

ORDINANCE NO. 2593

AN ORDINANCE OF THE CITY OF ISSAQUAH, WASHINGTON, CREATING A NEW CHAPTER 12.60 IN THE ISSAQUAH MUNICIPAL CODE TO BE ENTITLED TELECOMMUNICATIONS; ESTABLISHING REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS' USE OF THE PUBLIC RIGHTS-OF-WAY AND PUBLIC PROPERTY; DESCRIBING THE PROCEDURES FOR APPLICATION AND APPROVAL OF TELECOMMUNICATIONS FRANCHISES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 35A.47.040 and Chapter 35.99 RCW grants cities broad authority to grant non-exclusive franchise agreements; and

WHEREAS, the City recognizes that there are differences in the services provided by cable and telecommunications providers and the federal law governing such providers; and

WHEREAS, the City desires to separate the franchise requirements for cable and telecommunications providers into two chapters in the Issaquah Municipal Code; NOW, THEREFORE,

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

Section 1. A new Chapter 12.60 is hereby added to the Issaquah Municipal Code to be entitled Telecommunications.

Chapter 12.60

TELECOMMUNICATIONS

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ARTICLE I. GENERAL PROVISIONS

12.60.010 Purpose.

The purpose and intent of this chapter is to:

- A. Establish a local policy concerning the use of public ways and City property by telecommunication carriers;
- B. Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of the public ways and city property;
- C. Promote competition in telecommunication services;
- D. Minimize unnecessary local regulation of telecommunication providers;
- E. Encourage the provision of advanced and competitive telecommunication services on the widest possible basis to the businesses, institutions and residents of the City;
- F. Permit and manage reasonable access to the public ways of the City for telecommunication purposes on a competitively neutral basis;
- G. Conserve the limited physical capacity of the public ways held in public trust by the City;
- H. Assure that the City's current and ongoing costs of granting and regulating private access to and use of the public ways and City property are fully paid by the persons seeking such access and causing such costs;
- I. Secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the public ways and City property;
- J. Assure that all telecommunication carriers providing facilities or services within the City comply with the ordinances, rules and regulations of the City;
- K. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare;
- L. Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;

12.60.020 Definitions.

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

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

“Applicant” means any person or entity that applies for any permit or franchise pursuant to this chapter.

“Cable Act” shall mean the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunication Reform Act of 1996, all codified at 47 U.S.C. 521, et seq., as now exists and is hereafter amended.

“City” means the City of Issaquah, Washington in King County, and all the territory within the corporate boundaries of Issaquah as these may change from time to time.

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

“Council” means the City Council of the City of Issaquah, Washington.

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

“Excess capacity” means the volume or capacity in any existing or future duct, conduit, manhole, hand hole or other utility facility within a public way that is or will be available for use for additional Telecommunication Facilities.

“FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunication carriers, services and providers on a national level.

“Fiber optics” means the technology of guiding and projecting light for use as a communications medium.

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

“Overhead facilities” means utility poles, utility facilities and telecommunication facilities located above the surface of the

ground, including the underground supports and foundations for such facilities.

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

“Personal Wireless Services” means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services as defined by federal laws and regulations.

“Public way” means and includes any highway, street, alley, utility easement, or other public right-of-way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway purposes now or hereafter owned by the City, but only to the extent of the City’s right, title, interest or authority to grant a license or franchise to occupy and the same for Telecommunication Facilities.

“Record” means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, magnetic and laser disk files, and photographs.

“Resident” means any natural person residing within the City.

“State” means the state of Washington.

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

“Telecommunication carrier” means and includes every person that directly or indirectly owns, controls, operates or manages Telecommunication Facilities within the City, used or to be used for the purpose of offering or furnishing telecommunication service within or outside the City.

“Telecommunication facilities” means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennas, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunication services.

“Telecommunication 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.

“Underground facilities” means utility and telecommunication facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

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

“Utility easement” means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunication facilities.

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

“Year” means a full twelve-month calendar year, unless designated otherwise, such as a “fiscal year.”

12.60.030 Business and utility occupation licenses required.

All telecommunication carriers engaged in the business of transmitting, supplying or furnishing of telecommunication service originating or terminating in the City shall apply for and obtain a business license pursuant to Chapter 5.02 IMC, a utility occupation license pursuant to Chapter 5.32 IMC, and pay all license fees, business and occupation taxes, and utility taxes related thereto.

