting storm water control shall require the prior approval of the

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1. See also Ch. 13.05 HPMC on right-of-way use by public utilities.

town engineer. [Ord. 467 § 15, 2008; Ord. 186 § 2, 1984]

#### **12.10.030 Prohibited.**

Except as hereinafter provided, no obstructions of any kind, including without limitation, artificial structures, rockeries, landscaping, including plant life, other than lawns composed of grasses commonly used for residential purposes in the town shall be maintained or permitted in the public rights-of-way within a specified distance from the near edge of the improved or traveled portion of town roads as measured perpendicular to the centerline of said roads. For Hunts Point Road the specified distance is eight feet. For all other streets the specified distance is 16 feet from the centerline of the improved roadway. [Ord. 247 § 2, 1991; Ord. 186 § 3, 1984]

#### **12.10.040 Exceptions.**

(1) Driveway Entrances. Landscaping adjacent to a driveway entrance is permitted so long as obstructions or plant growth are no higher than four feet above natural ground level; are placed no closer than four feet from the near outside edge of the improved or traveled portion of a road and extend along the road no further than 20 feet from the centerline of the driveway.

(2) Trees. Trees existing as of the effective date of the ordinance codified in this article and which are not now in conflict with the provisions of subsection (1) of this section, may be permitted so long as the overhanging branches of the same are no closer than seven feet to the ground measured vertically from existing ground level and are not determined by the town engineer to be a hazard to public transportation.

(3) Resident's Identification Signs. When house address numbers are not clearly visible from the public roads, each driveway shall be identified with a sign bearing a clearly legible street number and may contain the resident's name. Such signs shall not be placed closer than four feet from the improved edge of the traveled portion of a road and shall not be higher than four feet above natural ground level.

(4) Town mail box pagodas are permitted as provided by Article II of this chapter and the location of the same shall be established by the town engineer.

(5) Review of Existing Structures. Artificial structures, including but not limited to rockeries and landscaping existing as of the date of the ordinance codified in this article, which do not conform with the provisions of HPMC 12.10.030, shall be reviewed by the planning commission which shall report its findings to the town engineer within two months from the effective date of the ordinance codified in this article. The town engineer shall accordingly give notice and require removals in the same manner described in HPMC 12.10.050. [Ord. 186 § 4, 1984]

#### **12.10.050 Removal.**

In the event the town engineer determines that obstructions have been placed or are being maintained within town rights-of-way contrary to the provisions of this article, he shall give notice in writing to the party in possession of the property adjoining the right-of-way where the obstruction exists, requiring removal of the same within 90 days of the date of such notice. In the event such obstruction is not removed or brought into compliance with the provisions of this article within such time, the obstruction may be removed by the town of Hunts Point and all costs incurred by the town in removing the obstruction shall be assessed as a lien against the property adjoining the same, enforceable as a lien under the laws of the state of Washington. A property owner may appeal the decision of the town engineer to the hearing examiner. [Ord. 467 § 16, 2008; Ord. 406 § 7, 2002; Ord. 186 § 5, 1984]

#### **12.10.060 Traffic-control devices.**

Nothing herein permitted shall in any manner be construed to restrict the town's right under its police powers to place and maintain traffic control signs and devices in the public rights-of-way or to compel removal of any obstruction therein deemed by the town engineer to be dangerous to the public safety. [Ord. 186 § 6, 1984]

## **12.10.070**

### **12.10.070 Violation – Penalty.**

It shall be unlawful for any person, firm, corporation or association to place, construct or maintain any obstructions in and along the public rights-of-way of the town of Hunts Point in violation of the provisions of this chapter. Any violation of this chapter shall be deemed a misdemeanor and shall be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed 90 days or by both such fine and imprisonment. Each day that a violation is continued or maintained shall be considered a separate offense. [Ord. 186 § 8, 1984]

## **Article II. Mail Boxes**

### **12.10.080 Purpose.**

To preserve the public safety it is found to be necessary to minimize the locations of mail boxes, newspaper boxes and other delivery receptacles in and adjacent to all public rights-of-way within the town in order to assure that vehicles stopping on such rights-of-way to obtain deliveries shall do so only at locations which are prepared for that purpose and are determined to be the best locations from the standpoint of safety. [Ord. 77 § 1, 1967]

### **12.10.090 Location determinations.**

The town engineer shall determine the safest location for the establishment of delivery receptacles in and adjacent to the public rights-of-way of the town. The engineer shall file with the town clerk a map designating such locations. The locations shall be selected and determined to provide adequate safety to users of the public rights-of-way, as nearly as may be under the existing circumstances. [Ord. 77 § 2, 1967]

### **12.10.100 Restrictions.**

Upon the filing provided for in HPMC 12.10.090, it shall be unlawful for any person to erect, maintain, build or establish a delivery receptacle of any kind at any location in or adjacent to the public rights-of-way, except at those locations prescribed by the town engineer upon the map so filed. [Ord. 77 § 3, 1967]

### **12.10.110 Nonconforming receptacles.**

Any delivery receptacle which shall be in existence at the time of filing the engineer's map determining the permitted locations which is at a nonpermitted location shall be abated and removed within 60 days of the engineer's filing at the owner's cost and expense. If the nonconforming receptacle is not abated within that time the town may abate it at the owner's expense. [Ord. 77 § 4, 1967]

### **12.10.120 Town duties.**

The town shall cause to be erected and maintained, at the locations approved by the engineer, such racks or other structures as shall be required to hold delivery receptacles at such places with relation to the public rights-of-way as will promote the public safety. [Ord. 77 § 5, 1967]

### **12.10.130 Violation – Penalty.**

The ownership, construction, maintenance or use of a delivery receptacle in or adjacent to the public rights-of-way of the town at any place except those designated as herein provided is hereby declared to be a misdemeanor and is punishable by a fine of not to exceed \$50.00 in addition to the abatement remedies above established. [Ord. 77 § 6, 1967]

**Chapter 12.15**

**Chapter 12.18**

**ARTERIAL STREETS**

**TELECOMMUNICATIONS**

Sections:

- 12.15.010 Arterials.
- 12.15.020 Secondary arterials.

