

ORDINANCE NO. 231

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, CONCERNING THE USE OF PUBLIC RIGHT-OF-WAY BY PUBLIC UTILITIES AND TELECOMMUNICATIONS CARRIERS; ESTABLISHING STANDARDS AND A PERMIT PROCESS FOR USE OF PUBLIC RIGHT-OF-WAY BY SUCH ENTITIES; ESTABLISHING PENALTIES FOR NON-COMPLIANCE; ENACTING A NEW CHAPTER 12.27 IN WOODINVILLE MUNICIPAL CODE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the use of public right-of-way by public utilities and telecommunications carriers for placement of utility and telecommunications facilities is necessary for the provision of commodities and services to Woodinville residents and businesses; and

WHEREAS, the City has the authority to manage use of public right-of-way by public utilities and telecommunications carriers and to enact regulations which protect the public health, safety, and general welfare; and

WHEREAS, existing provisions of the City code do not adequately regulate the intensive short and long-term issues presented by use of public right-of-way by such entities; and

WHEREAS, the City Council desires to provide reasonable regulations regarding the use of public right-of-way by such companies in order to protect the public health, safety, and general welfare, and to assure that use of such right-of-way by public utilities and telecommunications carriers does not adversely impact the primary use of such right-of-way as transportation corridors for the general public; and

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

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

WHEREAS, the Act provides for the removal of regulatory barriers to market entry, requires local government to treat similar telecommunications carriers in a non-discriminatory manner, and permits reasonable regulation of public right-of-way; and,

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

WHEREAS, the Act will likely place additional demands on the use of the City's public right-of-way; NOW, THEREFORE,

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

Section 1. A new chapter 12.27, entitled *Public Utility & Telecommunications Right-of-Way Use*, is hereby added to the Woodinville Municipal Code to read as follows:

## Chapter 12.27

### PUBLIC UTILITY & TELECOMMUNICATIONS RIGHT-OF-WAY USE

#### Sections:

12.27.010	Purpose.
12.27.020	Definitions.
12.27.030	Authorization and Permit Required.
12.27.040	Application - Right-of-Way Use Authorization.
12.27.050	Approval of Right-of-Way Use Authorization.
12.27.060	Application - Construction Permit.
12.27.070	Performance Bond.
12.27.080	Approval of Construction Permit.
12.27.090	Terms of Use and Occupancy 12.27.100
	Reimbursement of City Costs and Expenses
12.27.110	Deferment of Construction
12.27.120	Specifications.
12.27.130	Exceptions.
12.27.140	Revocation of Right-of-Way Use Authorization and Construction Permits.
12.27.150	Security Fund.
12.27.160	Insurance.
12.27.170	Hold Harmless/Indemnity.
12.27.180	Inspections.
12.27.190	Correction and Discontinuance of Unsafe, Nonconforming, and Unauthorized Conditions.
12.27.200	Displacement for Public Use.
12.27.210	Additional Ducts or Conduits.
12.27.220	Joint Use Poles.
12.27.230	City Use for Government Communication.
12.27.240	Painting Poles.
12.27.250	Accommodating Moving of Buildings and Equipment.
12.27.260	Removal.
12.27.270	Billings and Collections.
12.27.280	Appeals.
12.27.290	Liability.
12.27.300	Tree Trimming.
12.27.310	Underground Electric Power Facilities.
12.17.320	Joint Trenching.
12.27.330	Notice of Tariff Changes Affecting Permitted Facilities.
12.27.340	One Call Locator Service.
12.27.350	Violations—Penalties.

**12.27.010 Purpose.**

A. **Applicability.** The purpose of this chapter is to provide for the regulation of the use of public right-of-way by any business, service, or person which is engaged in supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, water, sanitary sewer, telecommunications or transportation service. To the extent the provision of any current franchise or other written agreement with a public utility or telecommunications carrier conflicts with any provision of this chapter, the applicable provision of the franchise or other written agreement shall prevail.

B. The provisions of this chapter shall apply to all public utility and telecommunications carriers which occupy, use, construct, or maintain utility or telecommunications facilities within public right-of-way of the City.