12.60.040 Telecommunications franchise required.

Any telecommunication carrier who desires to construct, install, operate, maintain, or otherwise locate telecommunication facilities in, under, over or across any public way of the City for the purpose of providing telecommunication service to persons and areas within or outside the City shall first obtain a franchise granting the use of such public ways from the City pursuant to Articles II and III of this Chapter.

12.60.050 Facilities lease required.

No telecommunication carrier or other entity who desires to construct or erect telecommunication or other equipment on City property shall locate such facilities or equipment on City property unless granted a facilities lease from the City. The City Council reserves unto itself the sole discretion to lease City property for telecommunication 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.

12.60.060 Construction permits required.

The holder of a franchise granted pursuant this Chapter shall, in addition to said franchise, be required to obtain construction permits from the City pursuant to Article IV of this Chapter. No work, construction, development, excavation, or installation of any equipment or facilities shall take place within the public ways until such time as the construction permits are issued.

12.60.070 Application to existing franchise ordinances, agreements, leases, and permits – Effect of other laws.

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

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

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

12.60.080 Relief

The City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will

constitute a violation of the applicable provisions of this Chapter. Violation of the terms of this Chapter may also result in the revocation of any franchise, facilities lease, or permit issued or granted hereunder.

12.60.090 Remedies

Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter. All penalties and other remedies set forth in this Chapter are in addition to any enforcement provisions set forth in any permit, franchise, or lease granted by the City.

12.60.100 Fees and Compensation Not a Tax

The fees, charges and fines provided for in this Chapter and any compensation charged and paid for the public ways provided for herein, whether monetary or in-kind (to the extent permitted by law), are separate from, in addition to, any and all federal, state, local, and City taxes as may be lawfully levied, imposed or due from a telecommunications carrier, its customers or subscribers or on account of the lease, sale, delivery or transmission of telecommunications service.

**ARTICLE II. TELECOMMUNICATION
FRANCHISES**

12.60.110 Telecommunication Franchise

A telecommunication franchise shall be required of any telecommunication carrier who desires to occupy specific public ways of the City for the purpose of providing telecommunication services to persons or areas within or outside the City.

12.60.120 Telecommunication franchise application.

Any person that desires a telecommunication franchise shall file an application with the City which shall include the following information:

- A. The name, address, and telephone number of the applicant.
- B. A brief description of the telecommunication services that are or will be offered or provided by the applicant over its telecommunication facilities.
- C. A brief description of the transmission medium that will be used by the applicant to offer or provide such telecommunication services.
- D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:

1. The location and route requested for applicant's proposed telecommunication facilities;
 2. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;
 3. The location(s), if any, for interconnection with the telecommunication facilities of other telecommunication carriers;
 4. The specific trees, structures, improvements, facilities and obstructions in the public way to temporarily or permanently remove or relocate.
- E. If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunication facilities on existing utility poles along the proposed route.
- F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:
1. The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunication facilities;
 2. The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunication facilities.
- G. If applicant is proposing an underground installation with new ducts or conduits to be constructed within the public ways:
1. The location proposed for the new ducts or conduits;
 2. The excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunication facilities.
- H. A preliminary construction schedule and completion date.
- I. A preliminary traffic control plan in accordance with the City's adopted street standards.
- J. An application fee as provided in Chapter 3.65 IMC.

12.60.130 Issuance/denial of telecommunication franchise.

- A. Within 120 days after receiving a complete application under IMC 12.60.120 hereof, the City shall issue a written determination granting or denying the franchise in whole or in part. The City Council shall make a decision to grant or deny a franchise under this article based upon the following standards. If the franchise is denied, the written determination shall include the reason(s) for denial.
1. The capacity of the public ways to accommodate the applicant's proposed facilities.
 2. The capacity of the public ways to accommodate additional utility, cable, and telecommunication facilities if the franchise is granted.

3. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.
 4. The public interest in minimizing the cost and disruption of construction within the public ways.
 5. The effect, if any, on public health, safety and welfare if the franchise is granted.
 6. The availability of alternate routes and/or locations for the proposed facilities.
 7. Applicable federal and state laws, regulations and policies.
 8. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.
- B. Unless otherwise provided by state statute or other law, all actions seeking review of a final action of the City, whether in the form of an appeal, declaratory judgment action, petition for writ of review, or other extraordinary writ, or in any other form shall be filed with a court having jurisdiction over such action within 14 working days of the decision, and otherwise shall be barred.