Sections:

**12.15.010 Arterials.**

The following street is hereby designated to be an arterial street:

(1) The street known as Hunts Point Road, from where the street intersects with the southerly boundary of the town of Hunts Point to the northerly terminal of the street in the town of Hunts Point. [Ord. 58 § 1, 1964]

Article I. General Provisions

- 12.18.002 Purpose.
- 12.18.004 Definitions.
- 12.18.006 Business license required.
- 12.18.008 Telecommunications right-of-way use permit required.
- 12.18.010 Telecommunications franchise required.
- 12.18.012 Facilities lease required.
- 12.18.014 Construction permits required.
- 12.18.016 Application to existing franchise ordinances, agreements, leases, and permits.
- 12.18.018 General penalties.
- 12.18.020 Other remedies.

**12.15.020 Secondary arterials.**

The following streets within the town are hereby designated secondary arterial streets:

Street	From	To
Hunts Point Road	N.E. 28th Street	The north end of Hunts Point
Hunts Point Circle	Hunts Point Road at N.E. 30th Street	Hunts Point Road at N.E. 32nd Street
Points Drive	84th Avenue N.E.	88th Avenue N.E.

Article II. Business Licensing of Telecommunications Carriers and Providers

- 12.18.030 Business license required.
- 12.18.032 Business license fees.
- 12.18.034 Purpose of business license registration.

[Ord. 61 § 1, 1965]

Article III. Telecommunications Right-of-Way Use Permits

- 12.18.040 Telecommunications right-of-way use permit.
- 12.18.042 Telecommunications right-of-way use permit application.
- 12.18.044 Issuance/denial of right-of-way use permit.
- 12.18.046 Nonexclusive grant.
- 12.18.048 Rights granted.
- 12.18.050 Terms of telecommunications right-of-way use permit.
- 12.18.052 Telecommunications right-of-way permit route.
- 12.18.054 Service to town users.
- 12.18.056 Compensation to the town.
- 12.18.058 Amendment of permit.
- 12.18.060 Renewal of telecommunications right-of-way use permit.
- 12.18.062 Standards for renewal of permits.

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12.18.064 Obligation to cure as a condition of renewal.

### Article IV. Telecommunications Franchise

12.18.070 Telecommunications franchise.  
12.18.072 Franchise application.  
12.18.074 Determination by the town.  
12.18.076 Agreement.  
12.18.078 Nonexclusive grant.  
12.18.080 Terms of franchise grant.  
12.18.082 Rights granted.  
12.18.084 Franchise territory.  
12.18.086 Compensation to the town.  
12.18.088 Nondiscrimination.  
12.18.090 Service to the town.  
12.18.092 Amendment of franchise grant.  
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12.18.096 Renewal determination.  
12.18.098 Obligation to cure as a condition of renewal.

### Article V. *Reserved*

### Article VI. Conditions of Permits and Franchises

12.18.100 Location of facilities.  
12.18.102 Compliance with One Call Locator Service.  
12.18.104 Construction permits.  
12.18.106 Interference with the public ways.  
12.18.108 Damage to property.  
12.18.110 Notice of work.  
12.18.112 Repair and emergency work.  
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12.18.116 Relocation or removal of facilities.  
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12.18.122 Damage to franchise's facilities.  
12.18.124 Restoration of public ways, other ways and town property.  
12.18.126 Facilities maps.  
12.18.128 Duty to provide information.  
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12.18.132 Insurance.  
12.18.134 General indemnification.  
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12.18.138 Security fund.  
12.18.140 Construction and completion bond.

12.18.142 Coordination of construction activities.  
12.18.144 Assignments or transfers of grant.  
12.18.146 Transactions affecting control of grant.  
12.18.148 Revocation or termination of grant.  
12.18.150 Notice and duty to cure.  
12.18.152 Hearing.  
12.18.154 Standards for revocation or lesser sanctions.

### Article VII. Construction Standards

12.18.160 General construction standards.  
12.18.162 Construction codes.  
12.18.164 Construction permits.  
12.18.166 Applications.  
12.18.168 Engineer's certification.  
12.18.170 Traffic control plan.  
12.18.172 Issuance of permit.  
12.18.174 Construction schedule.  
12.18.176 Compliance with permit.  
12.18.178 Display of permit.  
12.18.180 Survey of underground facilities.  
12.18.182 Noncomplying work.  
12.18.184 Completion of construction.  
12.18.186 As-built drawings.  
12.18.188 Restoration of improvements.  
12.18.190 Landscape restoration.  
12.18.192 Construction surety.  
12.18.194 Exceptions.  
12.18.196 Responsibilities of the owner.

### Article I. General Provisions

#### 12.18.002 Purpose.

The purpose and intent of this chapter is to:

- (1) Establish a local policy concerning telecommunications providers and service;
- (2) Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services;
- (3) Promote competition in telecommunications;
- (4) Minimize unnecessary local regulation of telecommunications providers and services;
- (5) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the town;

(6) Permit and manage reasonable access to the public ways of the town for telecommunications purposes on a competitively neutral basis;

(7) Conserve the limited physical capacity of the public ways held in public trust by the town;

(8) Assure that the town's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs;

(9) Secure fair and reasonable compensation to the town and the residents of the town for permitting private use of the public ways;

(10) Assure that all telecommunications carriers providing facilities or services within the town comply with the ordinances, rules and regulations of the town;

(11) Assure that the town can continue to fairly and responsibly protect the public health, safety and welfare;

(12) Enable the town to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development. [Ord. 330 § 2, 1997]

#### 12.18.004 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:

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

(2) Annual Gross Revenue. *Reserved.*

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

(4) "FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to reg-

ulate and oversee telecommunications carriers, services and providers on a national level.

(5) "Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within the town, but under the jurisdiction and control of a governmental entity other than the town.

(6) "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.

(7) "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.

(8) "Public street" means any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the town which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

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

(10) "State" means the state of Washington.

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

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

(13) "Telecommunications facilities" means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennas, electronics and oth-

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er appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services. "Telecommunications facilities" may also mean wireless services, and wireless service facilities as defined in Title 47, United States Code, § 332(c)(7)(C), as they may be amended now or in the future and includes facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal communications services, enhanced specialized mobile radio, and any other wireless services licensed by the Federal Communications Commission ("FCC") and unlicensed wireless services.

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

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

(16) Telecommunications System. See "Telecommunications facilities".

(17) "Town" means the town of Hunts Point, Washington.

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

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

(20) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as

specified in any federal or state orders and regulations.