**12.27.020 Definitions.** For the purposes of this chapter, the following terms, phrases, and words shall have the meanings set forth below unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. **"Applicant"** means any person or entity that applies for Permit pursuant to this chapter;

B. **"City"** means the City of Woodinville, Washington;

C. **"Council"** means the City Council of the City of Woodinville, Washington acting in its official capacity;

D. **"Department"** means the Public Works Department of the City of Woodinville, Washington;

E. **"Director"** as used herein means the Public Works Director for the City of Woodinville or his/her designee;

F. **"Emergency"** means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City, including, but not limited to, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars;

G. **"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;

H. **"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;

I. **"Public improvement"** as used herein, means all work, construction, alterations, repair or improvements within public right-of-way, executed at the cost or under contract of the City, or caused to be performed by any person or entity as a condition or requirement of an approval or permit for zoning, land use, construction, or development if dedicated or required to be dedicated to the public use, benefit or enjoyment;

J. **"Public right-of-way"** means any highway, street, alley, other public right-of-way, or easement for motor vehicle under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to such purposes, but only to the extent of the City's right, title, interest or authority to grant a permit to occupy and use such streets and easements for telecommunications and utility facilities;

K. **"Public utility"** as used herein, means a company or entity engaged in any business or service regularly supplying the public with some commodity or service which is a public need and consequence, such as natural gas, electricity, water or sanitary sewer, including any business subject to regulation as to rates and service by the Utilities and Transportation Commission under the provisions of Title 81 of the Revised Code of Washington;

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

M. **"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 federal or state orders and regulations, to allow its use by a public utility or telecommunications carrier for a pole attachment. "Surplus space" shall also include usable space within underground conduits and ducts when the necessary clearance from other users, as required by federal or state orders and regulations, can be achieved;

N. **"Telecommunications carrier"** means and includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating, or managing any facilities used to provide telecommunications for hire, resale to the general public within this state;

O. **"Telecommunications facilities"** means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities, and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

P. **"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.

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

**R.** "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;

**S.** "Utility easement" means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes; and

**T.** "Utility facilities" as used herein means all conduit, wires, lines, poles, pipes, cables, communication and signal lines, braces, guys, anchors, vaults, pedestals, antennas, and all other structures, equipment and appurtenances thereto owned, operated or maintained by a public utility and used to furnish utility services.

#### **12.27.030 Authorization and Permit Required.**

**A.** It is unlawful for any person to maintain, operate on, under, or over public right-of-way, any railroad tracks, pipes, ducts, utility tunnels, vaults, maintenance holes, poles, fixtures, wires, utility facilities, telecommunications facilities, or any other appurtenances necessary for the purpose of providing telecommunications service, conducting any public utility business, either public or private, without complying with all the provisions of ordinances in relation thereto and obtaining and having a Right-of-Way Use Authorization from the Director for such purpose.

**B.** It is unlawful for any person to construct, repair, or maintain on, under, or over public right-of-way, any railroad tracks, utility facilities, telecommunications facilities or any other appurtenances necessary for the purpose of providing telecommunications service, conducting any public utility business, either public or private, or to go upon any such public right-of-way to perform any work therein which will obstruct the free flow of vehicular or pedestrian traffic or disturb the surface of public rights-of way, alley, planting strip or sidewalk, or to occupy area upon the surface or beneath the surface of public right-of-way, planting strips or sidewalks, without obtaining a Construction Permit from the Director for such purpose. The director may exempt certain activities from the requirements of this section that do not materially affect the public right-of-way; provided, however, that should the director deny an applicant's request for such an exemption, there shall be no appeal.

#### **12.27.040 Application - Right-of-Way Authorization.**

**A.** To obtain a Right-of-Way Use Authorization the applicant shall file an application with the Permit Center Director.

**B.** The Director shall examine each complete application submitted for review and approval to determine if it complies with the applicable provisions of this chapter and criteria for approval set forth in WMC Section 12.27.050(B). Other departments that have authority over the proposed use or activity may be required to review and approve or disapprove the application based on site specific criteria. The Director may inspect the public right-of-way(s) proposed for use to determine any facts which may aid in determining whether a Right-of-Way Use Authorization should be approved. Right-of-Way Use Authorizations shall be approved or denied within one hundred twenty (120) days of submission of a complete application

**C.** A complete application shall include the following information and materials:

1. The identity of the applicant, including all affiliates of the applicant who will be authorized to work in the Right of Way under the agreement;
2. A brief description of non-confidential, non-proprietary utility or telecommunications services that are or will be offered or provided by the applicant over its facilities;
3. A brief description of non-confidential, non-proprietary transmission medium that will be used to offer or provide such services;
4. If installation of overhead facilities is proposed, evidence that surplus space is available for locating the facilities on existing utility poles along the proposed route.
5. 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 services, including, but not limited to, evidence that the applicant has registered with the Washington Utilities and Transportation Commission;
6. An application fee which shall be set by the City Council by resolution which allows the city to recover its actual administrative expenses that are directly related to receiving and approving a permit, and license, to inspecting plans and construction, or to the preparation of a detailed statement

