

ORDINANCE O-4616

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING MCIMETRO ACCESS TRANSMISSION SERVICES CORP., A DELAWARE CORPORATION, D/B/A VERIZON ACCESS TRANSMISSION SERVICES, A NON-EXCLUSIVE COMMUNICATIONS MASTER USE PERMIT FOR THE RIGHT, PRIVILEGE, AND AUTHORITY TO MAKE USE OF THE PERMIT AREA FOR WIRELINE COMMUNICATIONS PURPOSES.

1 WHEREAS, MCImetro Access Transmission Services Corp., d/b/a
2 Verizon Access Transmission Services ("Grantee") has requested that
3 the City grant it the right to install, operate and maintain a wireline
4 communications system within the public rights of way of the City; and
5

6 WHEREAS, the City Council finds it desirable for the welfare of
7 the City and its residents that such a non-exclusive permit be granted
8 to Grantee; and
9

10 WHEREAS, the City Council has the authority under state and
11 local law to grant permits for the use of its street rights of way; and
12

13 WHEREAS, the City is willing to grant the rights requested by
14 Grantee subject to certain terms and conditions.
15

16 NOW, THEREFORE, The City Council of the City of Kirkland does
17 ordain as follows:

18 Section 1. Definitions. For purposes of this Communications
19 Master Use Permit (the "Permit"), the terms defined in Kirkland
20 Municipal Code ("KMC") 26.08.020 shall apply. In addition, the terms
21 below have the following meanings:
22

23 A. "Affiliate" means an entity which owns or controls, is owned
24 or controlled by, or is under common ownership with Grantee.
25

26 B. "City" means the City of Kirkland, a municipal corporation of
27 the State of Washington.
28

29 C. "Facilities" means all appurtenances or tangible things
30 owned, leased, operated, or licensed by the Grantee, including but not
31 limited to plant, equipment, fixtures, appurtenances, antennas, poles
32 with crossarms, poles without crossarms, wires, lines, conduits, ducts,
33 cables, communication and signal lines and equipment, braces, guys,
34 anchors, vaults, and all attachments, appurtenances, and appliances
35 necessary or incidental to the distribution and use of communications.
36

37 D. "Communications Master Use Permit" shall mean the initial
38 authorization or renewal thereof, granted by the City, through this

39 Ordinance, or a subsequently adopted Ordinance, which authorizes the
40 use of rights-of-way in the Permit Area for construction and operation
41 of the Grantee's facilities for the purpose of offering communications
42 service.

43
44 E. "Permit Area" means the present municipal boundaries of the
45 City, and shall include any additions thereto by annexation or other legal
46 means.

47
48 F. "Person" means an individual, partnership, association, joint
49 stock company, trust, corporation, limited liability company or
50 governmental entity.

51
52 G. "Rights-of-way" means land acquired or dedicated for public
53 roads and streets. It does not include (1) state highways; (2) structures,
54 including poles and conduits located within the right-of-way; (3)
55 federally granted trust lands or forest board trust lands; (4) lands owned
56 or managed by the state Parks and Recreation Commission; (5) federally
57 granted railroad rights-of-way acquired under 43 U.S.C. 912 and related
58 provisions of federal law that are not open for motor vehicle use; or (6)
59 parks or other public property not used as a public right-of-way,
60 including the Cross Kirkland Corridor.

61
62 H. "Communications Service" means any communications
63 service, including, but not limited to telecommunications and
64 communications services as defined by federal and state law,
65 communications capacity, or dark fiber, provided by the Grantee using
66 its Facilities, either directly or as a carrier for its Affiliates, or any other
67 person engaged in Communications Services, including, but not limited
68 to, the transmission of voice, data or other electronic information,
69 facsimile reproduction, burglar alarm monitoring, meter reading and
70 home shopping, or other subsequently developed technology that
71 carries an electronic signal over fiber optic cable. Communications
72 Service shall also include non-switched, dedicated and private line, high
73 capacity fiber optic transmission services to firms, businesses or
74 institutions within the City. However, Communications Service shall not
75 include the provision of cable television, open video, or similar services,
76 as defined in the Communications Act of 1934, as amended, and the
77 Telecommunications Act of 1996, as amended, for which a separate
78 Master Permit would be required.