(21) "Utility easement" means any easement owned by the town and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

(22) "Utility facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the town and used or to be used for the purpose of providing utility or telecommunications services. [Ord. 330 § 2, 1997]

### **12.18.006 Business license required.**

Except as otherwise provided herein, all telecommunications carriers and providers engaged in the business of transmitting, supplying or furnishing of telecommunications originating or terminating in the town shall apply for and obtain a business license with the town pursuant to Article II of this chapter. [Ord. 330 § 2, 1997]

### **12.18.008 Telecommunications right-of-way use permit required.**

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any public way of the town for the sole purpose of providing telecommunications service to persons and areas outside the town shall first obtain a right-of-way use permit granting the use of such public ways from the town pursuant to Article III of this chapter. [Ord. 330 § 2, 1997]

### **12.18.010 Telecommunications franchise required.**

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in, under, over or across any public way of the town, and to also provide telecommunications service to persons or areas in the town, shall

first obtain franchise granting the use of such public ways from the town pursuant to Article IV of this chapter. [Ord. 330 § 2, 1997]

**12.18.012 Facilities lease required.**

No telecommunications carrier or other entity who desires to locate telecommunications or other equipment on town property shall locate such facilities or equipment on town property unless granted a facilities lease from the town, pursuant to Article VI of this chapter. The town council reserves unto itself the sole discretion to lease town property for telecommunications and other facilities, and no vested or other right shall be created by this section or any provision of this chapter applicable to such facilities leases. [Ord. 330 § 2, 1997]

**12.18.014 Construction permits required.**

Except as otherwise provided herein, the holder of a permit or franchise granted pursuant to this chapter shall, in addition to said permit or franchise, be required to obtain a construction permit from the town pursuant to Article VII of this chapter. No work, construction, development, excavation, or installation of any equipment shall take place until such time as the construction permit is issued. [Ord. 330 § 2, 1997]

**12.18.016 Application to existing franchise ordinances, agreements, leases, and permits.**

This chapter shall have no effect on any existing franchise ordinance, franchise agreement, lease, or permit to use or occupy a public way in the town until:

(1) The expiration of said franchise ordinance, agreement, lease, or permit; or

(2) Amendment to an unexpired franchise ordinance, franchise agreement, lease, or permit, unless both parties agree to defer full compliance to a specific date not later than the present expiration date. [Ord. 330 § 2, 1997]

**12.18.018 General penalties.**

(1) Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business failing to obtain any permit, fran-

chise, or lease as required by this chapter shall have committed a civil infraction and, upon a determination by a court of competent jurisdiction that such infraction has been committed, shall pay a civil monetary penalty to the town of a sum not less than \$100.00 nor more than \$500.00 for each offense. Each and every day during any portion of which a violation of any provision of this chapter is committed, continued or permitted constitutes a separate infraction.

(2) In addition to the penalties provided in this section, any condition caused or permitted to exist by virtue of such failure to obtain a permit, franchise, or lease, is a public nuisance and all remedies given by law for the prevention and abatement of nuisances shall apply thereto.

(3) Any person deemed to have committed a civil infraction under subsection (1) of this section who shall fail, after written notice to correct, to come into compliance, or who shall fail to remain in compliance with the provision(s) of this chapter deemed violated under subsection (1), after a notice of noncompliance has been received, shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in jail for a term not exceeding 90 days or by a fine in an amount not more than \$1,000, or by both such fine and imprisonment. Each day that such condition or violation continues shall be regarded as a new and separate offense and shall be punishable accordingly. [Ord. 330 § 2, 1997]

**12.18.020 Other remedies.**

Nothing in this chapter shall be construed as limiting any judicial remedies that the town may have, at law or in equity, for enforcement of this chapter. [Ord. 330 § 2, 1997]

**Article II. Business Licensing of Telecommunications Carriers and Providers**

**12.18.030 Business license required.**

All telecommunications carriers and telecommunications providers that offer or provide any telecommunications service for a fee directly to the public, either within the town, or

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outside the corporate limits from telecommunications facilities within the town, shall apply for and obtain a business license with the town pursuant to this chapter on forms to be provided by the town clerk, which shall include the following:

(1) The identity and legal status of the applicant, including any affiliates;

(2) The name, address, telephone number, and title of the officer, agent or employee responsible for the accuracy of the business license application statement;

(3) A description of applicant's existing or proposed telecommunications facilities within the town;

(4) A description of the telecommunications service that the applicant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the town;

(5) Information sufficient to determine whether the applicant is subject to the public way permitting and/or franchising requirements imposed by this chapter;

(6) Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the applicant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility tax or other occupation tax imposed by the town;

(7) Information sufficient to determine that the applicant has applied for and received any certificate of authority required by any federal or state agency to provide telecommunications services or facilities within the town;

(8) Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide telecommunications services or facilities within the town. [Ord. 330 § 2, 1997]

### 12.18.032 Business license fees.

Each application for a business license as a telecommunications carrier or provider shall be accompanied by an application fee which shall be set by the town council by resolution. [Ord. 330 § 2, 1997]

### 12.18.034 Purpose of business license registration.

The purpose of telecommunications business licensing is to:

(1) Provide the town with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the town, or that own or operate telecommunications facilities within the town;

(2) Assist the town in enforcement of this chapter;

(3) Assist the town in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the town;

(4) Assist the town in monitoring compliance with local, state and federal laws. [Ord. 330 § 2, 1997]

## Article III. Telecommunications Right-of-Way Use Permits

### 12.18.040 Telecommunications right-of-way use permit.

A telecommunications right-of-way permit shall be required of any telecommunications carrier who desires to occupy specific public ways of the town for the sole purpose of providing telecommunications services to persons or areas outside the town. [Ord. 330 § 2, 1997]

### 12.18.042 Telecommunications right-of-way use permit application.

Any person that desires a telecommunications right-of-way use permit pursuant to this chapter shall file an application with the town which shall include the following information:

(1) The identity of the license applicant, including all affiliates of the applicant;

(2) A description of the telecommunications services that are or will be offered or provided by the permit applicant over its telecommunications facilities;

(3) A description of the transmission medium that will be used by the permit applicant to offer or provide such telecommunications services;

(4) Preliminary engineering plans, specifications and a network map of the facilities to be

located within the town, all in sufficient detail to identify:

(a) The location and route requested for applicant's proposed telecommunications facilities,

(b) The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route,

(c) The location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers,

(d) The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate;

(5) If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route. All utilities in Hunts Point are undergrounded, and the town shall have the discretion to deny the installation of any new overhead wires, poles or overhead facilities;

(6) If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

(a) The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities,

(b) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities, and

(c) That the applicant has permission from the owner of the ducts to install any such facilities in the ducts;