#### **12.27.050 Approval of Right-of-Way Use Authorization.**

**A.** In the event the Director finds that the Right-of-Way Use Authorization application conforms to the requirements of this chapter and the criteria for approval set forth in subsection B, below, the Director shall approve the Right-of-Way Use Authorization, and may impose such conditions thereon as are reasonably necessary to protect the public health, welfare, and safety and to mitigate any impacts resulting from the use. In the event that the Director denies an application for a Right-of-Way Use

Authorization, the Director's decision shall be in writing and set forth the reasons for said denial. Following approval by the Director, the Right-of-Way Use Authorization shall be issued by the Permit Center.

B. In evaluating a Right-of-Way Use Authorization application under this chapter, the Director shall, consistent with Federal and State law, apply the following criteria;

1. Whether all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies have been obtained by the applicant;

2. The capacity of the public right-of-way to accommodate additional utility and telecommunications facilities if the Right-of-Way Use Authorization is granted;

3. The effect, if any, on public health, safety and welfare if the Right-of-Way Use Authorization is granted;

4. The availability of reasonable alternate routes and/or locations in the right-of-way for the proposed facilities;

5. Applicable federal, state, and local statutes, regulations, ordinances, and policies related to utility, telecommunications, and other facilities, including City construction standards;

6. Such other factors as may demonstrate that the grant to use the public right-of-way will serve the community interest.

C. The duration of a Right-of-Way Use Authorization shall be five (5) years unless revoked or modified under the provisions of this chapter.

D. A grantee that desires to renew a Right-of-Way Use Authorization issued pursuant to this Section for an additional term shall, not more than 180 days nor less than 90 days before expiration of the current authorization, file a completed Right-of-Way Use Authorization Renewal application with the Public Works Department. Said application shall be deemed to be complete when it meets the submittal requirements specified by the Public Works Director.

E. Within 90 days after receiving a complete application for renewal, the Public Works Director or the designee shall issue a written determination granting or denying the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reason(s) for denial. The decision to grant or deny an application for the renewal of a Right-Of-Way Use Authorization

shall, in addition to the standards set forth in Subsection (B) of this Section, be based upon the following standards:

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

F. The Right-of-Way Use Authorization shall incorporate the relevant terms and conditions of this chapter by reference.

#### **12.27.060 Application - Construction Permit.**

A. To obtain a Construction Permit, the applicant shall file an application with the Permit Center Director.

B. All applications for Construction Permits will be submitted at least thirty (30) days prior to the planned need for the Permit, except that the Director may waive the 30-day requirement upon the applicant's showing an unforeseeable, emergent need. Applicants shall be approved within a reasonable time thereafter, generally not to exceed fifteen (15) days, taking into consideration the nature and complexity of the proposed use of City streets. Application for complex projects, as determined by the director, should be submitted at least one hundred twenty (120) days prior to the planned need for the Permit. If unforeseen conditions require expedited processing time, the City will attempt to cooperate, but reasonable expedited processing fees to cover additional costs to the City shall be charged.

C. A complete application shall include the following information and materials:

1. A complete application on a form specified by the Director.
2. In addition to the general plans and specifications described in WMC 12.27.040(C)(4), the applicant shall provide detailed construction plans demonstrating compliance with all applicable City codes and construction specifications.
3. The location of the applicant's overhead and underground facilities in the public right-of-way along the proposed route.
4. Preliminary engineering plans, specifications, and maps of the facilities to be located within the public right-of-way, all in sufficient detail to identify:
  - a. The location and route requested for the proposed facilities including the lineal distance run of the facilities within public right-of-way;

b. The location of the applicant's existing and proposed facilities in the public right-of-way along the proposed route;

c. The specific trees, structures, improvements, facilities and obstructions, if any, the applicant proposes to temporarily or permanently remove or relocate.

5. If underground installation in existing ducts or conduits within the public right-of-way is proposed, information in sufficient detail to identify:

a. The excess capacity currently available in such ducts or conduits before installation of the facilities; and

b. The excess capacity, if any, that will exist in such ducts or conduits after installation of the facilities;

6. If underground installation within new ducts or conduits to be constructed within the public right-of-way is proposed:

a. The location proposed for the new ducts or conduits; and

b. The excess capacity that will exist in such ducts or conduits after installation of the facilities.