79
80 I. Wireless Communications includes communications using
81 radio frequency or optical emissions to complete or more
82 communications paths in whole or in part among originating and
83 receiving points without other tangible physical connection, including
84 without limitation radio and unguided optical waves, and the apparatus
85 used for such transmission.

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Section 2. Permit Area and Authority Granted.

A. Facilities within Permit Area. The City does hereby grant to Grantee the right, privilege, authority and Permit to use rights-of-way in the Permit Area to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along and across rights of way in the Permit Area for purposes of communications services.

B. Permission Required to Enter Onto Other City Property. Nothing contained in this Ordinance is to be construed as granting permission to Grantee to go upon any other public place other than rights of way within the Permit Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case by case basis from the City.

C. Compliance with WUTC Regulations. At all times during the term of this Permit, Grantee shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission.

Section 3. Construction and Maintenance.

A. Grantee's Facilities shall be located, relocated and maintained within the Permit Area so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for Grantee, in the exercise of its rights under this Permit, to make any excavation in the right of way, Grantee shall obtain prior approval from the City of Kirkland Public Works Department, pay the applicable permit fees, and obtain any necessary permits for the excavation work. Grantee shall meet the City's specifications per the Kirkland Municipal Code ("KMC") and the Public Works Pre-Approved Plans and Policies.

Section 4. Location and Relocation of Facilities.

A. Grantee shall place any new Facilities underground where existing telecommunications and cable facilities are located underground. Any new Facilities to be located above-ground shall be placed on existing utility poles. No new utility poles shall be installed in connection with placement of new above-ground facilities.

B. Except as otherwise required by law, Grantee agrees to relocate, remove or reroute its facilities as ordered by the City, at no expense or liability to the City, except as may be required by KMC 26.36.050 and RCW 35.99.060. The City's decision to require the relocation of Grantee's facilities shall be made in a reasonable, uniform and non-discriminatory manner. Pursuant to the provision of Section 5,

134 Grantee agrees to protect and save harmless the City from any customer
135 or third-party claims for service interruption or other losses in
136 connection with any such change or relocation.

137
138 C. The Grantee shall indemnify, hold harmless and pay the costs
139 of defending the City against any and all claims, suits, actions, damages,
140 or liabilities for delays on City construction projects caused by or arising
141 out of the failure of the Grantee to relocate its Facilities in a timely
142 manner; provided, that the Grantee shall not be responsible for
143 damages due to delays caused solely by the City, or circumstances
144 beyond the control of the Grantee. Notwithstanding the foregoing or
145 any other provision of this Permit, in the event such requirement for
146 indemnification is subject to the provisions of RCW 4.24.115, then such
147 section shall control Grantee's indemnification obligations.

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149 D. In the event that the City orders the Grantee to relocate its
150 Facilities for a project which is primarily for private benefit, the private
151 party or parties causing the need for such project shall reimburse the
152 Grantee for the cost of relocation in the same proportion as their
153 contribution to the total cost of the project, pursuant to RCW
154 35.99.060(4).

155
156 E. In the event of an unforeseen emergency that creates a
157 threat to public safety, health or welfare, the City may require the
158 Grantee to relocate its Facilities at its own expense, any other portion
159 of this Section notwithstanding.

160
161 Section 5. Indemnification.