(7) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

(a) The location proposed for the new ducts or conduits,

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

(8) A preliminary construction schedule and completion date;

(9) A preliminary traffic control plan in accordance with the Manual on Traffic Control Devices, current edition;

(10) Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities;

(11) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application;

(12) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the telecommunications services;

(13) All deposits or charges required pursuant to this chapter;

(14) An application fee which shall be set by the town council by resolution. [Ord. 330 § 2, 1997]

#### **12.18.044 Issuance/denial of right-of-way use permit.**

Within 120 days after receiving a complete application under HPMC 12.18.042, the town shall issue a written determination granting or denying the permit in whole or in part, applying the following standards. If the permit is denied, the written determination shall include the reason for denial:

(1) The financial and technical ability of the applicant;

(2) The legal ability of the applicant;

(3) The capacity of the public ways to accommodate the applicant's proposed facilities;

(4) The capacity of the public ways to accommodate additional utility and telecommunications facilities if the permit is granted;

(5) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the permit is granted;

(6) The public interest in minimizing the cost and disruption of construction within the public ways;

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(7) The service that applicant will provide to the community and region;

(8) The effect, if any, on public health, safety and welfare if the license is granted;

(9) The availability of alternate routes and/or locations for the proposed facilities;

(10) Applicable federal and state telecommunications laws, regulations and policies;

(11) Such other factors as may demonstrate that the grant to use the public ways will serve the community interest. [Ord. 330 § 2, 1997]

### 12.18.046 Nonexclusive grant.

No permit granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the town for delivery of telecommunications services or any other purposes. [Ord. 330 § 2, 1997]

### 12.18.048 Rights granted.

No permit granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a permit only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no permit shall be construed as any warranty of title. [Ord. 330 § 2, 1997]

### 12.18.050 Terms of telecommunications right-of-way use permit.

Unless otherwise specified in a permit, a telecommunications license granted hereunder shall be in effect for a term of three years, which shall be revokable upon 30 days' notice by the town to the permittee. [Ord. 330 § 2, 1997]

### 12.18.052 Telecommunications right-of-way permit route.

A telecommunications permit granted under this chapter shall be limited to a grant of specific public ways and defined portions thereof. [Ord. 330 § 2, 1997]

### 12.18.054 Service to town users.

A permittee shall be permitted to offer or provide telecommunications services to persons or areas within the town upon approval of an application for a telecommunications fran-

chise pursuant to Article IV of this chapter. [Ord. 330 § 2, 1997]

### 12.18.056 Compensation to the town.

Each permit granted pursuant to this article is subject to the town's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the right to occupy and use the public ways of the town granted under such permits; provided, nothing in this chapter shall prohibit the town and a permittee from agreeing to the compensation to be paid. [Ord. 330 § 2, 1997]

### 12.18.058 Amendment of permit.

A new permit application shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public ways of the town which are not included in a permit previously granted under this chapter. If ordered by the town to locate or relocate its telecommunications facilities in public ways not included in a previously granted license, the town shall grant a permit amendment without further application. [Ord. 330 § 2, 1997]

### 12.18.060 Renewal of telecommunications right-of-way use permit.

A permittee that desires to renew its permit under this chapter shall, not more than 180 days nor less than 90 days before expiration of the current permit, file an application with the town for renewal of its permit which shall include the following:

(1) The information required pursuant to HPMC 12.18.042;

(2) Any information required pursuant to the permit agreement between the town and the permittee;

(3) All deposits or charges required pursuant to this chapter;

(4) An application fee which shall be set by the town council by resolution. [Ord. 330 § 2, 1997]

### 12.18.062 Standards for renewal of permits.

Within 90 days after receiving a complete application for renewal, the town shall issue a

written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

(1) The financial and technical ability of the applicant;

(2) The continuing capacity of the public ways to accommodate the applicant's existing facilities;

(3) The applicant's compliance with the requirements of this chapter and the permit;

(4) Applicable federal, state and local telecommunications laws, rules and policies;

(5) Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest. [Ord. 330 § 2, 1997]

#### **12.18.064 Obligation to cure as a condition of renewal.**

No permit shall be renewed until any on-going violations or defaults in the permittee's performance of the permit, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the permittee has been approved by the town. [Ord. 330 § 2, 1997]

### **Article IV. Telecommunications Franchise**

#### **12.18.070 Telecommunications franchise.**

A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public ways of the town and to provide telecommunications services to any person or area in the town. [Ord. 330 § 2, 1997]

#### **12.18.072 Franchise application.**

Any person that desires a telecommunications franchise pursuant to this chapter shall file an application with the town which shall include the following:

(1) The identity of the franchise applicant, including all affiliates of the applicant;

(2) A description of the telecommunications services that are or will be offered or provided by the franchise applicant over its existing or proposed facilities;

(3) A description of the transmission medium that will be used by the franchisee to offer or provide such telecommunications services;

(4) Preliminary engineering plans, specifications and a network map of the facilities to be located within the town, all in sufficient detail to identify:

(a) The location and route requested for applicant's proposed telecommunications facilities,

(b) The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route,

(c) The location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers,

(d) The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate;

(5) If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route;

(6) If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

(a) The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities,

(b) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunication facilities;

(7) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

(a) The location proposed for the new ducts or conduits,

(b) The excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunication facilities;

(8) A preliminary construction schedule and completion dates;

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(9) A preliminary traffic control plan in accordance with the town's adopted street standards;

(10) Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities;

(11) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application;

(12) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services;

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

(14) An accurate map showing the location of any existing telecommunications facilities in the town that the applicant intends to use or lease;

(15) A description of the services or facilities that the applicant will offer or make available to the town and other public, educational and governmental institutions;

(16) A description of the applicant's access and line extension policies;

(17) The area or areas of the town the applicant desires to serve and a schedule for build-out to the entire franchise area;

(18) All fees, deposits or charges required pursuant to Article VI of this chapter;

(19) Such other and further information as may be requested by the town clerk;

(20) An application fee which shall be set by the town council by resolution. [Ord. 330 § 2, 1997]

### 12.18.074 Determination by the town.

Within 120 days after receiving a complete application under HPMC 12.18.072, the town shall issue a written determination granting or denying the franchise application in whole or in part, applying the following standards. If the

franchise application is denied, the written determination shall include the reason for denial:

(1) The financial and technical ability of the applicant;

(2) The legal ability of the applicant;

(3) The capacity of the public ways to accommodate the applicant's proposed facilities;

(4) The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted;