12.60.140 Term of telecommunication franchise.

Unless otherwise specified in a franchise, a franchise granted hereunder shall be in effect for a term of up to 5 years.

12.60.150 Compensation to the City.

Each franchise granted pursuant to this article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the right to occupy and use the public ways of the City granted under such franchise; provided, nothing in this Chapter shall prohibit the City and a grantee from agreeing to the compensation to be paid. In the event that a telecommunications carrier or provider desires to place telecommunications facilities for personal wireless services within the public ways, the telecommunications carrier or provider and the City shall negotiate within the franchise a site-specific charge for the following: (1) the placement of new structures in the public ways regardless of height, unless the new structure is the result of a mandated relocation; (2) replacement structures when the replacement structure is necessary for the attachment of wireless telecommunications facilities and the overall height of the replacement structure and the wireless facility is more than sixty (60) feet; or (3) the placement of personal wireless telecommunications facilities on structures owned by the City and located within the public ways. In the event that the parties cannot agree to a site-specific charge, the amount shall be determined in accordance with RCW 35.21.860. Compensation to the City for

telecommunications facilities not addressed in this section shall be governed by RCW 35.21.860

12.60.160 Non-exclusive Grant

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

12.60.170 Amendment of franchise.

Unless granted City-wide approval, a new franchise application shall be required of any telecommunication carrier that desires to extend or locate its telecommunication facilities in public ways of the City which are not included in a franchise previously granted under this Chapter. If ordered by the City to locate or relocate its telecommunication facilities in public ways not included in a previously granted license, the City shall grant a franchise amendment without further application.

12.60.180 Designated routes.

An applicant may request authority for use of specific public ways or all public ways within the City. In the event that an applicant is granted City-wide approval, the applicant's right to use and occupy public ways shall be limited to those public ways initially identified by the applicant. Use of additional public ways may be approved by the Public Works Director, through the construction permit process in Article IV of this Chapter; provided, however, that in addition to any other standards contained within said article, the Public Works Director shall apply the standards set forth in IMC 12.60.130 to such determinations.

12.60.190 Renewal of telecommunication franchise.

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

- A. The information required pursuant to IMC 12.60.120.
- B. Any information required pursuant to the franchise agreement between the City and the grantee.
- C. An application fee as provided in Chapter 3.65 IMC.

12.60.200 Standards for renewal of franchises.

Within 90 days after receiving a complete application for franchise renewal, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying the renewal of a franchise under this article,

the City Council shall make a decision based upon the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

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

12.60.210 Obligation to cure as a condition of renewal.

No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the franchise, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

12.60.220 Annual fee for recovery of city costs.

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

12.60.230 Other City costs.

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

ARTICLE III. CONDITIONS OF FRANCHISES

12.60.240 Purpose.

The purpose of this article is to set forth certain terms and conditions which are common to all telecommunication franchises. Except as otherwise provided in this Chapter or in such a franchise, the provisions of this article apply to all such franchises approved or granted by the City.

12.60.250 Agreement.

No approval granted under this Chapter shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the grantee has been granted the right to occupy and use public ways of the City or City property.

12.60.260 Rights granted.

No approval granted under this article shall convey any right, title or interest in the public ways or City property, but shall be deemed a franchise only to use and occupy the public ways or City property for the limited purposes and term stated in the approval. Further, no approval shall be construed as any warranty of title.

12.60.270 Acceptance.

No franchise granted pursuant to the provisions of this Chapter shall become effective unless and until the grant has been unconditionally accepted by the grantee. Within 60 days after the effective date of the ordinance or other City action granting a franchise, or within such extended period of time as may be authorized by the City, the applicant shall file written acceptance of the franchise in a form satisfactory to the City Attorney, together with the bonds, insurance policies, and security fund required by this article. Acceptance of a franchise shall consist of executing the written agreement granting the franchise and returning said franchise to the City within the period of time specified herein.

