

ORDINANCE 3756

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TELECOMMUNICATIONS AND AMENDING THE STANDARDS FOR THE ISSUANCE OF FRANCHISES, LICENSES AND OTHER RIGHT-OF-WAY USE PERMITS TO TELECOMMUNICATIONS SERVICE PROVIDERS.

WHEREAS, the State legislature recently enacted ESSB 6676 (Chapter 83, Laws of 2000) relating to telecommunication facilities in municipal rights-of-way; and

WHEREAS, the City seeks to incorporate and integrate the state legislation into its existing telecommunications regulations;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Section 26.12.020 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.12.020 License application.**

Any person that desires a license hereunder shall file ~~an~~ a written license application on a form provided by with the city clerk. Within 28 calendar days after the date of submittal of the application, the city clerk shall provide the applicant a written determination of whether the application is complete, and if the application is not complete what must be submitted by the applicant in order for the application to be complete. The procedures for approval of a license and the requirements for a complete application shall be available in written form.

Section 2. Section 26.12.030 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.12.030 Determination by the city.**

Within one hundred twenty days after receiving a complete application hereunder, the city ~~clerk~~ shall make a determination ~~on behalf of the city~~ granting or denying the application in whole or in part. The one hundred twenty-day period may be extended by a specific number of days or to a defined date by written agreement between the city and the applicant. If the application is denied, the determination shall include the reasons for denial. The reasons for denial of a license shall be supported by substantial evidence contained in a written record. The following standards shall apply when determining to grant or deny the application:

- (1) The financial and technical ability of the applicant.
- (2) The legal status of the applicant.
- (3) The capacity of the rights-of-way to accommodate the applicant's facilities.
- (4) The capacity of the rights-of-way to accommodate additional utility and telecommunications facilities if the application is granted.
- (5) The damage or disruption, if any, to public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same.

- (6) The public interest in minimizing the cost and disruption of construction within the rights-of-way.
- (7) The service that applicant will provide to the region.
- (8) The effect, if any, on general public health, safety and welfare in the city's sole opinion if the application is granted.
- (9) The availability of alternate routes or locations for the proposed facilities.
- (10) Applicable federal, state and local laws, regulations, rules and policies.
- (11) Such other factors as may demonstrate that the grant to use the rights-of-way will serve the community interest.

Section 3. Section 26.12.040 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.12.040 Agreement.**

No license granted hereunder shall be effective until the ~~applicant and the city have executed a written agreement setting~~ license has been approved by the City Council by ordinance and the applicant has accepted the license, in writing, in a form acceptable to the city. The license shall set forth the particular items and provisions under which the license to occupy and use rights-of-way will be granted. All licenses granted pursuant to this title shall contain substantially similar terms which, taken as a whole and considering relevant characteristics of applicants, do not provide more or less favorable terms and conditions than those required of other licensees.

Section 4. Section 26.12.090 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.12.090 Construction permits.**

All licensees are required to obtain construction and right-of-way permits and pay all fees as required by the city; provided, however, that nothing in this title shall prohibit the city and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement; provided such alternative procedures provide substantially equivalent safeguards for reasonable construction practices. Except as provided in this section, the city shall grant, condition or deny construction or right-of-way permits in writing within 30 days of receiving a complete application unless a licensee has consented to a different time period or has not obtained a license from the city. The city shall notify the licensee in writing if more than thirty days are required to process the permit. The notice shall state the amount of additional time required, and the reasons for the additional time. Conditioned or denied permits may be appealed to the city hearing examiner within 14 days of the date of the permit or permit denial.

Section 5. Section 26.16.020 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.16.020 Franchise application.**

Any person that desires a franchise hereunder shall file a written franchise application provided by with the city clerk. Within 28 calendar days after the date of the submittal of the application, the city clerk shall provide the applicant a written determination of whether the application is complete, and if the application is not complete, what must be submitted by the applicant in order for the application to be complete. The procedures for approval of a franchise and the requirements for a complete application shall be available in written form.

Section 6. Section 26.16.030 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.16.030 Determination by the city.**

Within one hundred twenty days after receiving a complete application hereunder, the city shall make a determination granting or denying the application in whole or in part. The one hundred twenty-day period may be extended by a specific number of days or to a defined date by written agreement between the City and the applicant. If the application is denied, the determination shall include the reasons for denial. The reasons for denial of a franchise shall be supported by substantial evidence contained in a written record. The standards enumerated in Section 26.12.030 of this code shall apply when determining to grant or deny the application.

Section 7. Section 26.16.040 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.16.040 Agreement.**

No franchise shall be granted hereunder unless the ~~applicant and the city have executed a written agreement setting~~ franchise has been approved by the city council by ordinance and the applicant has accepted the franchise in writing, in a form acceptable to the city. The franchise shall set forth the particular terms and provisions under which the franchise to occupy and use rights-of-way will be granted. All franchises granted pursuant to this title shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other franchisees.