(5) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted;

(6) The public interest in minimizing the cost and disruption of construction within the public ways;

(7) The service that the applicant will provide to the community and region;

(8) The effect, if any, on public health, safety and welfare if the franchise request is granted;

(9) The availability of alternate routes and/or locations for the proposed facilities;

(10) Applicable federal and state telecommunications laws, regulations and policies;

(11) Such other factors as may demonstrate that the grant to use the public ways will serve the community interest. [Ord. 330 § 2, 1997]

### 12.18.076 Agreement.

No franchise shall be deemed to have been granted hereunder until the applicant and the town have executed a written agreement setting forth the particular terms and provisions under which the franchisee has been granted the right to occupy and use public ways of the town. [Ord. 330 § 2, 1997]

### 12.18.078 Nonexclusive grant.

No franchise granted under this article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the town for delivery of telecommunications services or any other purposes. [Ord. 330 § 2, 1997]

**12.18.080 Terms of franchise grant.**

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of 10 years. [Ord. 330 § 2, 1997]

**12.18.082 Rights granted.**

No franchise granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title. [Ord. 330 § 2, 1997]

**12.18.084 Franchise territory.**

A telecommunications franchise granted under this chapter shall be limited to the specific geographic area of the town to be served by the franchisee, and the specific public ways necessary to serve such areas, as described in the franchise documents. [Ord. 330 § 2, 1997]

**12.18.086 Compensation to the town.**

Each franchise granted under this chapter is subject to the town's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the franchise rights granted to all franchisees. [Ord. 330 § 2, 1997]

**12.18.088 Nondiscrimination.**

A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for franchisee's services; provided, however, that nothing in this chapter shall prohibit a franchisee from making any reasonable classifications among differently situated customers. [Ord. 330 § 2, 1997]

**12.18.090 Service to the town.**

A franchisee shall make its telecommunications services available to the town at its most favorable rate for similarly situated users, unless otherwise provided in a license or franchise agreement. [Ord. 330 § 2, 1997]

**12.18.092 Amendment of franchise grant.**

A new franchise application and grant shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in public ways of the town which are not included in a franchise previously granted under this chapter. If ordered by the town to locate or relocate its telecommunications facilities in public ways not included in a previously granted franchise, the town shall grant a franchise amendment without further application. [Ord. 330 § 2, 1997]

**12.18.094 Renewal application.**

A franchisee that desires to renew its franchise under this chapter shall, not more than 240 days nor less than 150 days before expiration of the current franchise, file an application with the town for renewal of its franchise which shall include the following:

(1) The information required pursuant to HPMC 12.18.072;

(2) Any information required pursuant to the franchise agreement between the town and the grantee;

(3) All deposits or charges required pursuant to this chapter;

(4) An application fee which shall be set by the town council by resolution. [Ord. 330 § 2, 1997]

**12.18.096 Renewal determination.**

Within 120 days after receiving a complete application under HPMC 12.18.094, the town shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal:

(1) The financial and technical ability of the applicant;

(2) The legal ability of the applicant;

(3) The continuing capacity of the public ways to accommodate the applicant's existing facilities;

(4) The applicant's compliance with the requirements of this chapter and the franchise agreement;

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(5) Applicable federal, state and local telecommunications laws, rules and policies;

(6) Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest. [Ord. 330 § 2, 1997]

### **12.18.098 Obligation to cure as a condition of renewal.**

No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the town. [Ord. 330 § 2, 1997]

## **Article V. Reserved**

### **Article VI. Conditions of Permits and Franchises**

#### **12.18.100 Location of facilities.**

All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a permit or franchise agreement.

(1) A grantee shall install its telecommunications facilities within an existing underground duct or conduit whenever the grantee can obtain permission from the duct owner and excess capacity exists within such utility facility.

(2) A grantee with permission from the town to install certain limited overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

(3) Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public way of the town, a grantee with permission to occupy the same public way must also locate its telecommunications facilities underground.

(4) Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public way of the town, a grantee that currently occupies the same public way shall

relocate its facilities underground. Absent extraordinary circumstances or undue hardship as determined by the town engineer, such relocation shall be made concurrently to minimize the disruption of the public ways. No extension granted by the engineer under this subsection shall exceed a period of 12 months.

(5) Whenever new telecommunications facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future telecommunications carriers or facilities, the grantee and all other occupants of the public way shall provide additional ducts, conduits, manholes and other facilities for non-discriminatory access to future carriers. [Ord. 330 § 2, 1997]

#### **12.18.102 Compliance with One Call Locator Service.**

All permittees and franchise grantees shall, before commencing any construction in the public ways, comply with all regulations of Chapter 19.122 RCW, the One Call Locator Service. [Ord. 330 § 2, 1997]

#### **12.18.104 Construction permits.**

All permittees and franchise grantees are required to obtain construction permits for telecommunications facilities as required in Article VII of this chapter. However, nothing in this chapter shall prohibit the town and a grantee from agreeing to alternative plan review, permit and construction procedures for a permit or franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices. [Ord. 330 § 2, 1997]

#### **12.18.106 Interference with the public ways.**

No permittee or franchise grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the town, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the grantee, at the grantee's cost, temporarily or permanently, as determined by the town engineer. [Ord. 330 § 2, 1997]

**12.18.108 Damage to property.**

No permittee or franchise grantee nor any person acting on a permittee or grantee's behalf shall take any action or permit any action to be done which may impair or damage any town property, public ways of the town, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto. [Ord. 330 § 2, 1997]

**12.18.110 Notice of work.**

Unless otherwise provided in a permit or franchise agreement, no permittee or franchise grantee, nor any person acting on the permittee's or grantee's behalf, shall commence any nonemergency work in or about the public ways of the town or other ways without 10 working days' advance notice to the town. [Ord. 330 § 2, 1997]

**12.18.112 Repair and emergency work.**

In the event of an unexpected repair or emergency, a permittee or grantee may commence such repair and emergency response work as required under the circumstances, provided the grantee or permittee shall notify the town as promptly as possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable. [Ord. 330 § 2, 1997]

**12.18.114 Maintenance of facilities.**

Each permittee or franchise grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements. [Ord. 330 § 2, 1997]

**12.18.116 Relocation or removal of facilities.**

Within 30 days following written notice from the town, a permittee or franchise grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever the town engineer shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The construction, repair, maintenance or installation of any town or other public improvement in or upon the public ways;

(2) The operations of the town or other governmental entity in or upon the public ways;