12.60.280 Effect of franchise approval.

No franchise granted under this Chapter, shall be deemed to be an exclusive grant and shall not in any manner prevent the City from constructing, operating, and/or maintaining a telecommunication systems or facilities of its own or granting other franchises to do so in, along, over, through, under below or across any of the public ways, streets, avenues, and other public land and properties of every type and description. No franchise granted hereunder shall prevent or prohibit the City from using any of said roads, rights-of-

way, streets or other public properties or affect the City's jurisdiction over them. The City reserves full power to make all necessary changes, relocations, repairs, maintenance and improvement of all public ways and thoroughfares and other public properties of every type.

12.60.290 Police power.

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

12.60.300 Rules and regulations by the City.

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

12.60.310 Location of facilities.

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

- A. In all new developments and subdivisions, cable and telecommunication facilities shall be placed underground.
- B. A grantee shall install its telecommunication facilities within an existing underground duct or conduit whenever excess capacity exists within such facility.
- C. A grantee with permission to install overhead facilities shall install its telecommunication facilities on pole attachments to existing utility poles only, and then only if surplus space is available.
- D. Whenever any existing electric utilities or telecommunication facilities are located underground within a public way of the City, a grantee with permission to occupy the same public way must also locate its telecommunication facilities underground.

E. Whenever any new or existing electric utilities, cable facilities or telecommunication facilities are located or relocated underground within a public way of the City, a grantee that currently occupies the same public way shall relocate its facilities underground. Absent extraordinary circumstances or undue hardship as determined by the City Public Works Director, such relocation shall be made concurrently to minimize the disruption of the public ways. No extension granted by the Director of Public Works under this subsection shall exceed a period of 12 months.

F. Whenever new telecommunication facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future telecommunication carriers or facilities, the grantee and all other occupants of the public way shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future operators and carriers.

12.60.320 Compliance with one call locator service.

All grantees shall, before commencing any construction in the public ways, comply with all regulations of Chapter 19.122 RCW, the One Call Locator Service.

12.60.330 Interference with the public ways.

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

12.60.340 Damage to property.

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

12.60.350 Notice of work.

Unless otherwise provided in a franchise agreement, no grantee, nor any person acting on the grantee's behalf, shall commence any nonemergency work in or about the public ways of the City or other ways without 10 working days' advance notice to the City.

12.60.360 Repair and emergency work.

In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances, provided the grantee shall notify the City

as promptly as possible, before such repair or emergency work commences or as soon thereafter if advance notice is not practicable, but no more than 48 hours after such emergency repair commences.

12.60.370 Maintenance of facilities.

Each grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

12.60.380 Relocation or removal of facilities.

Within 30 days following written notice from the City, a grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunication facilities within the public ways whenever the safety, health or welfare of the public requires such change. In the case of relocation projects where the City hires and designates an independent contractor to accommodate and coordinate the conversion of overhead utilities within a City capital improvement project, if the grantee decides to participate in the joint trench opportunity then the grantee shall pay to the City the grantee's portion of the traffic control and trench costs, including excavation and other associated costs, trench bedding, and backfill commensurate with the grantee's proportionate share of trench usage. However, notwithstanding anything to the contrary set forth herein, if bids from the City's contractor for placement of the grantee's conduits and vaults/pedestals in the supplied joint trench, in the reasonable estimation of the grantee, are not acceptable, the grantee shall have the option to utilize contractor(s) of its choice to complete the required work. The City's contractor shall coordinate with the grantee's contractor(s) to provide reasonable notice and time to complete the placement of the grantee's facilities in the supplied joint trench.

12.60.390 Building moving.

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

12.60.400 Removal of unauthorized facilities.

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

- A. Upon expiration or termination of the grantee's franchise.
- B. Upon abandonment of a facility within the public ways of the City. Such property shall be deemed abandoned if the grantee does not respond within 120 days of notice of abandonment from the City.
- C. If the system or facility was constructed or installed without the prior grant of a franchise.
- D. If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- E. If the system or facility was constructed or installed at a location not permitted by the franchise.

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

12.60.410 Emergency removal or relocation of facilities.

The City retains the right and privilege to cut or move any telecommunication facilities located within the public ways of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to any telecommunication carrier, grantee, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this section.

12.60.420 Damage to facilities.

Unless directly and proximately caused by the willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunication facility upon City property or within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such City property or within the public ways by or on behalf of the City, nor shall the City be liable with respect to any actions in connection with IMC 12.60.410.