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163 A. Grantee agrees to indemnify, defend, and hold the City
164 harmless as set forth in KMC 26.40.030. In addition, Grantee shall
165 indemnify, defend and hold the City, its agents, officers, employees,
166 volunteers and assigns harmless from and against any and all claims,
167 demands, liability, loss, cost, damage or expense of any nature
168 whatsoever, including all costs and attorney's fees, made against them
169 on account of injury, sickness, death or damage to persons or property
170 which is caused by or arises out of, in whole or in part, the acts, failures
171 and/or omissions of Grantee or its agents, servants, employees,
172 contractors, subcontractors or assigns arising out of this agreement.
173 *Provided, however,* such indemnification shall not extend to injury or
174 damage caused by the sole negligence or willful misconduct of the City,
175 its agents, officers, employees, volunteers or assigns. Notwithstanding
176 the foregoing or any other provision of this Permit, in the event such
177 requirement for indemnification is subject to the provisions of RCW
178 4.24.115, then such section shall control Grantee's indemnification
179 obligations.

180 B. In the event any such claim or demand be presented to or
181 filed with the City, the City shall promptly notify Grantee thereof, and
182 Grantee shall have the right, at its election and at its sole cost and
183 expense, to settle and compromise such claim or demand, provided
184 further, that in the event any suit or action be begun against the City
185 based upon any such claim or demand, the it shall likewise promptly
186 notify Grantee thereof, and Grantee shall have the right, at its election
187 and its sole cost and expense, to settle and compromise such suit or
188 action, or defend the same at its sole cost and expense, by attorneys of
189 its own election.

190

191 Section 6. Default.

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193 A. If Grantee shall fail to comply with any of the provisions of
194 this Permit, unless otherwise provided in this Permit, the City may, in
195 addition to the remedies provided in KMC Chapter 26.44, serve upon
196 Grantee a written order to comply within thirty (30) days from the date
197 such order is received by Grantee. If Grantee is not in compliance with
198 this Permit after expiration of the thirty (30) day period, the City may
199 act to remedy the violation and may charge the reasonable costs and
200 expenses of such action to Grantee. The City may act without the thirty
201 (30) day notice in case of an emergency. If any failure to comply with
202 this Permit by Grantee cannot be corrected with due diligence within
203 said thirty (30) day period, then the time within which Grantee may so
204 comply shall be extended for such time as may be reasonably necessary
205 and so long as Grantee works promptly and diligently to effect such
206 compliance. If Grantee is not in compliance with this Permit, and is not
207 proceeding with due diligence in accordance with this section to correct
208 such failure to comply, then the City may in addition, by ordinance and
209 following written notice to Grantee, declare an immediate forfeiture of
210 this Permit.

211

212 B. In addition to other remedies provided in KMC Chapter 26.44,
213 this Permit, or otherwise available at law, if Grantee is not in compliance
214 with requirements of the Permit, and if a good faith dispute does not
215 exist concerning such compliance, the City may place a moratorium on
216 issuance of pending Grantee right-of-way use permits until compliance
217 is achieved.

218

219 Section 7. Nonexclusive Permit. This Permit is not and shall not
220 be deemed to be an exclusive Permit. This Permit shall not in any
221 manner prohibit the City from granting other and further Permits over,
222 upon, and along the Permit Area. This Permit shall not prohibit or
223 prevent the City from using the Permit Area or affect the jurisdiction of
224 the City over the same or any part thereof.

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Section 8. Permit Term.

A. This Permit is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of the Ordinance, provided that the term may be extended for two additional five (5) year periods upon the agreement of Grantee and the City; and provided further, however, Grantee shall have no rights under this Permit nor shall Grantee be bound by the terms and conditions of this Permit, unless Grantee shall, within thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of this Permit, in a form acceptable to the City Attorney.

B. If the City and Grantee fail to formally renew this Permit prior to the expiration of its term or any extension thereof, this Permit shall automatically continue in full force and effect until renewed or until either party gives written notice at least one hundred eighty (180) days in advance of intent not to renew this Permit.