(3) The operations of any such entity duly authorized by the town to use its public ways. [Ord. 330 § 2, 1997]

**12.18.118 Removal of unauthorized facilities.**

Within 30 days following written notice from the town, any permittee, grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public ways of the town shall, at its own expense, remove such facilities or appurtenances from the public ways of the town. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

(1) Upon expiration or termination of the grantee's telecommunications permit or franchise;

(2) Upon abandonment of a facility within the public ways of the town;

(3) If the system or facility was constructed or installed without the prior grant of a telecommunications permit or franchise;

(4) If the system or facility was constructed or installed without the prior issuance of a required construction permit;

(5) If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications right-of-way permit or franchise. [Ord. 330 § 2, 1997]

**12.18.120 Emergency removal or relocation of facilities.**

The town retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the town, as the town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The town shall not be liable to any telecommunications carrier or any other party for any direct, indirect, or any other such damages suffered by any person or

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entity of any type as a direct or indirect result of the town's actions under this section. [Ord. 330 § 2, 1997]

### **12.18.122 Damage to franchise's facilities.**

Unless directly and proximately caused by the willful, intentional or malicious acts by the town, the town shall not be liable for any damage to or loss of any telecommunications facility upon town property or within the public ways of the town as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such town property or within the public ways by or on behalf of the town. [Ord. 330 § 2, 1997]

### **12.18.124 Restoration of public ways, other ways and town property.**

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

(2) If weather or other conditions do not permit the complete restoration required by this section, the grantee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A permittee, grantee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property. [Ord. 330 § 2, 1997]

### **12.18.126 Facilities maps.**

Each permittee or franchise grantee shall provide the town with an accurate map, maps or as-builts certifying the location of all telecommunications facilities within the public ways. Each permittee or grantee shall provide updated maps annually. [Ord. 330 § 2, 1997]

### **12.18.128 Duty to provide information.**

Within 10 days of a written request from the town clerk, each permittee or franchise grantee shall furnish the town with information sufficient to demonstrate:

(1) That permittee or grantee has complied with all requirements of this chapter;

(2) That all sales, utility and/or telecommunications taxes due the town in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee;

(3) All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public ways shall be made available for inspection by the town at reasonable times and intervals. [Ord. 330 § 2, 1997]

### **12.18.130 Leased capacity.**

A permittee or franchise grantee shall have the right, without prior town approval, to offer or provide capacity or bandwidth to its customers consistent with such permit or franchise; provided:

(1) The permittee or grantee shall furnish the town with a copy of any such lease or agreement between the permittee or grantee and the customer or lessee; and

(2) The customer or lessee complied, to the extent applicable, with the requirements of this chapter. [Ord. 330 § 2, 1997]

### **12.18.132 Insurance.**

Unless otherwise provided in a permit or franchise agreement, each permittee or franchise grantee shall, as a condition of the permit or grant, secure and maintain the liability insurance policies insuring both the grantee and the town, and its elected and appointed

officers, officials, agents, consultants and employees as co-insureds as required by and in an amount determined by the town.

The liability insurance policies required by this section shall be maintained by the permittee or grantee throughout the term of the permit or franchise, and such other period of time during which the permittee or grantee is operating without a franchise or permit hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until 90 days after receipt by the Town, by registered mail, of a written notice addressed to the Town Clerk of such intent to cancel or not to renew.

Within 60 days after receipt by the town of said notice, and in no event later than 30 days prior to said cancellation or intent not to renew, the grantee shall obtain and furnish to the town replacement insurance policies meeting the requirements of this section. [Ord. 330 § 2, 1997]

#### **12.18.134 General indemnification.**

Each permit or franchise agreement shall include, to the extent permitted by law, permittee's or grantee's express undertaking to defend, indemnify and hold the town and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the permittee, grantee, or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized,

allowed or prohibited by this chapter or by an agreement made or entered into pursuant to this chapter. [Ord. 330 § 2, 1997]

#### **12.18.136 Performance and construction surety.**

Before a permit or franchise granted pursuant to this chapter is effective, and as necessary thereafter, the permittee or grantee shall provide and deposit such moneys, bonds, letters of credit or other instruments in form and substance acceptable to the town as may be required by this chapter or by an applicable permit or franchise agreement. [Ord. 330 § 2, 1997]

#### **12.18.138 Security fund.**

Each permittee or grantee shall establish a permanent security fund with the town by depositing the amount of \$50,000 with the town in cash, an unconditional letter of credit, or other instrument acceptable to the town, which fund shall be maintained at the sole expense of grantee so long as any of grantee's telecommunications facilities are located within the public ways of the town.

(1) The fund shall serve as security for the full and complete performance of this chapter, including any costs, expenses, damages or loss the town pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rule, regulations or permits of the town.

(2) Before any sums are withdrawn from the security fund, the town shall give written notice to the permittee or grantee:

(a) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the town has incurred by reason of permittee's or grantee's act or default;

(b) Providing a reasonable opportunity for permittee or grantee to first remedy the existing or ongoing default or failure, if applicable;

(c) Providing a reasonable opportunity for permittee or grantee to pay any moneys due the town before the town withdraws the amount thereof from the security fund, if applicable;

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(d) That the grantee will be given an opportunity to review the act, default or failure described in the notice with the town clerk or her designee.

(3) Grantees shall replenish the security fund within 14 days after written notice from the town that there is a deficiency in the amount of the fund. [Ord. 330 § 2, 1997]

### 12.18.140 Construction and completion bond.

Unless otherwise provided in a permit or franchise agreement, a performance bond written by a corporate surety acceptable to the town equal to at least 100 percent of the estimated cost of constructing grantee's telecommunications facilities within the public ways of the town shall be deposited before construction is commenced.

(1) The construction bond shall remain in force until 60 days after substantial completion of the work, as determined by the town engineer, including restoration of public ways and other property affected by the construction.

(2) The construction bond shall guarantee, to the satisfaction of the town:

(a) Timely completion of construction;

(b) Construction in compliance with applicable plans, permits, technical codes and standards;

(c) Proper location of the facilities as specified by the town;

(d) Restoration of the public ways and other property affected by the construction;

(e) The submission of as-built drawings after completion of the work as required by this chapter;

(f) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work. [Ord. 330 § 2, 1997]

### 12.18.142 Coordination of construction activities.

All permittees and franchise grantees are required to cooperate with the town and with each other.