12.60.430 Restoration of public ways, other ways and City property.

A. When a grantee, or any person acting on its behalf, does any work in or affecting any public ways, other ways or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property in accordance with applicable City standards.

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

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

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

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

1. Purchase the telecommunications facilities at a mutually determined price or the grantee may seek bids from other persons; or

2. Require the grantee, at its own expense, to remove the telecommunications facilities.

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

1. Abating the nuisance;
2. Requiring removal of the telecommunications facilities at the expense of the grantee; or
3. Removing abandoned telecommunications facilities in conjunction with a proposed construction project.

12.60.440 Facilities maps.

Each grantee shall provide the City with an accurate map or maps certifying the location of all Telecommunication Facilities within the public ways. The map or maps will be supplied both as a paper copy and in a digital format acceptable to the Public Works Director. Each grantee shall provide the City with updated maps annually.

12.60.450 Duty to provide information.

A. Within 10 days of a written request from the Public Works Director, each grantee shall furnish the City with information sufficient to demonstrate:

1. That grantee has complied with all requirements of this Chapter.
2. That all sales, business and occupation, utility and/or telecommunication taxes due to the City in connection with the telecommunication services and facilities provided by the grantee have been properly collected and paid by the grantee.

B. 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 City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require a grantee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require a grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

12.60.460 Leased capacity.

A grantee shall have the right, without prior City approval, to offer or provide fiber capacity or bandwidth to other carriers, resellers, customers, or subscribers consistent with a franchise; provided, however, that the grantee shall remain responsible for compliance with this Chapter and such franchise, and provided the co-locator or other user obtains any necessary agreement or authorization from the City if telecommunications facilities are made available to the co-locator or other user.

12.60.470 Insurance.

Unless otherwise provided in an authorization, each grantee shall secure and maintain the following liability insurance policies insuring both the grantee and the City against claims for injuries to persons, death or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted to the grantee:

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

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

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

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

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

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

responsibility of the grantee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. The grantee's insurance shall be primary insurance as respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the grantee's insurance and shall not contribute with it.

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

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

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

12.60.480 General indemnification.

No franchise shall be deemed to be granted under this Chapter unless it includes an indemnity clause substantially conforming to the following:

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

1. For which the negligent acts or omissions of grantee, its agents, servants, officers or employees in performing the activities authorized by a franchise are the proximate cause;
2. By virtue of grantee's exercise of the rights granted herein;
3. By virtue of the City permitting grantee's use of the City's public ways or other public property;
4. Based upon the City's inspection or lack of inspection of work performed by grantee, its agents and servants, officers or employees in connection with work authorized on the facility or property over which the City has control, pursuant to a franchise or pursuant to any other permit or approval issued in connection with a franchise;

5. Arising as a result of the negligent acts or omissions of grantee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction or work upon the facility, in any public way, or other public place in performance of work or services permitted under a franchise;

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

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

C. Inspection or acceptance by the City of any work performed by grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that grantee has been given prompt written notice by the City of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

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

E. The obligations of grantee under the indemnification provisions of this section shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this section, however, are not to be construed to require the grantee to hold harmless, defend or indemnify the City as to any claim, demand, suit or action which arises out of the sole negligence of the City. In the event that a court of competent jurisdiction determines that a franchise is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided herein.

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

G. The provisions of this section shall survive the expiration, revocation or termination of a franchise.

12.60.490 Security fund.

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

A. The fund shall serve as security for the full and complete performance of this Chapter, including any costs, expenses,

damages or loss the City pays or incurs, including civil penalties, because of any failure attributable to the grantee to comply with the codes, ordinances, rule, regulations or permits of the City.

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

1. Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the grantee's act or default;

2. Providing a reasonable opportunity for the grantee to first remedy the existing or ongoing default or failure, if applicable;

3. Providing a reasonable opportunity for the grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable;

4. That the grantee will be given an opportunity to review the act, default or failure described in the notice with the Public Works Director or his or her designee.

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

12.60.500 Construction and completion bond.

A performance bond written by a corporate surety acceptable to the City equal to at least 100 percent of the estimated cost of constructing the grantee's telecommunication facilities within the public ways of the City shall be deposited before construction is commenced.

A. The construction bond shall remain in force until 60 days after substantial completion of the work, as determined by the Public Works Director, including restoration of public ways and other property affected by the construction.