Section 9. Compliance with Codes and Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable ordinances and codes of the City of Kirkland, as they now exist or may hereafter be amended, including but not limited to the provisions of Kirkland Municipal Code Title 26, Title 19, Title 5, and Kirkland Zoning Code Title 117. Nothing in this Permit limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by Grantee shall be performed by Grantee in accordance with applicable federal, state and city rules and regulations, including the City's Public Works Pre-Approved Plans and Policies, and any required permits, licenses or fees, and applicable safety standards then in effect.

B. In the event that any territory served by Grantee is annexed to the City after the effective date of this Permit, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

Section 10. Undergrounding.

New Facilities shall be installed underground pursuant to Section 4 of this Permit and on a non-discriminatory basis. Grantee acknowledges the City's policy of undergrounding of Facilities within the Permit Area. Grantee will cooperate with the City in the undergrounding of Grantee's existing Facilities within the Permit Area. If, during the term of this Permit, the City shall direct Grantee to underground Facilities within any Permit Area, such undergrounding shall be at no cost to the City, except as may be provided in RCW Chapter 35.99. Grantee shall comply with all federal, state, and City regulations on undergrounding. If the City

273 undertakes any street improvement which would otherwise require
274 relocation of Grantee's above-ground facilities, the City may, by written
275 notice to Grantee, direct that Grantee convert any such Facilities to
276 underground Facilities.

277

278 Section 11. Record of Installations and Service.

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280 A. With respect to excavations by Grantee and the City within
281 the Permit Area, Grantee and the City shall each comply with its
282 respective obligations pursuant to Chapter 19.122 RCW and any other
283 applicable state law.

284

285 B. Upon written request of the City, Grantee shall provide the
286 City with the most recent update available of any plan of potential
287 improvements to its Facilities within the Permit Area; provided,
288 however, any such plan so submitted shall be for informational purposes
289 within the Permit Area, nor shall such plan be construed as a proposal
290 to undertake any specific improvements within the Permit Area.

291

292 C. As-built drawings and maps of the precise location of any
293 Facilities placed by Grantee in any Right of Way shall be made available
294 by Grantee to the City within 10 (ten) working days of the City's request.
295 These plans and maps shall be provided at no cost to the City and shall
296 include hard copies and/or digital copies in a format specified by the
297 City.

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299 Section 12. Shared Use of Excavations and Trenches.

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301 A. If either the City or Grantee shall at any time after installation
302 of the Facilities plan to make excavations in the area covered by this
303 Permit and as described in this Section, the party planning such
304 excavation shall afford the other, upon receipt of written request to do
305 so, an opportunity to share such an excavation, *provided that*: (1) such
306 joint use shall not unreasonably delay the work of the party causing the
307 excavation to be made or unreasonably increase its costs; (2) such joint
308 use shall be arranged and accomplished on terms and conditions
309 satisfactory to both parties. In addition, pursuant to RCW 35.99.070,
310 the City may request that Grantee install additional conduit, ducts and
311 related access structures for the City pursuant to contract, under which
312 Grantee shall recover its incremental costs of providing such facilities to
313 the City.

314

315 B. The City reserves the right to require Grantee to joint trench
316 with other Permittees if both entities are anticipating trenching within
317 the same general area and provided that the terms of this Section are
318 met.

319

320 Section 13. Insurance.

321 A. Grantee shall procure and maintain for the duration of this
322 Permit, insurance against claims for injuries to persons or damage to
323 property which may arise from or in connection with the performance
324 of work under this Permit by Grantee, its agents, representatives or
325 employees in the amounts and types set forth below. Any policy of
326 insurance shall be written on an occurrence basis.