(1) By February 1st of each year, permittees and franchise grantees shall provide the town with a schedule of their proposed construction activities in, around or that may affect the public ways.

(2) Each grantee shall meet with the town, other grantees and users of the public ways annually or as determined by the town to schedule and coordinate construction in the public ways.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the town engineer, to minimize public inconvenience, disruption or damages. [Ord. 330 § 2, 1997]

### 12.18.144 Assignments or transfers of grant.

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

(1) No permit, franchise, or other grant shall be assigned or transferred in any manner within 12 months after the initial grant of the permit or franchise, unless otherwise provided in the permit or franchise agreement.

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

(3) The permittee or franchise grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the town not less than 150 days prior to the proposed date of transfer:

(a) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;

(b) All information required of a telecommunications permit or franchise applicant pursuant to Articles III and IV of this chapter

with respect to the proposed transferee or assignee;

(c) Any other information reasonably required by the town;

(d) An application fee which shall be set by the town council by resolution.

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

(5) Unless otherwise provided in a license or franchise agreement, the permittee or grantee shall reimburse the town for all direct and indirect costs and expenses reasonably incurred by the town in considering a request to transfer or assign a telecommunications license or franchise. No approval shall be deemed approved until all such costs and expenses have been paid.

(6) Any transfer or assignment of a telecommunications grant, system or integral part of a system without prior written approval of the town under this section or pursuant to a license or franchise agreement shall be void and is cause for revocation of the grant. [Ord. 330 § 2, 1997]

#### **12.18.146 Transactions affecting control of grant.**

Any transactions which singularly or collectively result in a change of 10 percent or more of the ownership or working control of the grantee, of the ownership or working control of a telecommunications permit or franchise, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth of the permittee or grantee's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring town approval pursuant to this chapter. Transactions between affiliated entities are not exempt from town approval. [Ord. 330 § 2, 1997]

#### **12.18.148 Revocation or termination of grant.**

A permit or franchise granted by the town to use or occupy public ways of the town may be revoked for the following reasons:

(1) Construction or operation in the town or in the public ways of the town without a permit or franchise grant of authorization;

(2) Construction or operation at an unauthorized location;

(3) Unauthorized substantial transfer of control of the grantee;

(4) Unauthorized assignment of a license or franchise;

(5) Unauthorized sale, assignment or transfer of grantee's franchise or license assets, or a substantial interest therein;

(6) Misrepresentation by or on behalf of a grantee in any application to the town;

(7) Abandonment of telecommunications facilities in the public ways;

(8) Failure to relocate or remove facilities as required in this chapter;

(9) Failure to pay taxes, compensation, fees or costs when and as due the town;

(10) Insolvency or bankruptcy of the grantee;

(11) Violation of material provisions of this chapter;

(12) Violation of the material terms of a license or franchise agreement. [Ord. 330 § 2, 1997]

#### **12.18.150 Notice and duty to cure.**

In the event that the town clerk believes that grounds exist for revocation of a license or franchise, he/she shall give the grantee 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 30 days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

(2) That rebuts the alleged violation or noncompliance;

## **12.18.152**

(3) That it would be in the public interest to impose some penalty or sanction less than revocation. [Ord. 330 § 2, 1997]

### **12.18.152 Hearing.**

In the event that a grantee fails to provide evidence reasonably satisfactory to the town clerk as provided in HPMC 12.18.150, the clerk shall refer the apparent violation or non-compliance to the town council. The town council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter. [Ord. 330 § 2, 1997]

### **12.18.154 Standards for revocation or lesser sanctions.**

If persuaded that the grantee has violated or failed to comply with material provisions of this chapter or of a franchise or license agreement, the town council shall determine whether to revoke the license or franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (1) Whether the misconduct was egregious;
- (2) Whether substantial harm resulted;
- (3) Whether the violation was intentional;
- (4) Whether there is a history of prior violations of the same or other requirements;
- (5) Whether there is a history of overall compliance;
- (6) Whether the violation was voluntarily disclosed, admitted or cured. [Ord. 330 § 2, 1997]

## **Article VII. Construction Standards**

### **12.18.160 General construction standards.**

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the town except as provided in this chapter. [Ord. 330 § 2, 1997]

### **12.18.162 Construction codes.**

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state

and local codes, rules and regulations. [Ord. 330 § 2, 1997]

### **12.18.164 Construction permits.**

No person shall construct or install any telecommunications facilities within the town without first obtaining a construction permit therefor; provided, however:

(1) No permit shall be issued for the construction or installation of telecommunications facilities within the town unless the telecommunications carrier has filed an application for a business license with the town pursuant to this chapter;

(2) No permit shall be issued for the construction or installation of telecommunications facilities in the public ways unless the telecommunications carrier has applied for and received a permit or franchise pursuant to this chapter;

(3) No permit shall be issued for the construction or installation of telecommunications facilities without payment of the construction permit fee established by a resolution adopted by the town council for this purpose. [Ord. 330 § 2, 1997]

### **12.18.166 Applications.**

Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the town and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations;

(2) The location and route of all facilities to be installed on existing utility poles;

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

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

(5) The location of all other facilities to be constructed within the town, but not within the public ways;

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

(7) 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, consistent with all ordinances of the town relating to tree protection. [Ord. 330 § 2, 1997]

#### **12.18.168 Engineer's certification.**

All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. [Ord. 330 § 2, 1997]

#### **12.18.170 Traffic control plan.**

All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. [Ord. 330 § 2, 1997]

#### **12.18.172 Issuance of permit.**

Within 45 days after submission of all plans and documents required of the applicant and payment of the permit fees required by this chapter, the town engineer, if satisfied that the applications, plans and document comply with all requirements of this chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he may deem necessary or appropriate. [Ord. 330 § 2, 1997]

#### **12.18.174 Construction schedule.**

The permittee shall submit a written construction schedule to the town engineer 10 working days before commencing any work in or about the public ways. The permittee shall further notify the town engineer not less than two working days in advance of any excavation or work in the public ways. [Ord. 330 § 2, 1997]

#### **12.18.176 Compliance with permit.**

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The town engineer and his representatives shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements. [Ord. 330 § 2, 1997]

#### **12.18.178 Display of permit.**

The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the town engineer or his representatives at all times when construction work is occurring. [Ord. 330 § 2, 1997]

#### **12.18.180 Survey of underground facilities.**

If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a registered state land surveyor. The permittee shall relocate any facilities which are not located in compliance with permit requirements. [Ord. 330 § 2, 1997]