7. A preliminary construction schedule and completion date;

8. An application fee which shall be set by the City Council by resolution which allows the city to recover its actual administrative expenses that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement.

**12.27.070 Performance Bond.** A performance bond written by a corporate surety acceptable to the City equal to at least 150% of the estimated cost of removing the permittee's facilities and restoring the public right-of-way to their pre-construction condition shall be deposited before the construction permit is issued. Said bond shall be required to remain in full force until sixty (60) days after completion of the construction and/or improvements within the public right-of-way, and shall warrant all such restoration work for a period of two (2) years. Those applicants performing annual work within the rights-of-way may provide an annual performance bond, in an amount approved by the Director, at the beginning of each year to cover all excavations. The purpose of this bond is to guarantee removal of partially completed and/or non-conforming facilities and to fully restore the public right-of-way to the pre-construction condition

**12.27.080 Approval of Construction Permit.**

A. In the event that the Director finds that the Construction Permit application conforms to the requirements of this chapter and applicable construction standards adopted by the City, the Director shall approve the Construction Permit, and may impose such conditions thereon as are reasonably necessary to protect the public health, welfare and safety, to mitigate any impacts resulting from the use, and to facilitate the orderly management of other utility and telecommunications facilities within the public right-of-way. In the event that the Director denies an application for a Construction Permit, the Director's decision shall be in writing and set forth the reasons for said denial. Following approval by the Director, Construction Permits shall be issued by the Permit Center.

B. The Director has the discretion to approve a blanket Construction Permit for a period of up to one (1) year, when the applicant seeks approval to perform construction or maintenance that is of a repetitive or similar nature.

C. In evaluating a Construction Permit application under this chapter, the Director shall, in addition to the criteria set forth in WMC 12.27.050(B), determine whether the proposed construction is consistent with all construction standards adopted by the City.

D. The duration for a Construction Permit shall be for one (1) year unless revoked or modified under the provisions of this chapter. The Director shall approve a construction schedule specifying the dates, times, and duration during which construction activity shall be permitted within the public right-of-way.

E. The Construction Permit shall incorporate the relevant terms and conditions of this chapter by reference.

F. The Director shall have the power to regulate the construction and enforce Construction Permit conditions and the requirements of this Chapter. The Director shall keep a record of the Construction Permit and the work done thereunder.

#### **12.27.090 Terms of Use and Occupancy.**

A. The use and occupancy of public right-of-way in the City by any person constructing, maintaining or operating telecommunications, utility, or other facilities shall conform to the terms and conditions of this chapter.

B. Existing facilities installed or maintained by a telecommunications carrier, public utility or other entity over, under or across public right-of-way within the City in accordance with an expired franchise agreement or other City-issued permit may be operated by the telecommunications carrier or public utility at the locations at which such facilities exist. Provided, however, that maintenance, repair, relocation,

and/or expansion of such facilities shall not be permitted unless and until the public utility or telecommunications carrier, or other entity obtains all permits and approvals required by this chapter.

C. All work by a telecommunications carrier, public utility, or other entity in the public right-of-way shall be in accordance with all construction standards and specifications adopted by the City as now exist or are hereafter amended, including but not limited to WMC Chapter 12.09.

**12.27.100 Reimbursement of City Costs and Expenses.** All public utilities, telecommunications carriers, and other entities shall, within sixty (60) days after written demand, reimburse the City for all reasonable costed expenses incurred by the City in connection with said party's occupation and use of the public right-of-way for which a permit fee is not otherwise provided.

**12.27.110 Deferral of Construction.** The Director has the discretion to defer construction, or other activity under any Construction Permit, until such time as the Director deems proper in all cases, where the public right-of-way on which the work is desired to be done is occupied or about to be occupied in any work by the City or by some other person having a right to use the same in such manner as to render it seriously inconvenient to the public to allow any further obstruction thereof at such time. In granting such Construction Permit, the Director may so regulate the manner of doing such work in order to cause the least inconvenience to the public in the use of such public right-of-way. In all cases, any work of the City or its contractors or employees for municipal purposes shall have precedence over all work of every other kind.

**12.27.120 Specifications.**

A. All work to be performed under a Construction Permit issued under this chapter shall conform to all applicable City codes, ordinances, and standards adopted by the City. In case of any conflict, the most stringent provision shall apply.