327
328 (1) Commercial general liability insurance shall be written
329 on ISO occurrence from CG 00 01 and shall cover liability arising
330 from bodily injury (including death) and property damage;
331 including premises operation, products and completed
332 operations and explosion, collapse and underground coverage
333 extensions. Commercial General Liability insurance shall be
334 written with limits of no less than \$1,000,000 per occurrence and
335 \$2,000,000 general aggregate and a \$2,000,000 products
336 completed operations aggregate limit. The City shall be named
337 as an additional insured using Additional Insured-State or
338 Political Subdivisions-Permits CG 20 12 or a substitute
339 endorsement providing at least as broad coverage;

340 (2) Commercial Automobile liability insurance covering all
341 owned, non-owned and hired vehicles. Coverage shall be at
342 least as broad as ISO form CA 00 01. Commercial Auto Liability
343 shall be written with a minimum combined single limit of
344 \$1,000,000 per accident for bodily injury and property damage;
345 and

346 (3) Worker's compensation within statutory limits and
347 employer's liability insurance with limits of \$1,000,000 for each
348 accident/disease/policy limit.

349
350 B. The insurance policies required by this section shall be
351 maintained at all times by the owner.

352
353 C. Upon receipt of notice from its insurer(s) Grantee shall
354 endeavor to provide the City with thirty (30) days prior written notice of
355 cancellation of any policy required herein.

356
357 D. Grantee's insurance coverage shall be primary insurance as
358 respects the City. Any insurance, self-insurance or insurance pool
359 coverage maintained by the City shall be in excess of Grantee's
360 insurance and shall not contribute with it.

361
362 E. Grantee shall furnish the City with certificates of the foregoing
363 insurance coverage and a copy of amendatory endorsements, including
364 but not necessarily limited to the additional insured endorsement,
365 before issuance of the Permit.

366 F. Grantee shall have the right to self-insure any or all of the
367 above-required insurance. Any such self-insurance is subject to
368 approval by the City.

369
370 G. Grantee's maintenance of insurance as required by this
371 Permit shall not be construed to limit the liability of Grantee to the
372 coverage provided by such insurance, or otherwise limit City's recourse
373 to any remedy to which the City is otherwise entitled at law or in equity.
374

375 H. Insurance is to be placed with insurers with a current A.M.
376 Best rating of not less than A:VII.

377
378 I. If the Grantee maintains higher insurance limits than the
379 minimums shown above, the City shall be insured for the
380 full available limits of Commercial General and Excess or
381 umbrella liability maintained by the Grantee, irrespective
382 of whether such limits maintained by the Grantee are
383 greater than those required by this Permit, or whether
384 any certificate of insurance furnished to the City
385 evidences limits of liability lower than those maintained
386 by the Grantee.

387
388 J. Failure on the part of the Grantee to maintain the insurance
389 as required shall constitute a material breach of the permit, upon which
390 the City may, after giving fifteen (15) business days' notice to the
391 Grantee to correct the breach, immediately terminate the Permit or, at
392 its discretion, procure or renew such insurance and pay any and all
393 premiums in connection therewith, with any sums so expended to be
394 repaid to the City on demand.

395
396 Section 14. Assignment.

397
398 A. All of the provisions, conditions, and requirements herein
399 contained shall be binding upon Grantee, and no right, privilege, license
400 or authorization granted to Grantee hereunder may be assigned or
401 otherwise transferred without the prior written authorization and
402 approval of the City, which the City may not unreasonably withhold.
403 Notwithstanding the foregoing, Grantee, without the consent of, but
404 upon notice to the City, may assign this agreement in whole or in part
405 to: (a) an Affiliate (as defined in this Permit); or (b) the surviving entity
406 in the event of a merger or acquisition of substantially all of Grantee's
407 assets.

408
409 B. Grantee may lease the Facilities or any portion thereof to
410 another or provide capacity or bandwidth in its Facilities to another,
411 *provided that:* Grantee at all times retains exclusive control over such

412 Facilities and remains responsible for locating, servicing, repairing,
413 relocating or removing its Facilities pursuant to the terms and conditions
414 of this Permit.

415
416 Section 15. Abandonment and Removal of Facilities. Grantee's
417 Facilities may be considered abandoned pursuant to KMC 26.20.105. In
418 the event of abandonment, the parties shall refer to their options in KMC
419 26.20.105.