B. The construction bond shall guarantee, to the satisfaction of the City:

1. Timely completion of construction;

2. Construction in compliance with applicable plans, permits, technical codes and standards;

3. Proper location of the facilities as specified by the City;

4. Restoration of the public ways and other property affected by the construction;

5. The submission of 'as-built' drawings after completion of the work as required by this Chapter; and

6. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

12.60.510 Coordination of construction activities.

All grantees and other persons with telecommunication facilities occupying public ways of the City are required to cooperate with the City and with each other.

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

B. Each grantee and other persons with telecommunication facilities occupying public ways of the City shall meet with the City and other grantees of the public ways annually or as determined by the City to schedule and coordinate construction in the public ways.

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

12.60.520 Assignments or transfers of grant.

Ownership or control of a telecommunication system 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 City, which consent shall not be unreasonably withheld or delayed, except as expressed by resolution and then only on such reasonable conditions as may be prescribed therein.

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

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

1. Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;

2. All information required of a franchise applicant pursuant to Articles II, III and IV of this Chapter with respect to the proposed transferee or assignee;

3. Any other information reasonably required by the City; and

4. An application fee as provided in Chapter 3.65 IMC.

C. 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 telecommunication system pursuant to this Chapter.

D. Unless otherwise provided in a franchise, the grantee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assignment of a franchise. No approval shall be deemed approved until all such costs and expenses have been paid.

E. Any transfer or assignment of a franchise, system or integral part of a system without prior written approval of the City under this section shall be void and is cause for revocation of the grant.

F. The transferee or the new controlling entity shall file its written acceptance agreeing to be bound by all of the provisions of the franchise.

12.60.530 Transactions affecting control of grant.

Any transactions which singularly or collectively result in a change of 50 percent or more of the ownership or working control of the grantee, of the ownership or working control of a telecommunication system, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunication system, or of control of the capacity or bandwidth of the grantee's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to IMC 12.60.520. Transactions between affiliated entities are not exempt from City approval. A grantee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of a grantee's company. Every change, transfer, or acquisition of control of a grantee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the grant. Approval shall not be required for mortgaging purposes or if said transfer is from a grantee to another person or entity controlling, controlled by, or under common control with a grantee.

12.60.540 Revocation or termination of grant.

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

- A. Construction or operation at an unauthorized location.
- C. Unauthorized substantial transfer of control of grantee.
- D. Unauthorized assignment of a grantee.
- E. Unauthorized sale, assignment or transfer of a grantee's franchise, assets, or a substantial interest therein.
- F. Misrepresentation or lack of candor by or on behalf of a grantee in any application or written or oral statement upon which

the City relies in making the decision to grant, review or amend any franchise pursuant to this Chapter.

G. Abandonment of telecommunication facilities in the public ways.

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

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

J. Insolvency or bankruptcy of the grantee.

K. Violation of any material provision of this chapter.

L. Violation of the material terms of a franchise.

M. Failure to restore public ways, other ways, or public property to a complete and satisfactory condition.

12.60.550 Notice and duty to cure.

In the event that the Public Works Director believes that grounds exist for revocation of a franchise, he or 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:

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

B. That rebuts the alleged violation or noncompliance.

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

12.60.560 Hearing.

A. In the event that a grantee fails to provide evidence reasonably satisfactory to the Public Works Director as provided in IMC 12.60.550 hereof, the Public Works Director shall refer the apparent violation or noncompliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

B. The City Council shall have the option of directing that the appeal be heard before the Hearing Examiner who shall forward a recommendation to the City Council which shall take final action on the appeal.

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

D. Unless substantial relevant information is presented which was not considered by the Public Works Director, such decision shall be accorded substantial weight, but may be reversed or modified by the City Council if, after considering all of the

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

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

F. Judicial appeals will be in accordance with IMC 1.32.040.

12.60.570 Standards for revocation or lesser sanctions.

If the City Council determines that a grantee willfully violated or failed to comply with any of the provisions of this Chapter or a franchise or construction permit granted under this Chapter, or through willful misconduct or gross negligence failed to heed or comply with any notice given the grantee by the City under the provisions of this Chapter, then the grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and the franchise may be revoked or annulled. The City Council may elect, in lieu of the above and without any prejudice to any other legal rights and remedies, to pursue other remedies, including obtaining an order from the superior court having jurisdiction compelling the grantee or franchisee to comply with the provisions of this Chapter and any franchise granted hereunder, and to recover damages and costs incurred by the City by reason of the grantee's failure to comply. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent and gravity of the violation and in making its determination under this section:

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

12.60.580 Incorporation by reference.

The provisions of this Chapter shall be incorporated by reference in any franchise approved hereunder. However, in the event of any conflict between this Chapter and the franchise, the franchise shall be the prevailing document.