B. No telecommunications, utility, other facilities, or work related thereto shall protrude into or over any portion of a public right-of-way opened to vehicle or pedestrian travel in such a manner as to create a substantial likelihood of endangering the use of such place by vehicles or pedestrian travel. In addition, in the event the requested Construction Permit involves encroachment or partial obstruction of a sidewalk or other walkway open to the public, a minimum of five (5) feet of unobstructed sidewalk or other walkway shall be maintained at all times.

C. During any period of any relocation, construction or maintenance of its facilities within the public right-of-way, a telecommunications carrier, public utility or other person shall conduct their activities so as not to unreasonably interfere with the

free passage of traffic or the use of adjoining property. Such person shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City and the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

D. Upon request by the City, a permittee, utility, carrier, or other person shall, within ten (10) business days, submit, at no cost to the City, current and accurate as-built drawings showing the location of any facilities installed or constructed within the public right-of-way under a permit issued pursuant to this chapter or otherwise. As-builts shall show all of the applicant's facilities in the right-of-way including but not limited to telecommunications facilities, utility facilities, power poles, guy poles and anchors, overhead transformers, pad-mounted transformers, submersible transformers, conduit, substation (with its name) pedestals, pad-mounted Junction boxes, vaults, switch cabinets, and meter boxes.

#### **12.27.130 Exceptions.**

A. A Construction Permit shall not be required when public utilities, telecommunications carriers, or City contractors are responding to emergencies that require work in the public right-of-way, such as water or sewer main breaks, gas leaks, downed power lines, or similar emergencies. Provided, however, that the Public Works Department shall be notified by the responding utility, carrier, or contractor verbally or in writing, on the next business day following onset of the emergency. Nothing in this section shall relieve a responding utility, carrier, or contractor from the requirement of obtaining a Construction Permit after beginning emergency work in a public right-of-way.

B. A Construction Permit fee shall not be required for City-sponsored capital improvement projects for water, sewer, drainage, or road construction maintenance, including associated work required by a public utility.

#### **12.27.140 Revocation of Right-of-Way Use Authorizations and Construction Permits.**

A. Following a notice of violation and opportunity to cure, the Director may revoke or suspend any approval issued under this chapter, in accordance with existing tariff or applicable state law whenever:

1. The work does not proceed in accordance with the plans as approved, the conditions of approval, is not in compliance with the requirements of this chapter, other City ordinances, resolutions, or state law;

2. The City has been denied reasonable access to investigate and inspect the activity approved within the public right-of-way.

3. The permittee or its agents has made a misrepresentation of a material fact in applying for such approval.

4. The Director determines that inadequate measures are being taken to protect the public, adjoining property, public right-of-way, or telecommunications, utility or other facilities in such public right-of-way, or that any excavation or fill endangers or will endanger the public, adjoining property, public right-of-way, or telecommunications or utility facilities in such public right-of-way.

B. Upon suspension or revocation of an approval under this Chapter, all permit-related activities of the public right-of-way shall cease, except as authorized or directed by the Director

#### 12.27.150 Security Fund.

A. Prior to commencement of any activities approved under a Right-of-Way Use Authorization, the grantee shall establish a permanent security fund with the City by depositing the amount of \$50,000, or such greater amount as deemed necessary by the Public Works Director, with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund shall be maintained at the sole expense of the grantee so long as any of the grantee's utility or telecommunications facilities are located within the public right-of-way of the City.

B. The fund shall serve as security for the full and complete performance of the terms and conditions of this chapter and Right-of-Way Use Authorization, including any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations, or permits of the City.

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

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

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

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; and

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

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

**12.27.160 Insurance.** Unless otherwise provided in a Right-of-Way Use Authorization or Permit, each grantee shall, as a condition of the Right-of-Way Use Authorization or Permit, secure, and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as co-insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the grantee:

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

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

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

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

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

E. The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the Right-of-Way Use Authorization or Permit, and such other period of time during which the grantee is operating without a Right-of-Way Use Authorization or Permit hereunder, or is engaged in the removal of

its facilities. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of the grantee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The grantee's insurance shall be primary insurance as respects the City, its 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 insurance and shall not contribute with it. The provisions of this Section may be satisfied by the grantee furnishing evidence of self-insurance with a scope of coverage and limits comparable hereto and in a form satisfactory to the City Attorney.

F. In addition, each such insurance policy shall contain an endorsement which provides that the policy may not be cancelled, reduced in coverage, nor the intention not to renew be stated until sixty (60) days after receipt by the City of a written notice to that effect. Within thirty (30) days after receipt of such notice by the City, and in no event later than fifteen (15) days prior to the cancellation or non-renewal, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.