Section 8. Section 26.16.090 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.16.090 Construction permits.**

All franchisees are required to obtain construction and right-of-way permits and pay all fees for telecommunications facilities as required by the city; provided, however, that nothing in this title shall prohibit the city and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement; provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices. Except as provided in this section, the city shall grant, condition or deny construction and right-of-way permits in writing within 30 days of receiving a complete application unless a franchisee has consented to a different time period or has not obtained a franchise from the city. The city shall notify the franchisee in writing if more than thirty days are required to process the permit, the amount of additional time required, and the reasons for the additional time. Conditioned or denied permits may be appealed to the city hearing examiner within 14 days of the date of the permit or permit denial.

Section 9. Section 26.16.120 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.16.120 Service to the city.**

A franchisee shall make its telecommunications services available to the city at its most favorable rate for similarly situated users; provided, however, to the extent permitted by law, the city may negotiate more favorable rates or free

service, the provision of in-kind services, equipment and facilities, or any combination thereof in lieu of other obligations of franchisee. The city may, in accordance with Washington Laws of 2000, Chapter 83, Section 7, require a franchisee that is constructing, relocating or placing ducts or conduits in public right-of-way to provide the city with additional duct, conduit or related structures.

Section 10. A new Section 26.16.170 is hereby added to the Kirkland Municipal Code to read as follows:

**26.16.170 Personal wireless facilities in right-of-way.**

(1) The city may impose a site specific charge pursuant to an agreement with a service provider of personal wireless services for:

(a) The placement of new structures in the right-of-way regardless of height, unless the new structure is the result of a city mandated relocation, in which case the city will not charge the service provider if the previous location was not charged;

(b) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, and the overall height of the replacement structure and the wireless facility is more than 60 feet; or

(c) The placement of personal wireless facilities on structures owned by the city town located in the right-of-way; however a site specific charge shall not apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the city.

(2) The city is not required to approve a right-of-way use permit for the placement of a facility for personal wireless services that meets one of the criteria in this section absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city. Within 30 days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location and zoning requirements. Costs of arbitration including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses in connection with the arbitration proceeding.

Section 11. Section 26.24.070 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.24.070 Relocation or removal of facilities.**

~~Within thirty 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 telecommunications facilities within the rights-of-way whenever the public works director shall have determined that such removal, relocation, change or alteration is reasonably necessary for:~~

~~(1) The construction, repair, maintenance or installation of any city or other public nontelecommunications improvement in or upon the rights-of-way.~~

~~(2) The operations of the city or other governmental entity in or upon the rights-of-way.~~

~~(3) The vacation of a public street or the release of a utility easement.~~

~~(4) The construction, repair, maintenance or installation of any city or other parties' telecommunications improvement in or upon the rights-of-way.~~

~~Notwithstanding the foregoing and anything to the contrary elsewhere in this title, in the event that relocation or removal is due to the installation of telecommunications services of a competitive telecommunications provider (including the city or another third party), the terms and conditions regarding same may otherwise be as set forth in the license, franchise or cable franchise.~~

(1) The city may require a grantee to relocate authorized facilities within the right-of-way when reasonably necessary for construction, alteration, repair or improvement of the right-of-way for the purpose of public health, welfare and safety.

(2) The city shall notify grantees as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date by which relocation must be completed, the city shall consult with the affected grantees and consider the extent of the facilities to be relocated, the grantees' services requirements, and the construction sequence for the relocation, within the city's overall project construction sequence and constraints, to safely complete the relocation. Grantees shall complete the relocation by the date specified unless the city or a reviewing court establishes a later date for completion, after a showing by a grantee that the relocation cannot be completed by the date specified, using best efforts and meeting safety and service requirements.

(3) Grantees may not seek reimbursement for their relocation expenses from the city except:

(a) Where the grantee has paid for the relocation cost of the same facilities at the request of the city within the past five years, the grantee's share of the cost of relocation will be paid by the city;

(b) Where aerial to underground relocation of authorized facilities is required by the city under subsection (1) of this section, for grantees with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in the approved tariff if less, will be paid by the city; and

(c) Where the city requests relocation under subsection (1) of this section solely for aesthetic purposes.

(4) A city may require relocation of facilities at grantee's expense in the event of an unforeseen emergency that creates an immediate threat to public health, welfare or safety.

Section 12. Section 26.18.070 of the Kirkland Municipal Code is hereby amended to read as follows:

**26.28.070 Issuance of permit.**

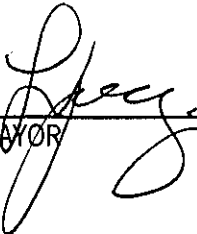
Within ~~forty-five~~ thirty days after submission of all plans and documents required of the applicant and payment of necessary permit fees, the public works director, if satisfied that the application, plans and documents comply with all requirements of this title, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the public works director may deem necessary or appropriate.

Section 13. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

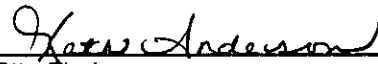
Section 14. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 3rd day of October, 2000.


Signed in authentication thereof this 3rd day of October, 2000.

  
MAYOR

Attest:

Acting   
City Clerk

Approved as to Form:

  
City Attorney

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