#### **12.18.182 Noncomplying work.**

Upon order of the town engineer, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this chapter, shall be removed. [Ord. 330 § 2, 1997]

#### **12.18.184 Completion of construction.**

The permittee shall promptly complete all construction activities so as to minimize disruption of the town ways and other public and

## **12.18.186**

private property. All construction work authorized by a permit within town ways, including restoration, must be completed within 120 days of the date of issuance. [Ord. 330 § 2, 1997]

### **12.18.186 As-built drawings.**

Within 60 days after completion of construction, the permittee shall furnish the town with two complete sets of plans, drawn to scale and certified to the town as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. [Ord. 330 § 2, 1997]

### **12.18.188 Restoration of improvements.**

Upon completion of any construction work, the permittee shall promptly repair any and all public and private property improvements, fixtures, structures and facilities in the public ways or otherwise damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction. [Ord. 330 § 2, 1997]

### **12.18.190 Landscape restoration.**

(1) 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 franchise, license, or permit, shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

(2) All restoration work within the public ways shall be done in accordance with landscape plans approved by the town engineer. [Ord. 330 § 2, 1997]

### **12.18.192 Construction surety.**

Prior to issuance of a construction permit, the permittee shall provide a performance bond, as provided in HPMC 12.18.064. [Ord. 330 § 2, 1997]

### **12.18.194 Exceptions.**

Unless otherwise provided in a license or franchise agreement, all telecommunications carriers are subject to the requirements of this chapter. [Ord. 330 § 2, 1997]

### **12.18.196 Responsibilities of the owner.**

The owner of the facilities to be constructed and, if different, the license or franchise grantee, are responsible for performance of and compliance with all provisions of this chapter. [Ord. 330 § 2, 1997]

**Chapter 12.20****PRIVATE STREETS IN FAIRWEATHER  
BASIN PLAT**

## Sections:

- 12.20.010 Policy declaration.
- 12.20.020 Development restrictions.
- 12.20.030 Owner responsibility.
- 12.20.040 Violation – Penalty.

**12.20.010 Policy declaration.**

It is hereby declared to be the public policy of the town that private rights-of-way shall be permitted when necessary in fact to provide property with some access to public streets, but shall be prohibited otherwise, when their establishment is inimical to public safety, health, morals or the general welfare of the town. The council finds that certain property owners propose to create and develop one or more streets or ways in and through the town to establish convenient shortcuts across private property, although these properties are not now deprived of access to some public street. [Ord. 50 § 1, 1964]

**12.20.020 Development restrictions.**

In furtherance of the foregoing policy no private roadway, highway, alley or vehicular way shall be created or developed in or across any of the lots of Fairweather Basin Plat for the following reasons:

- (1) All such lots have adequate access to public streets;
- (2) The town is in the process of constructing a childrens' pedestrian walking path in the Fairweather Basin area; a private roadway would increase the safety hazards to users of the pedestrian path;
- (3) Streets to the west of the basin are unsuitable and inadequate to carry traffic having its origin or destination in other neighborhoods which they were not designed or constructed to carry;
- (4) The town would be without jurisdiction to police such a roadway and no other means of assuring safety and proper conduct in the use of the roadway is available;

(5) The roadways of the town are established in furtherance of the town's comprehensive plan for the general welfare of its citizens. Considerations of safety, public morals and facility of policing have been weighed in determining where streets, entrances to streets and intersections would be located; likewise the traffic circulation in Fairweather Basin Plat was the subject of thorough study and policy decision when the plat was approved. Any possibility of east-west circulation was rejected at that time. [Ord. 50 § 2, 1964]

**12.20.030 Owner responsibility.**

No owner or tenant of any lot in Fairweather Basin Plat shall permit such lot to be wholly or partly devoted to use for a roadway, street, alley, way or mutual easement to provide vehicular ingress, egress or other vehicular access to any other lot, lots or any other property in or westerly of that plat for any purpose whatsoever. [Ord. 50 § 3, 1964]

**12.20.040 Violation – Penalty.**

(1) Violation of this chapter:

(a) Is hereby declared to be a nuisance, as against the peace, health, safety, morals and general welfare of the town and its inhabitants; and

(b) Shall be punishable by a fine of not more than \$300.00 or by imprisonment for not more than 10 days or both.

(2) Every day that such an owner or tenant maintains or permits any road, street, easement, alley or way to be used by any vehicle shall be a separate violation of this chapter. [Ord. 50 §§ 4, 5, 1964]

**Chapter 12.25**

**MAINTAINING CLEAN STREETS**

Sections:

- 12.25.010 Responsibility.
- 12.25.020 Engineer authorized to implement preventative measures.
- 12.25.030 Deposit required.
- 12.25.040 City actions.
- 12.25.050 Deposit refund.

**12.25.010 Responsibility.**

Any person or entity engaging in construction, excavation or demolition activities is required to keep the streets free of dirt, mud or other debris originating from the worksite. [Ord. 367 § 1, 2000]

**12.25.020 Engineer authorized to implement preventative measures.**

Any person or entity engaging in construction, excavation or demolition activities is required to take all appropriate and necessary measures in consultation with the city engineer to keep the streets free of dirt, mud or other debris originating from the worksite. Depending on the extent of the construction, excavation or demolition, the city engineer may require measures including, but not limited to, temporary wheel washing stations or the hosing off of tires before a construction vehicle enters town right-of-way. [Ord. 367 § 2, 2000]

**12.25.030 Deposit required.**

A \$3,000 deposit for street cleaning shall be required at the time a construction, excavation or demolition permit is issued and prior to the beginning of any construction activities if, in the opinion of the city engineer, the construction activity, in light of any preventative measures, will likely result in dirt, mud or other debris on the streets. The deposit balance shall be replenished to \$3,000 following any town draws pursuant to HPMC 12.25.040. [Ord. 367 § 3, 2000]

**12.25.040 City actions.**

In the event that any person or entity violates HPMC 12.25.010, the city engineer is authorized to hire the city's normal street sweeping contractor to clean the dirt, mud or other debris from the roadways. One hundred fifty percent of this cost shall be borne by the person or entity that furnished the deposit in order to cover administrative and sweeping costs, and the amount shall be drawn from the deposit. [Ord. 367 § 4, 2000]

**12.25.050 Deposit refund.**

The balance of any deposits shall be refunded to the depositing person or entity promptly after the town issues a certificate of occupancy or other similar certificate of approval. No interest shall be paid. [Ord. 367 § 5, 2000]