#### **12.27.170 Hold Harmless/Indemnity.**

A. Any person, public utility, or telecommunications carrier accepting approvals under the terms of this chapter shall agree to release, covenant not to bring suit, and agree 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, including claims by the grantee's own employees, or the employees of the grantee's contractors and subcontractors, for which the grantee might otherwise be immune under Title 51 RCW for injury or death of any person or damage to property caused by or arising out of the acts or omissions of the grantee, its agents, servants, officers, or employees in the performance of activities allowed under any Right-of-Way Use Authorization or Permit granted under this chapter, and any rights granted hereunder. Inspection or acceptance by the City of any work performed by a grantee during or at the time of completion of construction shall not be grounds for avoidance by the grantee of any of its obligations under this indemnity. Such indemnification obligation 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. Such indemnity agreement is required until the utility, telecommunications, or other facilities or any other appurtenances are removed from the public right-of-way, or, until the City furnishes a written release of the requirement to the public utility or telecommunications carrier

**B.** In addition, the City may require that any person, public utility, or telecommunications carrier accepting such a Right of Way Use Authorization or Right-of-Way Use Authorization or Permit provide the City with additional indemnification, such as an indemnification from a parent company.

**C.** The indemnification provided for herein shall not apply to injuries to persons or damage to property caused by or resulting from the sole negligence of the City, its agents or employees.

**12.27.180 Inspections.** All work performed within public right-of-way shall be subject to periodic inspection by the Director to assure compliance with any conditions attached to the Permit, the requirements of this chapter, and the requirements of any applicable City code or standard.

**12.27.190 Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions.**

**A.** Whenever the Director determines that any condition on any public right-of-way is in violation of, or any public right-of-way is being used contrary to any provision of this chapter or procedures adopted under this chapter or other applicable codes or standards, or without a Permit, the Director may order the correction or discontinuance of such condition or any activity causing such condition.

**B.** The Director shall also have all powers and remedies available under state law and this chapter, to secure the correction or discontinuance of any condition specified in this section.

**C.** The Director or his or her designee is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions, or activities as the Director determines appropriate:

**1.** Serving of oral or written directives to the grantee or other responsible person requesting immediate correction or discontinuance of the specified condition:

**2.** Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within such reasonable period as the Director may determine, taking into consideration the nature of the condition:

**3.** Revocation of previously granted Right-of-Way Use Authorizations or Construction Permits where the grantee or other responsible person has failed or refused to comply with requirements imposed by the City related to such Permits; or

4. Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work.

D. Any utility or telecommunications facility, or any other object or thing which shall occupy any public right-of-way without a Right-of-Way Use Authorization or Permit or in violation of Right-of-Way Use Authorization or Permit conditions or this chapter is a nuisance both public and private. The Department may attach a notice to any such object or thing stating that if it is not removed from the public right-of-way within 24 hours of the date and time stated on the notice, the object or thing may be taken into custody and stored at the owner's expense. The notice shall provide an address and phone number where additional information may be obtained. If the object or thing is a hazard to public safety, it may be removed summarily by the City. Notice of such removal shall be thereafter given to the owner, if known. This section shall not apply to motor vehicles.

E. All expenses incurred by the City, including attorney's fees and legal expenses, in abating the condition or any portion thereof shall constitute a civil debt owing to the City jointly and severally by such persons who have been given notice or who own the object or thing or placed it in the public right-of-way, which debt shall be collectible in the same manner as any other civil debt.

F. The City shall also have all powers and remedies which may be available under law, this chapter, and procedures adopted under this chapter for securing the correction or discontinuance of any conditions specified by the City.

#### **12.27.200 Displacement for Public Use.**

A. A telecommunications carrier, public utility, or other person under order of the Director shall, upon a minimum sixty (60) days written notice at its own cost, subject to law and existing tariffs, and expense, move or adjust its underground or overhead facilities located within the public right-of-way which interfere with any public improvement authorized or ordered by the City. The actual number of days shall be specified by the Director in the Director's order.

B. When a public improvement is required to accommodate or allow development or other activity by a party other than the city, then a telecommunications carrier, public utility or other person which moves or adjusts its facilities shall be entitled to recover its associated costs and expenses from such other party.

C. Such persons shall indemnify, hold harmless, and pay the costs of defending the City against claims or liabilities for delays on public improvement projects caused by their failure to relocate their facilities in a timely manner unless caused by circumstances beyond their control.