12.60.590 Notice of entry on private property.

At least 48 hours prior to entering private property or streets or public easements adjacent to or on such private property to perform new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property by the grantee. A door hanger may be used to comply with the notice and posting requirements of this section. A grantee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial lines utilizing existing poles and existing cable paths), consistent with sound engineering practices; provided, however, that nothing in this Chapter shall permit a grantee to unlawfully enter or construct improvements upon the property or premises of another.

12.60.600 Safety requirements.

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

12.60.610 Authority to trim trees.

Each grantee shall have the authority to trim trees upon and overhanging onto public ways, streets, alleys, sidewalks and other public places of the City, so as to prevent the branches of such trees from coming in contact with the wires and cables of the operator. All trimming is to be done after the explicit prior written notification and approval of the City and at the expense of the grantee. The grantee may contract for such services; however any firm or individual so retained shall receive City approval prior to commencing such trimming. All tree trimming shall be performed

under the direction of an arborist certified by the International Society of Arboriculture or the City Arborist.

12.60.620 Additional ducts or conduits.

The City may require that a telecommunications carrier or provider that is constructing, relocating, or placing ducts or conduits in the public ways provide the City with additional ducts or conduits in related structures necessary to access the same. The terms and conditions under which such additional ducts and/or conduits shall be provided shall be consistent with RCW 35.99.070.

ARTICLE IV. CONSTRUCTION STANDARDS

12.60.630 General construction standards.

No person shall commence or continue with the construction, installation or operation of facilities within the City except as provided in this Chapter.

12.60.640 Construction codes.

Telecommunication facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations.

12.60.650 Construction permits.

No person shall construct, install, repair or maintain any telecommunications facilities within the public ways of the City or upon City property without first obtaining the appropriate right-of-way work permit, provided, however:

A. No right-of-way work permit shall be issued for the construction or installation of telecommunications facilities within the City unless telecommunications carrier has filed an application for a telecommunications business registration pursuant to Chapter 5.02 IMC;

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

C. No permit shall be issued for the construction or installation of telecommunications facilities without payment of any applicable construction permit fee pursuant to Chapter 3.65 IMC; and

D. No permit shall be issued for the construction or installation of telecommunications or other equipment on City property unless the telecommunications carrier or provider has applied for and received a facilities lease from the City. The City Council reserves unto itself the sole discretion to lease City

property for telecommunications and other facilities, and no vested or other rights shall be created by this section or any provision of this Chapter applicable to such facilities leases.

12.60.660 Applications.

Applications for permits to construct telecommunication facilities shall be submitted upon forms to be provided by the City. All applications for construction permits shall be submitted at least thirty (30) days prior to the need for the construction permit. Applications for complex projects should be submitted at least one hundred twenty (120) days prior to the planned need for the construction permit. If unforeseen conditions or circumstances require expedited processing time, the City will reasonably attempt to cooperate where practicable, but additional fees to cover additional costs to the City shall be charged. Application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
- B. The location and route of all facilities to be installed on existing utility poles.
- C. The location 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.
- D. The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.
- E. The location of all other facilities to be constructed within the City, but not within the public ways.
- F. The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public ways.
- G. The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.
- H. Proposed construction schedule and work hours which may be limited by the City (including the requirement of working at night for traffic flow and other public health, safety and welfare related issues);
- I. The location of all survey monuments which may be displaced or disturbed by the proposed construction; and
- J. Whether the proposed use is in compliance or would be compliant with this Chapter and any other applicable regulations

with respect to use and management of public ways, other ways and City property.

12.60.670 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.

12.60.680 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.