420
421 Section 16. Miscellaneous.
422

423 A. If any term, provision, condition or portion of this Permit shall
424 be held to be invalid, such invalidity shall not affect the validity of the
425 remaining portions of this Permit which shall continue in full force and
426 effect. The headings of sections and paragraphs of this Permit are for
427 convenience of reference only and are not intended to restrict, affect,
428 or be of any weight in the interpretation or construction of the provisions
429 of such sections of paragraphs.

430
431 B. Grantee shall pay for the City's reasonable administrative
432 costs in drafting and processing this Ordinance and all work related
433 thereto. Grantee shall further be subject to all permit fees associated
434 with activities and the provisions of any such permit, approval, license,
435 agreement of other document, the provisions of this Permit shall control.

436
437 C. Failure of either party to declare any breach or default under
438 this Permit or any delay in taking action shall not waive such breach or
439 default, but that party shall have the right to declare any such breach
440 or default at any time. Failure of either party to declare one breach or
441 default does not act as a waiver of that party's right to declare another
442 breach or default.

443
444 Section 17. Notice. Any notice or information required or
445 permitted to be given to the parties under this Permit may be sent to
446 the following addresses unless otherwise specified:

447
448 City:
449 City of Kirkland
450 Public Works Director
451 123 Fifth Ave.
452 Kirkland, WA 98033

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456 Grantee:
457
458 MCImetro Access Transmission Services Corp.
459 Attn: Franchise Manager

460 600 Hidden Ridge
461 Irving, TX 75038

462 with copies (except for invoices) to:

463
464
465 Verizon Business Services
466 1320 North Courthouse Road, Suite 900
467 Arlington, VA 22201
468 Attn: Vice President and Deputy General Counsel, Network Services
469

470 Notice shall be deemed given upon receipt in the case of personal
471 delivery, three days after deposit in the United States Mail in the case
472 of regular mail, or the next day in the case of overnight delivery.
473


474 Section 18. Compensation. Notwithstanding any provision of
475 this Ordinance or the Kirkland Municipal Code, in no event shall Grantee
476 be assessed or liable for any fees, taxes or compensation not lawful
477 under applicable Federal and State statutes and regulations.
478

479 Section 19. Severance. If any provision of this ordinance or its
480 application to any person or circumstance is held invalid, the remainder
481 of the ordinance or the application of the provision to other persons or
482 circumstances is not affected.
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484 Section 20. Effective date. This Ordinance, being in compliance
485 with RCW 35A.47.040, shall be in force and effect five days from and
486 after its passage by the Kirkland City Council and publication pursuant
487 to Section 1.08.017 Kirkland Municipal Code in the summary form
488 attached to the original of this ordinance and by this reference approved
489 by the City Council.
490

491 Passed by majority vote of the Kirkland City Council in open
492 meeting this 21st day of November, 2017.

493
494 Signed in authentication thereof this 21st day of November,
495 2017.


MAYOR

Attest:


City Clerk

Publication Date: November 27, 2017

Approved as to Form:

Kevin Raymond

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4616

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING MCIMETRO ACCESS TRANSMISSION SERVICES CORP., A DELAWARE CORPORATION, D/B/A VERIZON ACCESS TRANSMISSION SERVICES, A NON-EXCLUSIVE COMMUNICATIONS MASTER USE PERMIT FOR THE RIGHT, PRIVILEGE, AND AUTHORITY TO MAKE USE OF THE PERMIT AREA FOR WIRELINE COMMUNICATIONS PURPOSES.

SECTIONS 1 - 19. Issues a right of way Master Use Permit to MCIMetro Access Transmission Services Corp., a Delaware Corporation, D/B/A Verizon Access Transmission Services for wireline communications purposes and sets forth the terms and conditions of the Permit.

SECTION 20. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 21st day of November, 2017.

I certify that the foregoing is a summary of Ordinance O-4616 approved by the Kirkland City Council for summary publication.



City Clerk