**12.27.210 Additional Ducts or Conduits.** Any person constructing underground ducts or conduits pursuant to this chapter shall, upon request, provide the City with additional ducts for its use. Such additional ducts or conduits shall be of a size and configuration specified by the City and shall be dedicated to the City. The City shall have the right to use the ducts and conduits for any purpose, including but not limited to leasing them to other entities. The incremental costs of adding the ducts and conduits under this section shall be borne by the City.

**12.27.220 Joint Use Poles.**

A. Subject to applicable state and federal law, any telecommunications carrier or public utility erecting or maintaining any privately-owned poles within public right-of-way shall permit joint use within available surplus space of such poles to another who is authorized to construct and maintain such poles or attachments thereto if directed to do so by the Director and shall obey any order issued by the Director relative to the joint use of such poles.

B. Nothing contained within this chapter shall prevent the owner of such poles to charge a reasonable pole attachment fee to a person, other than the City, making joint use of such poles.

**12.27.230 City Use for Non-Commercial Government Communication.** Any person erecting or maintaining poles within public right-of-way shall allow the City the right, free of charge, to attach, maintain and operate traffic and traffic safety signals, as non-commercial governmental communication and signals, wires and/or fixtures within available surplus space on the poles erected and so maintained.

**12.27.240 Appearance.** Any person erecting or maintaining poles under authority of this chapter shall ensure that its poles are maintained in a manner that does not significantly distract from the visual appearance of the pole. Such maintenance may include cleaning, replacement, painting or repainting of the pole. Wooden utility poles shall not be required to be painted.

**12.27.250 Accommodating Moving of Building(s) and/or Equipment.** Any person maintaining overhead telecommunication or utility facilities in public right-of-way shall, upon seven (7) days notice from the Director, disconnect or move said facilities to allow for the moving of building(s) and/or equipment across or along any such public right-of-way. Provided, however, that the advance notice may be reduced to twenty-four (24) hours if the facilities are below the minimum clearance set by law or regulation or in the case of an emergency. The cost of moving such facilities shall be in accordance with existing tariffs or applicable state law, and borne as follows: (a) by the person owning said facilities if the wires, cables or appurtenances are below the minimum vertical clearance required by state law, City ordinance, or rules of the

Director, above the surface of the public right-of-way, and no adjustment would be necessary if the minimum clearance had been maintained; and (b) by the person desiring to move the building(s) and/or equipment under all other circumstances.

**12.27.260 Removal.** Any person accepting a Right-of-Way Use Authorization or Construction Permit pursuant to this chapter for the installation of any utility or telecommunications carriers shall remove such facilities when they are no longer required, or the Right-of-Way Use Authorization or Permit has been revoked as provided in this chapter. Such removal shall occur within ninety (90) days of receiving notice from the Director ordering such removal. Unless otherwise approved by the City in writing, no such person shall be permitted to abandon utility or telecommunication facilities within a public right-of-way, and then only under such conditions as may be prescribed by the Director.

**12.27.270 Billings and Collections.** The Director, jointly with the Finance Director, may establish procedures pertaining to the billing and collection of fees and charges adopted pursuant to this chapter.

**12.27.280 Appeals.** A decision of the Director made in accordance with this chapter may be appealed to the City Council as provided in WMC Chapter 2.30.

**12.27.290 Liability.** The Director and other employees charged with the enforcement and administration of this chapter, acting for the City in good faith and without malice in the discharge of their duties, shall not thereby render themselves liable personally for damages that may accrue to persons or property as a result of an act required or by reason of an act or omission in the discharge of such duties.

**12.27.300 Tree Trimming.** Any telecommunications carrier or public utility required by state statute or regulation to trim or remove trees which may interfere with their facilities shall ensure that their tree trimming activities protect the appearance, integrity and health of the trees to the extent reasonably possible. The telecommunications carrier or public utility shall prepare and maintain a tree trimming schedule to ensure compliance with this provision and to avoid exigent circumstances where tree cutting, trimming or removal is necessary to protect the public safety or continuity of service without the regard for the appearance, integrity or health of the trees that planned maintenance would otherwise allow. The telecommunications carrier or public utility shall submit the schedule to the Director. Except where exigent circumstances do not permit, the telecommunications carrier or public utility shall give the owner the property on which the trees are located at least five (5) days advance written notice of the tree trimming. All tree trimming shall be performed under the direction of an arborist certified by the International Society of Arboriculture and shall be in accordance with WMC 2.24.180.

**12.27.310 Underground Electric Power and Telecommunication Facilities.**

A. The undergrounding requirements of this section shall apply where the telecommunications carrier, public utility, or other person's facilities consist of cable or any other facilities which are capable of being placed underground. This section shall not apply to antennas or other facilities, which are required to remain above ground, in order to be functional.