12.60.690 Issuance of permit.

Within 30 days after submission of all plans and documents required of the applicant and payment of the permit fees required by this article, the Public Works Director, if satisfied that the applications, plans and documents comply with all requirements of this Chapter and are complete, 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. In the event that the construction permit is denied, the Public Works Director shall set forth the reasons of such denial in writing.

12.60.700 Appeal of permit decision.

Any person aggrieved by the granting or denying of a construction permit pursuant to this article shall have the right to appeal to the City Council as follows:

- A. All appeals filed pursuant to this section must be filed in writing with the Public Works Director within 10 working days of the date of the decision appealed from;
- B. All appeals filed pursuant to this section shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the Public Works Director's decision, which shall constitute the basis of the appeal;
- C. Upon receipt of a timely written notice of appeal, the Public Works Director shall advise the City Council of the pendency of the appeal and request that a date for considering the appeal be established;
- D. All relevant evidence shall be received during the hearing on the appeal;

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

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

G. Unless otherwise provided by state statute or other law, all actions seeking review of a final action of the City, whether in the form of an appeal, declaratory judgment action, petition for writ of review or other extraordinary writ, or in any other form, shall be filed with a court having jurisdiction over such action within 15 days of the decision, or the expiration of the reconsideration period, whichever is later, and otherwise shall be barred; and

H. No action to obtain judicial review shall be commenced unless all rights of appeal provided by this section are fully exhausted. The cost of transcription of all records ordered certified by the court for such review shall be borne by the party seeking such review and shall be paid in advance to the City Clerk. If a transcript is prepared by such party shall be submitted to the City for confirmation of its accuracy.

12.60.710 Construction schedule.

The grantee shall submit a written construction schedule to the Public Works Director 10 working days before commencing any work in or about the public ways. The grantee shall further notify the Public Works Director not less than 2 working days in advance of any excavation or work in the public ways.

12.60.720 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 Public Works Director and his or her representatives shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

12.60.730 Display of permit.

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

12.60.740 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 grantee shall, at its cost, cause the location of such facilities to be verified by a state-registered land surveyor. The grantee shall relocate any facilities which are not located in compliance with permit requirements.

12.60.750 Noncomplying work.

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

12.60.760 Completion of construction.

The grantee shall promptly complete all construction activities so as to minimize disruption of the public and other ways and other public and private property. All construction work authorized by a permit within public and other ways, including restoration, must be completed within 120 days of the date of issuance, unless otherwise extended by the Public Works Director.

12.60.770 As-built drawings.

Within 60 days after completion of construction, the grantee shall furnish the City with complete sets of plans, drawn to scale and certified to the City as accurately as reasonably possible and depicting the horizontal and vertical location and configuration of all telecommunications facilities constructed pursuant to the construction permit. The Public Works Director shall have the discretion to prescribe the number of copies and format of said record drawings, consistent with City codes and policies, and to require submission of such record drawings in a digital format.

12.60.780 Restoration after construction, installation, maintenance, repair or replacement.

Upon completion of any construction, maintenance, repair or replacement work, the grantee shall promptly repair any and all public and private property improvements, fixtures, structures and telecommunications facilities in the public ways, other ways or City property or otherwise damaged during the course of

construction, installation, maintenance, repair or replacement, restoring the same as nearly as practicable to its condition before the start of construction, installation, maintenance, repair or replacement. All survey monuments disturbed or displaced shall be referenced and replaced as required by WAC 332-120. The referencing and replacement of survey monuments shall be performed by a licensed land surveyor. The Public Works Director shall have final approval of the completeness of all restoration work and all grantees shall warrant said restoration work for a period of one (1) year.

12.60.790 Landscape restoration.

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

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

12.60.800 Construction surety.

Prior to issuance of a construction permit, the grantee shall provide a performance bond, as provided in IMC 12.60.500.

12.60.810 Responsibilities of the owner.

Unless otherwise provided in a franchise, all telecommunication carriers are subject to the requirements of this article.

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

Section 3. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

Passed by the City Council of the City of Issaquah, the 20th day of September,
2010.

Approved by the Mayor of the City of Issaquah the 20th day of September, 2010.

APPROVED:

AVA FRISINGER, MAYOR

ATTEST/AUTHENTICATED:

CHRISTINE EGGERS, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
WAYNE D. TANAKA

PUBLISHED: September 29, 2010
EFFECTIVE DATE: October 4, 2010
ORDINANCE NO. 2593/AB 6169