B. In any area of the City in which there are no aerial facilities other than antennas or other facilities required to remain above ground in order to be functional, or in any public right-of-way in which all telecommunications wires and cables, and electric power wires, cables, 15,000 volts and lower, and other aerial facilities capable of undergrounding have been placed underground, no person shall be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. Provided, however, that if utility or street improvement projects are anticipated within the same public right-of-way within twelve (12) months of Grantee's proposed construction, the Director may permit interim installation of aerial facilities. In the event that the City does not require the undergrounding of such facilities at the time of initial installation, the City may, at any time in the future, require the conversion of such above-ground and/or aerial facilities to underground installation at the carrier, utility, or other person's expense.

C. The City shall allow new electric power lines and cables operating above 15,000 volts to be constructed above ground when location within the City right-of-way is approved by the Director.

D. Whenever the City undertakes an undergrounding project in any area of the City, the costs of which the City is not obligated to pay under any tariff, all carriers, utilities, and other persons shall underground their above-ground and/or aerial facilities in the manner specified by the City, concurrently with and in the area of all the other affected carriers, utilities, and other persons. The location of any such relocated and underground facilities shall be approved by the Director. Such persons shall underground their facilities at no cost to the City.

E. In the event that the City undertakes any public improvement which would otherwise require in the discretion of the Director the relocation of carrier, utility, or other person's above ground facilities, the Director may, by written notice to such persons, direct that any such facilities be converted to underground facilities. Any such conversion shall be done subject to and in accordance with applicable schedules and tariffs on file with the WUTC or such other regulatory agency having jurisdiction.

**12.27.320 Joint Trenching.** Recognizing that trenching and excavation within public right-of-way can significantly degrade the quality and longevity of street surfacing and seriously inconvenience the public, all grantees shall afford other telecommunications carriers, public utilities, and the City an opportunity to share in the use of their excavations and trenches within public right-of-way. In the event that the City, a telecommunications carrier, or a public utility desires to share in a grantee's excavation, it shall provide a written request to do so. Joint use of excavations shall be subject to the following conditions:

A. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made:

B. Any party desiring to share in an excavation may be required to pay the fair and reasonable pro-rata cost of said excavation. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

C. Either party may deny such request for safety reasons.

**12.27.330 Notice of Tariff Changes Affecting Permitted Facilities.** A grantee shall, when making application for any changes in tariffs affecting the provisions of this chapter or any approval issued hereunder, notify the City in writing of the application and provide the Director with a copy of the submitted application. The grantee shall further provide the Director with a copy of any actual approved tariff change affecting any approval issued pursuant to this chapter.

**12.27.340 One Call Locator.** All carriers, utilities, grantees, and other persons shall, before commencing any construction within a public right-of-way, comply with all of the requirements set forth in Chapter 19.122 RCW, the One Call Locator Service.

**12.27.350 Violation--Penalties.**

A. No person shall violate or fail to comply with this chapter.

B. A violation of or failure to comply with any provision of this chapter shall constitute a civil infraction subject to the enforcement provisions of WMC Chapter 1.03.

C. A violation or failure to comply with any provision of this chapter, including any order of the Director authorized by this chapter, shall, in addition to any other remedies, constitute grounds for the Director to revoke the underlying Permit issued to the grantee, if any, and grounds for the denial of any additional Permits under this chapter until the grantee is in full compliance with the provisions of this chapter.

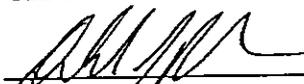
D. Violation of a stop work order issued by the Director pursuant to section 12.27.190 hereof shall constitute a misdemeanor, punishable by not more than ninety (90) days in jail and a fine not exceeding \$1,000.00, or both.

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

Section 3. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum. This ordinance shall take effect five (5) days after passage of publication of an approved summary thereof consisting of the title.

PASSED BY THE CITY COUNCIL ON THE 23rd DAY OF AUGUST, 1999.

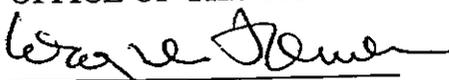
CITY OF WOODINVILLE

  
MAYOR, DONALD J. BROCHA

ATTEST/AUTHENTICATED:

  
CITY CLERK, SANDRA STEFFLER

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

  
WAYNE D. TANAKA

FILED WITH THE CITY CLERK:  
PUBLISHED:  
EFFECTIVE DATE: