

ORDINANCE O-4891

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE USE OF RIGHTS-OF-WAY FOR TELECOMMUNICATIONS PURPOSES, AND AMENDING TITLE 26 OF THE KIRKLAND MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION; FILE NO. CAM24-00633.

1 WHEREAS, in 2023, the City Council repealed and replaced
2 Title 26 of Kirkland Municipal Code related to the regulation of
3 telecommunication facilities in City rights-of-way, Ordinance
4 No. O-2853, so as to make Title 26 consistent with recent mandates
5 from federal and state agencies with respect to telecommunications law,
6 and also consistent with changes to the City's Zoning Code, Chapter
7 117, regarding wireless services facilities, Ordinance No. O-4852; and
8

9 WHEREAS, portions of the newly adopted Ordinance
10 No. O-4852 contained typographical and grammatical errors, in addition
11 to repetitive regulations and other minor errors that the Council wishes
12 to revise for clarity and consistency with other adopted related
13 regulations; and
14

15 WHEREAS, the City Council recognizes that this change to the
16 Municipal Code is consistent with the Comprehensive Plan.
17

18 NOW, THEREFORE, the City Council of the City of Kirkland do
19 ordain as follows:
20

21 Section 1. Title 26 of the Kirkland Municipal Code is amended
22 to read as follows:
23
24
25

Title 26

26 **RIGHT-OF-WAY - TELECOMMUNICATIONS-FRANCHISES**

27 **Chapter 26.04**

28 **PURPOSE AND SCOPE**

29 **26.04.010 Purpose and scope.**

30 1. The purpose of this title is to:

31 (a) Permit and manage reasonable access to the rights-of-way of
32 the City for telecommunications purposes on a nondiscriminatory
33 basis.

34 (b) Establish clear and nondiscriminatory local guidelines and
35 standards for the exercise of local authority with respect to the
36 regulation of right-of-way use.

37 (c) Encourage the provision of advanced and competitive
38 telecommunications services on the widest possible basis to the
39 businesses, institutions and residents of the City.

40 (d) Promote competition in telecommunications.

41 (e) Conserve and manage the limited physical capacity of the rights-
42 of-way held in public trust by the City.

43 (f) Ensure that all telecommunications providers within the City
44 comply with the applicable ordinances, rules and regulations of the
45 City.

46 (g) Ensure that the City can continue to fairly and responsibly
47 protect the public health, safety and welfare.

48 (h) Enable the City to discharge its public trust consistent with
49 rapidly evolving federal and state legal and regulatory policies,
50 industry competition and technological development.

51 **Chapter 26.08**

52 **DEFINITIONS AND RULES OF CONSTRUCTION**

53
54 **26.08.010 Rules of construction.**

- 55 1. For the purposes of this title, the following terms, phrases, words,
56 and abbreviations shall have the meanings given herein, unless
57 otherwise expressly stated. Unless otherwise expressly stated,
58 words not defined herein shall be given the meaning set forth in KZC
59 Chapter 117-KZC, as amended; Title 47 of the United States Code,
60 as amended; and Chapter 35.99 RCW, as amended. Words not
61 defined therein shall have their common and ordinary meaning.
- 62 2. When not inconsistent with the context, words used in the present
63 tense include the future tense; words in the plural number include
64 the singular number, and words in the singular number include the
65 plural number; the masculine gender includes the feminine gender,
66 and vice versa.
- 67 3. The words "shall" and "will" are mandatory, and "may" is permissive.
- 68 4. The term "written" shall include electronic documents.

69 **26.08.020 Defined terms.**

- 70 1. "Applicant" means any person submitting an application for a
71 franchise under this Title.
- 72 2. "City" means the City of Kirkland, Washington.
- 73 3. "City manager" means the City Manager or designee.
- 74 4. "City property" means all real property now or hereafter owned by
75 the City whether in fee ownership or other interest.
- 76 5. "Claims" means all actions, costs, damages, demands, expenses,
77 fines, injuries, judgments, liabilities, losses, penalties, suits, fees,
78 attorneys' fees, and costs.
- 79 6. "Department" means the Department of Public Works.

- 80 7. "Director" means the Director of the Department of Public Works or
81 designee.
- 82 8. "Franchise" means an agreement whereby the City grants general
83 permission to a service provider to use and occupy the right-of-way
84 for the purpose of locating telecommunications facilities. For the
85 purposes of this Title, the term "franchise" includes franchises as
86 described in RCW 35A.47.040 and "master permits" as defined in
87 RCW 35.99.010. In addition, the term "franchise" does not include
88 cable television franchises and permits which are separately
89 regulated under Chapter 7.61 KMC and KMC Title 30.
- 90 9. "Grantee" means the person, firm, or corporation to whom or which
91 a franchise, as defined in this section, is granted by the City Council
92 under this Title and the lawful successor, transferee or assignee of
93 such person, firm or corporation.
- 94 10. "Grantor" means the City of Kirkland acting through its City Council.
- 95 11. "Obstruction" means any object or structure that blocks or impedes
96 the construction or maintenance of public works including, but not
97 limited to, private facilities that provide telecommunications services
98 to customers; shrubbery or plants of any kind; and storage materials.
- 99 12. "Overhead facilities" means facilities located above the surface of
100 the ground, including the underground supports and foundations for
101 such facilities.
- 102 13. "Person" means corporations, companies, associations, firms,
103 partnerships, limited liability companies, government entities, other
104 entities and individuals.
- 105 14. "Public right-of-way" or "Rights-of-way" means land acquired or
106 dedicated for public roads and streets. It does not include:
- 107 a. State highways;
- 108 b. Land dedicated for roads, streets, and highways not opened
109 and not improved for motor vehicle use by the public;
- 110 c. Structures, including poles and conduits, located within the
111 right-of-way;
- 112 d. Federally granted trust lands or forest board trust lands;
- 113 e. Lands owned or managed by the State Parks and Recreation
114 Commission;
- 115 f. Federally granted railroad rights-of-way acquired under 43
116 U.S.C. 912 and related provisions of federal law that are not
117 open for motor vehicle use;
- 118 g. Parks or other public property not used as a public right-of-
119 way including, but not limited to, the Cross Kirkland Corridor.
- 120 15. "Right-of-way use permit" means the authorization by which the City
121 grants a person the right to use the public right-of-way as defined in
122 KMC Title 19.

- 123 ~~45-16.~~ "Right-of-way work permit" means the authorization by which the
 124 City grants permission for a person to temporarily conduct work or
 125 other activities on a specified street, sidewalk, curb, or other area
 126 within the public rights-of-way; right-of-way work permits can be
 127 consolidated with other types of permits.
- 128 ~~46-17.~~ "State" means the State of Washington.
- 129 ~~47-18.~~ "Surplus space" means that portion of the usable space on a
 130 utility pole which has the necessary clearance from other pole users,
 131 as required by the orders and regulations of the Washington Utilities
 132 and Transportation Commission, to allow its use by a
 133 telecommunications carrier for a pole attachment.
- 134 ~~48-19.~~ "Telecommunications facilities" or "Facilities" means all of the
 135 plant, equipment, fixtures, appurtenances, antennas, electronics,
 136 radios and other facilities necessary to furnish and deliver
 137 Telecommunications services, including, but not limited to, poles,
 138 wires, lines, conduits, cables, communication and signal lines and
 139 equipment, braces, guys, anchors, vaults and all attachments,
 140 appurtenances and appliances necessary or incidental to the
 141 transmission, reception, distribution, provision, offering and use of
 142 Telecommunications services.
- 143 ~~49-20.~~ "Telecommunications provider" or "provider" means and
 144 includes every corporation, company, association, joint stock
 145 association, firm, partnership, person, city or town owning, operating
 146 or managing any facilities used to provide and providing
 147 telecommunications for hire, sale or resale to the general public.
 148 This definition includes entities providing infrastructure, including but
 149 not limited to fiber, conduit, poles, or other structures to another
 150 service provider, but does not include electrical utility entities. This
 151 further includes the legal successor to any such corporation,
 152 company, association, joint stock association, firm, partnership,
 153 person, city or town.
- 154 ~~20-21.~~ "Telecommunications service" is defined consistently with RCW
 155 35.99.010(7). Telecommunications service means the transmission
 156 of information by wire, radio, optical cable, electromagnetic, or other
 157 similar means for hire, sale, or resale to the general public. For the
 158 purpose of this subsection, "information" means knowledge or
 159 intelligence represented by any form of writing, signs, signals,
 160 pictures, sounds, or any other symbols but does not include "cable
 161 service" as that term is defined in Chapter 7.61 KMC.
- 162 ~~24-22.~~ "Usable space" means the total distance between the top of a
 163 utility pole and the lowest possible attachment point that provides
 164 the minimum allowable vertical clearance as specified in the orders
 165 and regulations of the Washington Utilities and Transportation
 166 Commission.
- 167 ~~22-23.~~ "Washington Utilities and Transportation Commission" or
 168 "WUTC" means the State administrative agency, or lawful
 169 successor, authorized to regulate and oversee telecommunications
 170 carriers, services and providers in the state of Washington to the
 171 extent prescribed by law.
- 172 ~~24.~~ "Wireline" means communications using conducted electromagnetic
 173 or optical emissions by, over, or within a physically tangible means

174 of transmission, including without limitation wire or cable, and the
175 apparatus used for such transmission.
176 23-25. "WSF Permit" means a permit for a wireless service facility as
177 defined in KZC Chapter 117.

178 **Chapter 26.12**

179 **APPLICABILITY**

180 **26.12.010 Applicability.**

181 1. This Title applies to all persons who desire to locate, or have located,
182 telecommunication facilities in the City's rights-of-way. Additionally:

- 183 (a) Any person desiring to locate telecommunications facilities in the
184 right-of-way ~~may~~ shall apply for and receive a franchise pursuant
185 to KMC 26.12.020.
- 186 (b) Any person, whether or not they have obtained a franchise, who
187 desires to conduct work in the right-of-way shall apply for and
188 receive a right-of-way work permit pursuant to KMC Title 19.
- 189 (c) Any person desiring to locate a small wireless facility or a macro
190 facility anywhere in the City shall apply for and receive the
191 applicable WSF permit pursuant to KZMC Chapter 117.
- 192 (d) Any person who desires to attach a WSF, or any associated
193 equipment, on City property, at a specific site in the right-of-way,
194 or to any structure owned by the City shall include an application
195 for a license agreement or right-of-way use permits ~~site-specific~~
196 ~~agreement~~ as a component of its WSF permit application.
197 ~~Master license agreements, including for access to multiple City-~~
198 ~~owned poles or for public property, or City-owned structures~~
199 ~~outside the right of way, shall be submitted to the City Council~~
200 ~~for approval. Right-of-way use permits~~ Site-specific agreements
201 for the use of a specific City-owned pole or for a specific location
202 inside the right-of-way shall be submitted to the Director for
203 approval.
204

205 **26.12.020 Franchise.**

206 ~~±.~~ The City may grant any person, by ordinance, a nonexclusive
207 franchise for use of the rights-of-way to install, construct, operate,
208 maintain, remove, repair or replace facilities ~~in the right-of-way~~ for the
209 provision of telecommunications services to the public. The grant of a
210 franchise shall be made pursuant to the procedures, terms, and
211 conditions set forth in this Title; provided that, the City may accept
212 different terms when required by law. No provision of this Title requires
213 the granting of a new franchise if, in the opinion of the City Council, the
214 granting of an additional franchise is not in the public interest, unless
215 otherwise required by law.

216 ~~1. Except as set forth in KMC 26.12.020(3), it is unlawful for any person~~
217 ~~to install, construct, operate, maintain, remove, repair or replace~~
218 ~~facilities in the right-of-way for the provision of telecommunications~~
219 ~~services or cable without first obtaining a franchise pursuant to this~~

220 ~~Title if for telecommunication services or a franchise pursuant to~~
 221 ~~Chapter 7.61 KMC if for cable services.~~
 222 2. ~~Any person that shows that the State of Washington has granted it~~
 223 ~~the right to operate within the City's rights-of-way without the City's~~
 224 ~~consent may, but is not required to, obtain a franchise pursuant to~~
 225 ~~this title. A person asserting such a state grant, consistent with RCW/~~
 226 ~~35.99.010, shall provide the City with a statement, and supporting~~
 227 ~~documentation, detailing the basis for the assertion of a state-wide~~
 228 ~~grant.~~

229 **Chapter 26.20**

230 **FRANCHISES**

231 **26.20.010 Authority granted by franchise.**

- 232 1. A franchise authorizes the Grantee to use the rights-of-way, and
 233 only the rights-of-way, for a specified purpose. Use of City property
 234 other than the rights-of-way, including any use of City poles or other
 235 facilities, requires a separate site license or lease from the City.
 236
 237 2. A franchise shall state the specific purpose for which it authorizes
 238 the applicant to use the rights-of-way. The issuance of a franchise
 239 does not relieve the applicant from obtaining any other legal
 240 authority that may be necessary to use the rights-of-way for any
 241 other purpose.
 242

243 **26.20.020 Application to existing franchise ordinances,**
 244 **agreements, leases, and permits – Effect of other laws.**

- 245 1. Except as otherwise provided herein or permitted by applicable
 246 federal or state law, this Title shall have no effect on any franchise,
 247 franchise ordinance, franchise agreement, lease, permit, or other
 248 authorization existing on or before the effective date of the ordinance
 249 codified in this Title, to use or occupy public rights-of-way or City
 250 property until:
 251
 252 (a) The expiration of said franchise, franchise ordinance,
 253 franchise agreement, lease, permit, or authorization; or
 254
 255 (b) The amendment to an unexpired franchise, franchise
 256 ordinance, franchise agreement, lease, permit, or
 257 authorization, unless both parties agree to defer full
 258 compliance to a specific date not later than the present
 259 expiration date.
 260

261 2. Nothing in this Title shall be deemed to create an obligation upon
262 any person that the City is forbidden to require pursuant to federal,
263 state, or other law.
264

265 **26.20.030 Applications for franchises.**

266 Applications for new franchises shall be submitted to the Department
267 and shall include the following information:

- 268 1. Applicant's name, address, and telephone number and the name,
269 address and telephone number of the duly authorized officer or
270 employee of the applicant. If the application is submitted by an agent
271 of the applicant (i.e., by someone other than a duly authorized officer
272 or employee of the applicant), the following information shall also be
273 provided: (i) the agent's name, address and telephone number; and
274 (ii) documentation of the agent's authority to submit the application
275 on behalf of the applicant.
- 276 2. Applicant's business structure, e.g., corporation, limited liability
277 company, partnership, sole proprietorship.
- 278 3. Identification of the service area for which the franchise is requested,
279 including a map of the area to be covered by the franchise and, if
280 known, specific locations of the initial build-out and proposed future
281 build-out locations, including which proposed facilities will be
282 underground, ground based or aerial. A citywide franchise area may
283 be requested.
- 284 4. Description of the services that the applicant expects to provide
285 within the City, including whether the services will be provided to the
286 general public, to commercial and/or residential customers, or to
287 other utilities or telecommunications providers.
- 288 5. Description of the type(s) of facilities to be installed in the right-of-
289 way.
- 290 6. To the extent locations for installations are known, preliminary
291 engineering plans, specifications and a map showing where the
292 facilities are to be located within the City, all in sufficient detail to
293 identify:
- 294 (a) The location and/or route requested for the applicant's
295 proposed facilities;
- 296 (b) The location of applicant's overhead and underground
297 facilities, other lines and equipment in the rights-of-way in the
298 proposed location and/or along the proposed route;
- 299 (c) The specific trees, structures, improvements, facilities, lines
300 and equipment and obstructions, if any, that the applicant
301 proposes to temporarily or permanently remove or relocate.
- 302 7. If the applicant is proposing an underground installation within new
303 ducts or conduits to be constructed within the rights-of-way and to
304 the extent specific locations are known:
- 305 (a) The location proposed for the new ducts or conduits;
- 306 (b) Evidence that there is sufficient capacity within the rights-of-
307 way for the proposed facilities.
- 308 8. A preliminary construction schedule and completion date.

- 309 9. Evidence that the applicant is registered to participate in the one-
 310 number locator service, as described in RCW Chapter 19.122, if
 311 applicable.
 312 10. If the applicant is proposing small wireless facilities, an accurate
 313 map showing the existing locations, if any, of any existing small
 314 wireless facilities in the rights-of-way, owned or operated by the
 315 applicant.
 316 11. An application fee which shall be set by the City Council to recover
 317 City costs in accordance with applicable federal and state law.
 318 12. Description of applicant's previous experience providing the
 319 proposed services and facilities, including an illustrative list of other
 320 franchises awarded applicant in the State of Washington.
 321 13. The name, address and telephone number of any person, other than
 322 applicant, who will have any ownership interest in the proposed
 323 facilities.
 324 14. Proof that applicant possesses all governmental licenses,
 325 certificates or authorizations that are necessary to lawfully conduct
 326 the proposed franchise activities.
 327 15. Explanation of whether applicant-proposed services or any portion
 328 thereof will be subject to tax under Chapter 5.08 KMC.
 329 16. Information demonstrating applicant's financial capacity to
 330 construct, maintain and operate the proposed franchise facilities in
 331 compliance with the requirements of this Title, as may be shown by
 332 its operations in other cities, financial statements, or other means.
 333 17. A statement as to whether applicant has had any franchise revoked
 334 or been held to be in violation of any franchise and, if so, a full
 335 explanation of the reasons for such violation and/or revocation and
 336 the steps taken by the applicant to cure all resulting harms and
 337 prevent their reoccurrence.
 338 18. Such other information as the Department shall deem appropriate.

339 **26.20.040 Determination by City.**

- 340 1. Within the time periods established by state and/or federal law, as
 341 applicable, after receiving a complete application hereunder, the
 342 City Council shall grant or deny a franchise application. If the City
 343 Council denies a franchise, such denial must be based on one of the
 344 following:
 345
 346 (a) The capacity of the rights-of-way to accommodate the
 347 applicant's facilities;
 348 (b) The capacity of the rights-of-way to accommodate additional
 349 facilities if the application is granted;
 350 (c) The damage or disruption, if any, to public or private facilities,
 351 improvements, service, travel or landscaping if the
 352 application is granted, giving consideration to an applicant's
 353 willingness and ability to mitigate and/or repair same;
 354 (d) The public interest in minimizing the cost and disruption of
 355 construction within the rights-of-way;
 356 (e) The availability of alternate routes or locations that are
 357 reasonable for placement of the proposed facilities;

- 358 (f) Such other factors as may relate to the City's authority to
 359 manage, regulate and control public rights-of-way.
 360
- 361 2. If the application is denied, the determination shall include the
 362 reasons for denial. Denial of a franchise shall be supported by
 363 substantial evidence contained in a written record.
- 364 3. If the application is approved, the City shall issue the franchise as a
 365 written document with any conditions necessary to preserve and
 366 maintain the public health, safety, welfare, and convenience.

367 **26.20.050 Acceptance.**

- 368 1. No franchise granted hereunder shall be effective until it has been
 369 approved by the City Council by ordinance and the applicant has
 370 accepted the franchise, in writing, in a form acceptable to the City.
- 371 2. Either before the franchise is presented to City Council or within 60
 372 days after the effective date of the ordinance or other City action
 373 granting a franchise, or within such extended period of time as may
 374 be authorized by the City, the applicant shall file written acceptance
 375 of the franchise, together with the bonds, certificate(s) of insurance
 376 policies, and security fund required by this KMC 26.40.050.
 377 Acceptance of a franchise shall consist of executing the written
 378 agreement granting the franchise and returning said franchise to the
 379 City within the period of time specified herein.
- 380 3. All franchises granted pursuant to this Title shall contain
 381 substantially similar terms and conditions.
 382

383 **26.20.060 General conditions of franchises.**

- 384 1. A franchise shall be nonexclusive.
- 385 2. No franchise shall be in effect for a term of more than five years,
 386 unless a different term is expressly specified in the franchise.
- 387 3. The franchise shall authorize the Ggrantee to use only those specific
 388 portions of the rights-of-way indicated in the franchise. The franchise
 389 area may include all rights-of-way within the city limits.
- 390 4. In accepting any franchise, the Ggrantee acknowledges that its
 391 rights thereunder are subject to the lawful exercise of the police
 392 power and zoning power of the City to adopt and enforce ordinances
 393 necessary to protect the safety and welfare of the public, and it
 394 agrees to comply with all applicable laws enacted by the City
 395 pursuant to such powers.
- 396 5. No franchise shall convey any right, title or interest in rights-of-way,
 397 but shall be deemed an authorization only to use and occupy the
 398 rights-of-way for the limited purposes and term stated in the
 399 franchise.
- 400 6. No franchise shall excuse the Ggrantee from securing any further
 401 easements, leases, permits or other approvals that may be required
 402 to lawfully occupy and use rights-of-way.
- 403 7. No franchise shall be construed as any warranty of title.
- 404 8. The provisions of this Title shall be incorporated by reference in any
 405 franchise approved hereunder. However, in the event of any conflict

406 between this Title and the franchise, the franchise shall be the
407 prevailing document.

408 9. If a franchise expires, the franchise shall continue on a month-to-
409 month basis until either party requests to terminate or amend the
410 franchise.

411 **26.20.070 Amendment of franchise.**

412 1. If a Grantee wishes to modify the conditions of the franchise,
413 including the portions of the rights-of-way it is authorized to use and
414 occupy, the Grantee shall submit such amendment request in
415 writing to the Director. Upon the Director's recommendation of
416 approval or denial, the amendment request shall be submitted to
417 City Council for review and determination.

418 2. If a Grantee is ordered by the City to locate or relocate its facilities
419 in rights-of-way not included in a previously granted franchise, the
420 City shall grant an amendment making that change without further
421 application.

422 **26.20.080 Renewal of franchise.**

423 1. A Grantee that wishes to renew its franchise hereunder shall, not
424 more than one hundred eighty days nor less than ninety days before
425 the expiration of the current franchise, submit an application to the
426 City for renewal on a form prepared by the Director.

427 2. No franchise shall be renewed until any ongoing violations or
428 defaults in the Grantee's performance of the franchise, or of the
429 requirements of this Title, have been cured, or a plan detailing the
430 corrective action to be taken by the Grantee has been approved by
431 the City.

432 3. After receiving a complete application for franchise renewal, the City
433 shall determine whether to grant or deny the renewal application in
434 whole or in part. If the renewal application is denied, the written
435 determination shall include the reasons for nonrenewal. Prior to
436 granting or denying the renewal of a franchise under this Article, the
437 City Council shall consider the following:

438 (a) The applicant's compliance with the requirements of this Title
439 and the franchise.

440 (b) Applicable federal, state and local laws, rules and policies.

441 (c) Such other factors as may demonstrate that the continued
442 grant to use the rights-of-way will be in the best interests of
443 the community.

444 **26.20.090 Personal wireless service facilities in rights-of-way.**

445 1. The City may impose a site-specific charge consistent with
446 applicable law and pursuant to an agreement with a personal
447 wireless service provider for:

448 (a) The placement of new facilities in the right-of-way regardless
449 of height, including underground facilities, unless the new
450 facility is the result of a City-mandated relocation, in which
451 case the City will not charge the personal wireless service
452 provider if the previous location was not charged.

453 (b) The placement of replacement structures when the
 454 replacement is necessary for the installation or attachment
 455 of facilities, and the overall height of the replacement
 456 structure and the facility is more than sixty feet.

457 (c) The placement of new facilities on structures owned by the
 458 City located in the right-of-way.

459 2. The City is not required to approve a franchise for the placement of
 460 facilities that meets one of the criteria in this section absent such an
 461 agreement. If the parties are unable to agree on the amount of the
 462 charge, the personal wireless service provider may submit the
 463 amount of the charge to binding arbitration by serving notice on the
 464 City. Within thirty days of receipt of the initial notice, each party shall
 465 furnish a list of acceptable arbitrators. The parties shall select an
 466 arbitrator; failing to agree on an arbitrator, each party shall select
 467 one arbitrator and the two arbitrators shall select a third arbitrator for
 468 an arbitration panel. The arbitrator or arbitrators shall determine the
 469 charge based on comparable siting agreements involving rights-of-
 470 way and consistent with applicable law. The arbitrator or arbitrators
 471 shall not decide any other disputed issues, including but not limited
 472 to size, location and zoning requirements. Costs of the arbitration,
 473 including compensation for the services of the arbitrator(s), must be
 474 borne equally by the parties participating in the arbitration and each
 475 party shall bear its own costs and expenses, including legal fees and
 476 witness expenses in connection with the arbitration proceeding.

477 **26.20.100 Use of poles and conduit.**

478 1. The City may, in accordance with RCW 35.99.070 and any other
 479 applicable law, require a telecommunications provider that is
 480 constructing, relocating or placing ducts or conduits in the rights-of-
 481 way to provide the City with additional duct or conduit and related
 482 structures necessary to access the conduit.

483 2. Subject to such reasonable rules and regulations as may be
 484 prescribed by the pole owner and subject to the limitations
 485 prescribed by RCW 70.54.090 or any other applicable law, the City
 486 may post City signs on a pole owner's poles within the City.

487 3. Subject to the pole owner's prior written consent, which may not be
 488 unreasonably withheld, the City may install and maintain City-
 489 owned overhead wires upon an owner's poles, in the right-of-way
 490 subject to the following:

491
 492 (a) Such installation and maintenance shall be done by the City
 493 at its sole risk and expense, in accordance with all applicable
 494 laws, and subject to such reasonable requirements as the pole
 495 owner may specify from time to time (including, without
 496 limitation, requirements accommodating its facilities or the
 497 facilities of other parties having the right to use the pole);

498 (b) The pole owner shall have no indemnification obligations in
 499 connection with any City-owned wires so installed and
 500 maintained;

501 (c) The pole owner shall not charge the City a fee for the use
 502 of such poles in accordance with this section as a means of
 503 deriving revenue therefrom; provided, however, that nothing
 504 herein shall require the pole owner to bear any cost or expense
 505 in connection with such installation and maintenance by the City.

506 (d) The pole owner shall not enter into an agreement with a
 507 third person which would require the pole owner to exclude the
 508 City or any other person from use of such poles.

509 (e) The pole owner may not condition the City's use of such
 510 poles on the City's acceptance of limitations on the purpose or
 511 use of the City's facilities.

512 **26.20.110 Abandonment.**

513 1. A Grantee that has determined to discontinue its operations in the
 514 City must submit to the City, within 90 days of the planned date for
 515 discontinuance of operation, a proposal and instruments for
 516 transferring ownership of its facilities to the City. If a Grantee
 517 proceeds under this clause, the City may at its option:

518 (a) Accept assignment of the facilities; or

519 (b) Require the Grantee, at its own expense, to remove the
 520 facilities.

521 2. Facilities of a Grantee who fails to comply with the preceding
 522 subsection and which, for 120 days, remain unused shall be deemed
 523 to be abandoned. Abandoned facilities are deemed to be a
 524 nuisance. After the lapsing of such 120 days and upon 30 days'
 525 notice to the Grantee, the City may exercise any remedies or rights
 526 it has at law or in equity, including but not limited to:

527 (a) Abating the nuisance; and

528 (b) Requiring removal of the facilities at the expense of the
 529 Grantee.

530

531

Chapter 26.28

532

INSPECTION, REPORTS AND NOTICE

533 **26.28.010 Inspection of right-of-way construction and restoration**
 534 **activities.**

535 1. The Director may inspect all right-of-way construction and
 536 restoration activities and conduct any tests that the Director finds
 537 necessary to ensure compliance with the terms of this Title and any
 538 other applicable law or agreements.

539 2. A Grantee shall allow the Director to make such inspections
 540 referred to in subsection (1a) of this section at any time. ~~Absent an~~
 541 ~~emergency, the City shall give the grantee reasonable notice of the~~
 542 ~~inspection of at least 24 hours.~~

543 26.28.020 Maps.

544 Upon request by the City, a Grantee shall, within 10 business days,
 545 submit to the City, at no cost to the City, the Grantee's most current
 546 and accurate record drawings in use by the Grantee showing the
 547 location of Grantee's facilities, specified by the City in its request.
 548 Record drawings shall show all facilities including but not limited to
 549 power poles, guy poles and anchors, overhead transformers, pad-
 550 mounted transformers, submersible transformers, conduit, substation
 551 (with its name) pedestals, pad-mounted J boxes, vaults, switch cabinets,
 552 and meter boxes.

553 26.28.030 Reports to the City.

- 554 1. The Director may require such reports and information as the
 555 Director finds necessary to ensure compliance with the terms of this
 556 title and any other applicable law or agreements.
- 557 2. Within ten days of receipt of a written request from the Director, or
 558 such other reasonable time as the Director may specify in writing,
 559 each Grantee shall furnish the Director with information sufficient
 560 to demonstrate:
- 561 (a) That it has complied with all requirements of this Title.
 - 562 (b) That all fees due the City in connection with the services and
 563 facilities provided by the Grantee have been properly
 564 collected and paid.
 - 565 (c) That the Grantee has furnished the City with all necessary
 566 information with respect to its facilities in City rights-of-way.

567 26.28.040 Notice to Department.

568 For emergency activity, the Grantee shall notify the Department as
 569 soon as the need for the work is known and in no event, no later than
 570 twenty-four hours after the need for work is first discovered. For
 571 nonemergency activities, the Grantee shall notify the Department in
 572 accordance with the conditions of the right-of-way work permit and/or
 573 franchise. For both emergency and nonemergency activities, the
 574 Grantee shall provide information about the right-of-way work as
 575 required by the Department.

576 26.28.050 Notice to public.

577 Pursuant to the Public Works Pre-Approved Plans and Policies and the
 578 terms of the right-of-way work permit, Gratees may be required to
 579 provide notice to the public of work in the right-of-way prior to
 580 undertaking said work.

581

Chapter 26.32

582

FEES**583 26.32.010 Purpose.**

584 The purpose of the fees established in this chapter is to ensure the
 585 recovery of the City's direct and indirect costs and expenses, including,
 586 but not limited to, actual costs of City staff time and resources as well
 587 as any outside consultation expenses which the City reasonably
 588 determines are necessary. The fees set forth are in addition to any other

589 fees that may be required by law, including but not limited to,
 590 construction fees that may be required under KMC Chapter 5.74 and
 591 KMC TitleSection 19.12.090, and land use permit fees in KZC Chapter
 592 117-KZG.

593 **26.32.020 Application fees.**

594 1. Franchises are subject to application fee deposit in an amount as
 595 determined by the currently effective fee schedule. This application fee
 596 deposit shall cover the actual costs associated with the City's initial
 597 review of the application; provided, however, that the applicant shall be
 598 required to pay all other necessary application fees. This application fee
 599 deposit shall be deposited with the City as part of the application filed
 600 pursuant to this Chapter.

601 2. An applicant that withdraws or abandons its franchise application
 602 shall, within sixty days of its application and review fee payment, be
 603 refunded the balance of its deposit under this section, less all
 604 reasonable costs and expenses incurred by the City in connection with
 605 the application prior to the withdrawal or abandonment.

606 3. Prior to issuance of an applicable right-of-way work permit or WSF
 607 permit, or any other necessary permit, the applicant shall pay a permit
 608 fee in an amount as determined by the currently effective fee schedule,
 609 or the actual costs incurred by the City in reviewing such permit
 610 application.

611 **26.32.030 Other City costs.**

612 To the extent allowed by law, all Ggrantees shall, within thirty days after
 613 written demand therefor, reimburse the City for all direct and indirect
 614 costs incurred by the City in connection with any modification,
 615 amendment, renewal or transfer of a franchise.

616 **26.32.040 Compensation.**

617 To the extent permitted by law and subject to KMZC 26.20.090, each
 618 franchise granted hereunder is subject to the City's right, which is
 619 expressly reserved, to annually fix a fair and reasonable compensation
 620 to be paid for use of property; provided, that nothing in this title shall
 621 prohibit the City and a Ggrantee from agreeing upon the compensation
 622 to be paid.

623 **26.32.050 Regulatory fees and compensation not taxes.**

624 The regulatory fees provided for in this title, and any compensation
 625 charged and paid for the rights-of-way provided for herein, are separate
 626 from and additional to any and all federal, state, local and City taxes as
 627 may be levied, imposed or due from a Ggrantee or its customers or
 628 subscribers.

629

Chapter 26.36

630

WORK IN RIGHTS-OF-WAY

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26.36.010 Placement of facilities.

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1. All facilities placed by a Grantee in rights-of-way within the City shall be so located as to minimize interference with the proper use of rights-of-way, and to minimize interference with the rights of property owners who adjoin any of the rights-of-way.

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2. A Grantee with written authorization from the City to install overhead facilities shall install its facilities on ~~pole-attachments-to~~ existing utility poles only, unless a specific pole is needed due to the technology employed in the facilities, and then only if surplus space is available. Locations for placement of WSF are subject to KZC Chapter 117.

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3. Whenever existing telephone, electric utilities, or telecommunications facilities are located or relocated underground within rights-of-way, a Grantee with written authorization to occupy the same rights-of-way must also locate or relocate its facilities underground unless such location is not feasible due to the technology employed in the facility.

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4. Whenever new electric utilities or telecommunications facilities are located underground within the City's rights-of-way, a Grantee that currently occupies or will occupy the same rights-of-way shall concurrently place its facilities underground, to the extent technically feasible, at its expense.

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5. A Grantee shall utilize existing poles and conduit wherever possible. New poles (other than replacement poles) shall not be allowed without specific written authorization from the Director or approval pursuant to KZC Chapter 117.

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26.36.020 Obstructions in rights-of-way.

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~~1. A person who places or maintains an obstruction in, on, over, under or through the City's rights-of-way shall promptly shift, adjust, accommodate, or remove the obstruction on reasonable notice from the City at such person's expense.~~

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~~2. If a person fails or refuses to shift, adjust, accommodate, or remove an obstruction after reasonable notice, the Department may shift, adjust, accommodate, or remove the obstruction, and the Director may charge the person having or maintaining the obstruction for the cost of performing the work.~~

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~~3. Any opening or obstruction in the rights-of-way made by a grantee in the course of its operation shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.~~

672 ~~4. No grantee may locate or maintain its facilities so as to unreasonably~~
 673 ~~interfere with the use of the rights-of-way by the City, by the general~~
 674 ~~public or other persons, or other persons authorized to use or be present~~
 675 ~~in or upon the rights-of-way. All such facilities shall be moved by and at~~
 676 ~~the expense of the grantee, temporarily or permanently, as determined~~
 677 ~~by the City.~~

678 **26.36.0230 Completion of make-ready work.**

679 To the extent consistent with state law, a Ggrantee shall have thirty days
 680 to perform any requested "make-ready" work (work required to prepare
 681 the Ggrantee's poles or other facilities for attachment by another party)
 682 or alterations to its facilities upon request by persons authorized to use
 683 or be present in or upon the rights-of-way. If an owner fails to perform
 684 such work within thirty days, then the authorized persons may perform
 685 such "make-ready" work or alterations at their own cost.

686 **26.36.0340 Restoration.**

687 1. No Ggrantee shall take any action or allow any action to be done
 688 that may permanently impair or damage any rights-of-way or other
 689 property located in, on or adjacent thereto.

690 2. In case of any disturbance of pavement, sidewalk, driveway or other
 691 surfacing, or any public or private property, the Ggrantee shall, in a
 692 manner acceptable to the City, replace, repair, and restore all paving,
 693 sidewalk, utility covers, survey monuments, driveway or surface of any
 694 rights-of-way, or other public or private property, that has been disturbed
 695 by the Ggrantee's activities in as good condition as before said work
 696 was commenced and in compliance with any then-current legal
 697 standards, including but not limited to requirements established by the
 698 Americans with Disabilities Act.

699 3. In particular, and without limitation, all trees, landscaping and
 700 grounds removed, damaged or disturbed as a result of right-of-way work
 701 by Ggrantees shall, at a minimum, be replaced or restored to the
 702 condition existing prior to performance of the work. In addition, a
 703 Ggrantee shall comply with all applicable provisions of KZC Chapter 95
 704 and the Public Works Pre-Approved Plans regarding all trees,
 705 landscaping and grounds.

706 4. If weather or other conditions do not allow for the complete
 707 restoration required hereunder, the Ggrantee shall temporarily restore
 708 the affected rights-of-way or property. Such temporary restoration shall
 709 be at the Ggrantee's sole expense, and the owner shall promptly
 710 undertake and complete the required permanent restoration when the
 711 weather or other conditions no longer prevent such permanent
 712 restoration.

713 5. All restoration work within the rights-of-way shall be done in
 714 accordance with landscape plans approved by the Director.

715 6. Restoration pursuant to this section shall be at the Ggrantee's cost
 716 and expense, except to the extent otherwise required by applicable law.

717 7. In the event that the Grantee fails to complete any work required
718 for the repair, protection, or restoration of the rights-of-way or private
719 property, or any other work required by law or ordinance, within the time
720 specified by and to the reasonable satisfaction of the City, the City,
721 following notice and an opportunity to cure, may cause such work to be
722 done. In such a case, the Grantee shall reimburse the City the cost
723 thereof within thirty days after receipt of an itemized list of such costs,
724 or the City may recover such costs through any bond or other security
725 instrument provided by the Grantee, except to the extent otherwise
726 required by applicable law.

727 **26.36.0450 Relocation of facilities.**

728 1. The City may require a Grantee to relocate authorized facilities
729 within the right-of-way when reasonably necessary for construction,
730 alteration, repair or improvement of the right-of-way for the purpose of
731 public health, welfare and safety, at no cost to the City, except to the
732 extent otherwise required by applicable law.

733 2. The City shall notify the Grantee as soon as practicable of the need
734 for relocation and shall specify the date by which relocation shall be
735 completed. In calculating the date by which relocation must be
736 completed, the City shall consult with the Grantee and consider the
737 extent of the facilities to be relocated, the Grantee's service
738 requirements, and the construction sequence required, within the City's
739 overall project construction sequence and constraints, to safely
740 complete the relocation. Grantees shall complete the relocation by the
741 date specified unless the City or a reviewing court establishes a later
742 date for completion, after showing by the Grantee that the relocation
743 cannot be completed by the date specified, using best efforts and
744 meeting safety and service requirements.

745 3. Subject to subsection (4) of this section, whenever any person, other
746 than the City, requires the relocation of a Grantee's facilities to
747 accommodate work of such person within the franchise area, then the
748 Grantee shall have the right as a condition of any such relocation to
749 require payment to Grantee, at a time and upon terms acceptable to
750 the Grantee, for any and all costs and expenses incurred by the
751 Grantee in the relocation of the Grantee's facilities.

752 4. Notwithstanding the provisions of subsection (3) of this section, if the
753 City reasonably determines and notifies the Grantee that the primary
754 purpose of imposing such condition or requirement upon such person is
755 to cause or facilitate the construction of a public works project to be
756 undertaken within a segment of the franchise area on the City's behalf
757 and consistent with the City's capital improvement plan, transportation
758 improvement program or the transportation facilities program, then only
759 those costs and expenses incurred by the Grantee in reconnecting
760 such relocated facilities with the Grantee's other facilities shall be paid
761 to Grantee by such person, and the Grantee shall otherwise relocate
762 its facilities within such segment of the franchise area in accordance with
763 subsection (1) of this section.

764 5. The City may require relocation of facilities at no cost to the City in
765 the event of an unforeseen emergency that creates an immediate threat
766 to public health, welfare and safety.

767 6. If a Grantee is required to relocate, change or alter facilities
768 hereunder and fails to do so, the City may cause such to occur and
769 charge the owner for the costs incurred.

770 **26.36.0560 Underground conversions.**

771 1. In the event that conversion of a Grantee's overhead facilities to
772 underground is required or reasonably necessary for construction,
773 alteration, repair, or improvement of the rights-of-way for purposes of
774 public welfare, health, or safety (such as projects that may include,
775 without limitation, road widening, surface grade changes or sidewalk
776 installation), a Grantee, to the extent permitted by applicable law, shall
777 bear the costs of converting the Grantee's facilities from an overhead
778 system to an underground system as follows:

779 (a) To ensure proper space and availability in the supplied joint
780 trench, a Grantee shall pay for the work (time and materials)
781 necessary to complete related engineering and coordination with
782 the other utilities involved in the project.

783 (b) A Grantee shall pay its proportionate share of the cost of
784 labor and materials necessary to place its cables, conduits and
785 vaults/pedestals in the supplied joint trench and/or stand-alone
786 cable trench. If, however, the City's costs for the Grantee are
787 not agreeable to the Grantee, then the Grantee shall have the
788 right to hire its own contractor(s) to complete its work within the
789 joint trench.

790 (c) If a Grantee decides to use its own contractor(s) to
791 complete its portion of the work, then the Grantee and its
792 contractor(s) are responsible for coordinating with the City to
793 provide reasonable notice and time to complete the placement
794 of the Grantee's cables, conduits and vaults/pedestals in the
795 trench. If the Grantee fails to complete the above work within
796 the time prescribed and to the City's reasonable satisfaction, the
797 City may cause such work to be done and bill the reasonable
798 cost of the work to the Grantee, including all reasonable costs
799 and expenses incurred by the City due to the Grantee's delay.
800 In such an event, the City shall not be liable for any damage to
801 any portion of the Grantee's facilities. Within forty-five days of
802 receipt of an itemized list of those costs, the Grantee shall pay
803 the City.

804 (d) Within the underground conversion area, a Grantee shall
805 cooperate with the City and its contractor on any on-site
806 coordination. The City shall be responsible for traffic control,
807 trenching, backfill, and restoration of all work performed by its
808 contractor. A Grantee shall be responsible for traffic control,

809 trenching, backfill, and restoration of all work performed by its
810 contractor for stand-alone cable trenches.

811 2. In the event a local improvement district (LID) has been created to
812 fund a relocation or conversion project, a Ggrantee shall be reimbursed
813 by the LID for all expenses incurred as a result of the project.

814 **26.36.0670 Maintenance of aerial facilities.**

815 A Ggrantee owner of aerial facilities shall be required to trim trees upon
816 and overhanging rights-of-way and other public places of the City so as
817 to prevent the branches of such trees from coming in contact with the
818 facilities of the Ggrantee, all trimmings to be done at the expense of the
819 Ggrantee, except to the extent otherwise required by applicable law. A
820 Ggrantee shall comply with all provisions of KZC Chapters 95.20 and
821 95.21 (Tree Pruning).

822 **26.36.0780 Compliance with applicable laws and standards.**

823 1. All right-of-way work shall be performed in accordance with all
824 applicable law and regulations, including, where applicable, the
825 Occupational Safety and Health Act of 1970, as amended; the National
826 Electrical Safety Code, prepared by the National Bureau of Standards;
827 and the National Electrical Code of the National Board of Fire
828 Underwriters.

829 2. All right-of-way work shall comply with the requirements of the most
830 recently adopted City Pre-Approved Plans and Policies, and in the event
831 of a conflict between the aforesaid Pre-Approved Plans and Policies and
832 this title, the standards of the Pre-Approved Plans and Policies shall
833 control.

834 3. All of a Ggrantee's facilities shall be installed in accordance with
835 good engineering practice. All of a Ggrantee's facilities shall be
836 maintained in a safe condition, in good order and repair, and in
837 compliance with all applicable federal, state and local requirements.

838 4. All safety practices required by law shall be used during
839 construction, maintenance, and repair of a Ggrantee's facilities.

840 5. A Ggrantee shall at all times employ ordinary care and shall use
841 commonly accepted methods and devices for preventing failures and
842 accidents that are likely to cause damage, injury, or nuisance to the
843 public.

844 6. If applicable, a Ggrantee shall maintain membership in good
845 standing with the Utilities Underground Location Center or other similar
846 or successor organization which is designated to coordinate
847 underground equipment locations and installations. A Ggrantee shall
848 abide by the state's "Underground Utilities" statutes (Chapter 19.122
849 RCW) and will further comply with and adhere to City regulations related
850 to the One Call locator service program.

851 **26.36.0890 Traffic control plan.**

852 1. All Ggrantees shall comply with the Manual on Uniform Traffic
853 Control Devices with respect to traffic control. The City may require a
854 traffic control plan demonstrating the protective measures and devices
855 that will be employed.

856 2. A Ggrantee shall use suitable barricades, flags, flagmen, lights,
857 flares and other measures as required for the safety of all members of
858 the general public and to prevent injury or damage to any person,
859 vehicle or property by reason of its right-of-way work.

860 **26.36.9400 Coordination of right-of-way work.**

861 1. A Ggrantee shall joint trench or share bores or cuts and work with
862 other Ggrantees so as to reduce the number of right-of-way cuts within
863 the City, to the extent such joint work would not impose undue economic
864 burdens or delay upon the Ggrantee.

865 2. The City shall provide as much advance notice as reasonable of
866 plans to open the rights-of-way to those providers who are current users
867 of the rights-of-way or who have filed notice with the clerk of the City
868 within the past twelve months of their intent to place facilities in the City.

869 3. If applicable law allows the City to keep electronic copies
870 confidential, then by the first day of February each year, each Ggrantee
871 shall prepare and submit to the Ddepartment a plan, in a format
872 specified by the Ddepartment, that shows all reasonably foreseeable
873 right-of-way work in the paved portion of the rights-of-way anticipated to
874 be done in the next year, or a statement that no right-of-way work is
875 proposed. The Ggrantee shall report to the Ddepartment promptly any
876 changes in the plan as soon as those changes become reasonably
877 foreseeable.

878 4. The Ddepartment may disclose information contained in such a plan
879 to another party only on a need-to-know basis in order to facilitate
880 coordination and avoid unnecessary right-of-way work, or as otherwise
881 required by law. If a Ggrantee clearly and appropriately identifies
882 information contained in the plan as proprietary, a trade secret, or
883 otherwise protected from disclosure, then to the maximum extent
884 permissible under federal, state, and local laws applicable to public
885 records, the Ddepartment may not disclose that information to the
886 public. If the Ddepartment determines that information is not clearly or
887 appropriately identified, the Ddepartment shall notify the Ggrantee that
888 the Ddepartment intends to disclose the requested information unless
889 ordered otherwise by a court.

890 5. The Ddepartment shall review the annual plans submitted by
891 Ggrantees and identify conflicts and opportunities for coordination of
892 right-of-way work in the paved rights-of-way. Each applicant shall
893 coordinate, to the extent practicable, with the City and with each
894 potentially affected Ggrantee to minimize disruption in the rights-of-way.

895 6. If communication facilities are to be placed underground in a new
896 subdivision, the communication provider shall give written notice to
897 other known providers in the area within which the property is located.
898 Such notice shall be given at least forty-eight hours before
899 commencement of trenching construction.

900 7. The City may facilitate joint use of the property, structures, and
901 appurtenances of each Ggrantee located in the rights-of-way and other
902 public places, insofar as such joint use may be reasonable and
903 practicable.

904 **26.36.1040 Damage to facilities.**

905 To the extent permitted by applicable law, the City shall not be liable for
906 any damage to or loss of any facilities within the rights-of-way as a result
907 of or in connection with any public works, public improvements,
908 construction, excavation, grading, filling, or work of any kind in the
909 rights-of-way by or on behalf of the City.

910 **26.36.1120 Obligations of developers.**

911 A developer shall provide for underground facilities for providers to
912 serve a development in accordance with applicable law for underground
913 facilities. The developer shall execute all required agreements relating
914 to the underground facilities, including easements, and provide proof to
915 the City that the agreements have been executed.

916 **Chapter 26.40**

917 **LIABILITY, INDEMNIFICATION AND SECURITY**

918 **26.40.010 Warranty and liability.**

919 1. For a period of two years after satisfactory completion of work in a
920 right-of-way, the Ggrantee warrants and guarantees the quality of the
921 work performed and is responsible for maintaining the site free from any
922 defects resulting from the ~~quality of the work~~ and, in the event of such
923 defects, for repairing or restoring the site to a condition that complies
924 with all applicable law and regulations. Any repair or restoration during
925 the warranty period shall cause the warranty period to run for one
926 additional year beyond the original two-year period with respect only to
927 what was repaired.

928 2. The issuance of a right-of-way work permit or any inspection, repair,
929 suggestion, approval, or acquiescence of any person affiliated with the
930 City does not relieve the Ggrantee from the warranty and liability
931 provisions of this section, the indemnification provisions of Section
932 26.40.030, or any other term or condition of this title.

933 **26.40.020 Insurance.**

934 1. Unless otherwise provided by a franchise or other agreement to use
935 the right-of-way, each Ggrantee shall, as a condition of the grant, secure
936 and maintain the following liability insurance policies (which may be
937 evidenced by an acceptable certificate of insurance) insuring both the

938 Grantee and the City, and its elected and appointed officers, officials,
939 agents, representatives and employees, as additional insureds:

940 (a) Commercial General Liability Insurance Written on an
941 Occurrence Basis. The insurance policy shall be endorsed to
942 provide a per project general aggregate and there shall be no
943 exclusions for liability arising from explosion, collapse or
944 underground property damage. The policy shall have limits not
945 less than:

946 (i) \$5,000,000 for bodily injury, property damage,
947 products-completed operations, stop gap liability, personal injury
948 and advertising injury, and liability assumed under an insured
949 contract;

950 (ii) \$6,000,000 general aggregate, per project aggregate
951 and products-completed operations aggregate.

952 (b) Automobile liability insurance covering all owned, non-
953 owned, hired and leased vehicles with a minimum combined
954 single limit for bodily injury and property damage of \$5,000,000
955 per accident.

956 (c) Worker's compensation within statutory limits and
957 employer's liability insurance with limits of not less than
958 \$1,000,000. Grantee may satisfy this requirement by being a
959 qualified self-insurer.

960 (d) Excess or Umbrella Liability insurance shall be written with
961 limits of not less than \$5,000,000 per occurrence and annual
962 aggregate. The Excess or Umbrella Liability requirement and
963 limits may be satisfied instead through Grantee's Commercial
964 General Liability and Automobile Liability insurance, or any
965 combination thereof that achieves the overall required limits.

966 2. The liability insurance policies required by this section shall be
967 maintained by the Grantee throughout the term of the franchise or
968 other agreement to use the right-of-way, and such other period of time
969 during which the Grantee is operating without a franchise or other
970 agreement to use the right-of-way, or is engaged in the removal of its
971 utility services or telecommunications facilities. ~~The insurance policies~~
972 ~~shall include the City, and its elected and appointed officers, officials,~~
973 ~~agents, employees, representatives, engineers, and consultants as~~
974 ~~additional insureds.~~ The Grantee shall provide a certificate of
975 insurance (COI), together with the additional insured endorsement(s) to
976 the City, upon acceptance of the franchise or other agreement to use
977 the right-of-way. Payment of deductibles and self-insured retentions
978 shall be the sole responsibility of the Grantee ~~or grantee~~. The
979 insurance required by this section shall apply separately to each insured
980 against whom a claim is made or suit is brought. The Grantee's
981 required insurance shall be primary insurance with respect to the City,
982 its officers, officials, employees, agents, engineers, and consultants.

983 3. Any insurance, self-insurance, or self-insured pool coverage
 984 maintained by the City shall be excess of the Ggrantee's required
 985 insurance and shall not contribute with it. Receipt by the City of any
 986 certificate or evidence of insurance showing less coverage than required
 987 is not a waiver of Ggrantee's obligations to fulfill the requirements.
 988 Grantee may utilize primary and excess liability insurance policies to
 989 satisfy the insurance policy limits required in this section. Grantee's
 990 excess liability insurance policy shall provide "follow form" coverage
 991 over its primary liability insurance policies.

992 4. Grantee is obligated to notify the City of any cancellation or intent
 993 not to renew any insurance policy required pursuant to this section 30
 994 days prior to any such cancellation. Within 15 days prior to said
 995 cancellation or intent not to renew, Ggrantee shall obtain and furnish to
 996 the City replacement insurance policies meeting the requirements of this
 997 section. Failure to provide the insurance cancellation notice and to
 998 furnish to the City replacement insurance policies meeting the
 999 requirements of this section shall be considered a material breach of the
 1000 franchise or other agreement to use the right-of-way.

1001 5. Grantee's maintenance of insurance, its scope of coverage and
 1002 limits as required herein shall not be construed to limit the liability of the
 1003 Ggrantee to the coverage provided by such insurance, or otherwise limit
 1004 the City's recourse to any remedy available at law or in equity. If the
 1005 Ggrantee maintains higher insurance limits than the minimums shown
 1006 above, the City shall be insured for the full available limits of commercial
 1007 general and excess or umbrella liability maintained by the Ggrantee,
 1008 irrespective of whether such limits maintained by the Ggrantee are
 1009 greater than those required by this code or whether any certificate of
 1010 insurance furnished to the City evidences limits of liability lower than
 1011 those maintained by the Ggrantee. Further, Ggrantee's maintenance of
 1012 insurance policies required by this franchise or other agreement to use
 1013 the right-of-way shall not be construed to excuse unfaithful performance
 1014 by Ggrantee.

1015 6. Upon approval by the City and based on conditions set by the City
 1016 in the franchise or other agreement to use the right-of-way, the Ggrantee
 1017 may self-insure under the same terms as required by this section.
 1018 Further, the Director may modify these insurance requirements within
 1019 the franchise or other agreement to use the right-of-way as they~~he~~/she
 1020 ~~deems necessary to comply with the City's risk management policies or~~
 1021 ~~as otherwise approved by the City's Risk Manager;~~ provided, that any
 1022 such changes provide adequate protection for the City.

1023 **26.40.030 Indemnification.**

1024 1. As consideration for the issuance of a franchise or other agreement
 1025 to use the right-of-way, the agreement~~franchise~~ shall include an
 1026 indemnity clause substantially conforming to the following:

1027 (a) Grantee hereby releases, covenants not to bring suit and agrees
 1028 to indemnify, defend, and hold harmless the City, its elected and
 1029 appointed officers, officials, employees, agents, engineers,

- 1030 consultants, and representatives from any and all claims, costs,
 1031 judgments, awards, or liability to any person arising from injury,
 1032 sickness, or death of any person or damage to property:
- 1033 i. For which the negligent acts or omissions of Ggrantee,
 1034 its agents, servants, officers or employees in performing
 1035 the activities authorized are the proximate cause;
- 1036 ii. By virtue of Ggrantee's exercise of the rights granted
 1037 herein;
- 1038 iii. By virtue of the City's permitting Ggrantee's use of the
 1039 ~~rights-of-way or other City property;~~
- 1040 iv. Based upon the City's inspection or lack of inspection of
 1041 work performed by Ggrantee, its agents and servants,
 1042 officers or employees in connection with work authorized
 1043 on a telecommunications facility, ~~or rights-of-way or other~~
 1044 ~~City property over which the City has control pursuant to~~
 1045 ~~any franchise issued;~~
- 1046 v. Arising as a result of the negligent acts or omissions of
 1047 Ggrantee, its agents, servants, officers or employees in
 1048 barricading, instituting trench safety systems or providing
 1049 other adequate warnings of any excavation,
 1050 construction, or work upon a facility, in any rights-of-way
 1051 in performance of work or services;
- 1052 vi. Based upon radio frequency emissions or radiation
 1053 emitted from Ggrantee's equipment located upon a
 1054 telecommunications facility, regardless of whether
 1055 Ggrantee's equipment complies with applicable federal
 1056 statutes and/or FCC regulations related thereto.
- 1057 (b) Grantee's indemnification obligations pursuant to subsection A of
 1058 this section shall include assuming potential liability for actions
 1059 brought against the City by Ggrantee's own employees and the
 1060 employees of Ggrantee's agents, representatives, contractors,
 1061 and subcontractors even though Ggrantee might be immune under
 1062 Title 51 RCW from direct suit brought by such an employee. It is
 1063 expressly agreed and understood that this assumption of potential
 1064 liability for actions brought against the City by the aforementioned
 1065 employees is with respect to claims against the City arising by
 1066 virtue of Ggrantee's exercise of its rights. In addition to the
 1067 indemnification obligations throughout this Section, the obligations
 1068 of Ggrantee under this subsection B shall be mutually negotiated
 1069 between the parties. Grantee shall acknowledge that the City
 1070 would not enter into an agreement without Ggrantee's waiver
 1071 thereof. To the extent required to provide this indemnification and
 1072 this indemnification only, Ggrantee will waive its immunity under
 1073 Title 51 RCW relating solely to indemnity claims made by the City

- 1074 directly against Ggrantee for claims made against the City by
 1075 Ggrantee's employees as provided in RCW 4.24.115.
- 1076 (c) Inspection or acceptance by the City of any work performed by
 1077 Ggrantee at the time of completion of construction shall not be
 1078 grounds for avoidance of any of these covenants of
 1079 indemnification. Provided that Ggrantee has been given prompt
 1080 written notice by the City of any such claim, said indemnification
 1081 obligations shall also extend to claims which are not reduced to a
 1082 suit and any claims which may be compromised, with Ggrantee's
 1083 prior written consent, prior to the culmination of any litigation or the
 1084 institution of any litigation. The City has the right to defend or
 1085 participate in the defense of any such claim and has the right to
 1086 approve any settlement or other compromise of any such claim.
- 1087 (d) In the event any such suit, claim or demand is presented to or filed
 1088 with the City, the City shall notify Ggrantee thereof, and Ggrantee
 1089 shall have the right, at its election and at its sole cost and expense,
 1090 to settle and compromise such suit, claim or demand, or defend
 1091 the same at its sole cost and expense, by attorneys of its own
 1092 election. In the event that Ggrantee refuses the tender of defense
 1093 in any suit or any claim, said tender having been made pursuant
 1094 to this section, and said refusal is subsequently determined by a
 1095 court having jurisdiction (or such other tribunal that the parties
 1096 agree to decide the matter), to have been a wrongful refusal on the
 1097 part of Ggrantee, then Ggrantee shall pay all of the City's costs for
 1098 defense of the action, including all reasonable expert witness fees,
 1099 reasonable attorneys' fees, the reasonable costs of the City, and
 1100 reasonable attorneys' fees of recovering under this Subsection.
- 1101 (e) The obligations of Ggrantee under the indemnification provisions
 1102 of this section shall apply regardless of whether liability for
 1103 damages arising out of bodily injury to persons or damages to
 1104 property were caused or contributed to by the concurrent
 1105 negligence of the City, its officers, agents, employees or
 1106 contractors. The provisions of this section, however, are not to be
 1107 construed to require the Ggrantee to hold harmless, defend, or
 1108 indemnify the City as to any claim, demand, suit, or action which
 1109 arises out of the sole negligence or willful misconduct of the City,
 1110 its agents, officers, employees, volunteers, or assigns. In the event
 1111 that a court of competent jurisdiction determines that a franchise
 1112 or other agreement to use the right-of-way is subject to the
 1113 provisions of RCW 4.24.115, the parties agree that the indemnity
 1114 provisions hereunder shall be deemed amended to provide that
 1115 the Ggrantee's obligation to indemnify the City hereunder shall
 1116 extend only to the extent of Ggrantee's negligence.
- 1117 (f) Notwithstanding any other provisions of this section, Ggrantee
 1118 assumes the risk of damage to its facilities located in the rights-of-
 1119 way ~~and upon City property~~ from activities conducted by the City,
 1120 its officers, agents, employees and contractors, except to the
 1121 extent any such damage or destruction is caused by or arises from
 1122 the sole negligence or willful or malicious action on the part of the
 1123 City, its officers, agents, employees or contractors. Grantee
 1124 releases and waives any and all such claims against the City, its

1125 officers, agents, employees and contractors. In no event shall the
 1126 City be responsible for indirect, special, consequential, or punitive
 1127 damages or loses, including but not limited to lost income or
 1128 business interruption, whether or not a party has been advised of
 1129 the possibility of such damage and notwithstanding the theory of
 1130 liability in which an action may be brought. Grantee further agrees
 1131 to indemnify, hold harmless and defend the City against any claims
 1132 for damages, including, but not limited to, business interruption
 1133 damages and lost profits, brought by or under users of Ggrantee's
 1134 facilities as the result of any interruption of service due to damage
 1135 or destruction of Ggrantee's facilities caused by or arising out of
 1136 activities conducted by the City, its officers, agents, employees or
 1137 contractors, except to the extent any such damage or destruction
 1138 is caused by or arises from the sole negligence or any willful
 1139 misconduct on the part of the City, its officers, agents, employees,
 1140 or contractors.

1141 2. These indemnification obligations shall survive expiration,
 1142 revocation, termination, or completion of the activities authorized by the
 1143 franchise or other agreement to use the right-of-way.

1144 **26.40.040 Security fund.**

1145 1. The City may require that eEach Ggrantee toshall establish a
 1146 permanent security fund with the City by depositing the amount of at
 1147 least fifty thousand dollars or other amount as determined by the
 1148 Director with the City in cash or other instrument acceptable to the City
 1149 (the "security fund"), which fund shall be maintained at the sole expense
 1150 of the Ggrantee so long as any of the Ggrantee's facilities are located
 1151 within the rights-of-way. This security fund shall be separate and distinct
 1152 from any other bond or deposit required under other code provisions or
 1153 agreements.

1154 2. The Ggrantee shall deposit the security fund with the City on or
 1155 before the effective date of its franchise, or, if the Ggrantee does not
 1156 have a franchise, on or before the date the Ggrantee places its facilities
 1157 in the rights-of-way.

1158 3. The security fund shall serve as security for the full and complete
 1159 performance of the Ggrantee's obligations under this title and under any
 1160 agreement between the Ggrantee and the City, including any costs,
 1161 expenses, damages or loss the City pays or incurs because of any
 1162 failure attributable to the Ggrantee to comply with the codes,
 1163 ordinances, rules, regulations or permits of the City.

1164 4. Before any sums are withdrawn from the security fund, the Director
 1165 shall give written notice to the Ggrantee:

1166 (a) Describing the act, default or failure to be remedied, or the
 1167 damages, cost or expenses which the City has incurred by
 1168 reason of the Ggrantee's act or default.

1169 (b) Providing a reasonable opportunity for the Grantee to
1170 remedy the existing or ongoing default or failure, if applicable.

1171 (c) Providing a reasonable opportunity for the Grantee to pay
1172 any moneys due the City before the City withdraws the amount
1173 thereof from the security fund, if applicable.

1174 (d) Stating that the Grantee will be given an opportunity to
1175 review the act, default or failure described in the notice with the
1176 City manager.

1177 5. The Grantee shall replenish the security fund within fourteen days
1178 after written notice from the City that the City has withdrawn an amount
1179 from the security fund. In the event that a Grantee notifies the City that
1180 it no longer has wireless facilities on City-owned property, the balance
1181 of the fund shall be refunded to the Grantee within thirty business days
1182 of said notice.

1183 **26.40.050 Construction bond.**

1184 4.—Grantee shall comply with the right-of-way work permit requirements
1185 of Title 19 KMC.

1186 ~~Unless otherwise provided in a franchise agreement or in right-of-way~~
1187 ~~work permit, each grantee shall deposit with the City, before a permit is~~
1188 ~~issued, a construction bond written by a surety acceptable to the City~~
1189 ~~equal to at least one hundred percent of the estimated cost of the right-~~
1190 ~~of-way work covered by the permit.~~

1191 ~~2.—The construction bond shall remain in force until ninety days after~~
1192 ~~substantial completion of the work, as determined by the Director,~~
1193 ~~including restoration of rights of way and other property affected by the~~
1194 ~~right of way work. However, in addition to the foregoing, the City~~
1195 ~~reserves the right to require a maintenance bond pursuant to Chapter~~
1196 ~~175 KZC.~~

1197 ~~3.—The construction bond shall guarantee, to the satisfaction of the~~
1198 ~~City:~~

1199 (a) ~~Timely completion of construction.~~

1200 (b) ~~Construction in compliance with applicable plans, permits,~~
1201 ~~technical codes and standards.~~

1202 (c) ~~Proper location of the facilities as specified by the City.~~

1203 (d) ~~Restoration of the rights of way and other property affected~~
1204 ~~by the right-of-way work.~~

1205 (e) ~~The submission of "as-built" maps after completion of right-~~
1206 ~~of-way work as required by this title.~~

1207 (f) ~~Timely payment and satisfaction of all claims, demands or~~
1208 ~~liens for labor, material or services provided in connection with~~
1209 ~~the right-of-way work.~~

1210 **26.40.060 Work of contractors and subcontractors.**

1211 The contractors and subcontractors of a Grantee shall be licensed and
1212 bonded in accordance with the City's generally applicable regulations.
1213 Work by contractors and subcontractors is subject to the same
1214 restrictions, limitations and conditions as if the work were performed by
1215 the Grantee itself. The Grantee shall be responsible for all work
1216 performed by its contractors and subcontractors and others performing
1217 work on its behalf as if the work were performed by it, and it shall ensure
1218 that all such work is performed in compliance with this title and other
1219 applicable laws. The Grantee shall be jointly and severally liable for all
1220 damage, and for correcting all damage, caused by its contractors or
1221 subcontractors. It is the responsibility of the Grantee to ensure that
1222 contractors, subcontractors or other persons performing work on the
1223 Grantee's behalf are familiar with the requirements of this title and
1224 other applicable laws governing the work they perform.

1225 **Chapter 26.44**

1226 **ENFORCEMENT**

1227 **26.44.010 Enforcement procedures and remedies.**

1228 1. If the City determines that a Grantee has failed to perform any
1229 obligation under this title or has failed to perform in a timely manner, the
1230 City may:

1231 (a) Issue a stop work order pursuant to Section 26.44.020;
1232 and/or

1233 (b) Issue an order to cure pursuant to Section 26.44.030.

1234 2. If the violation is contested (as provided in Section 26.44.020 and
1235 26.44.030), the Director shall consider the written communication
1236 provided by the Grantee and shall notify same of ~~their~~his or her final
1237 decision in writing within a reasonable time period.

1238 3. If the violation has not been remedied or is not in the process of
1239 being remedied to the satisfaction of the City within a reasonable time
1240 period following the later of: (i) the expiration of the time period for
1241 contesting a violation; and (ii) the notification by the Director to the
1242 Grantee of ~~their~~his or her final decision in respect of a contestation of
1243 the violation, the City may:

1244 (a) Enforce the provisions of this title through injunctive
1245 proceedings, an action for specific performance, or any other
1246 manner allowed by law~~appropriate proceedings.~~

1247 (b) Impose a fine upon the Grantee pursuant to Section
1248 26.44.040.

1249 (c) Assess against the Grantee any monetary damages
1250 provided for such violation in any agreement between the
1251 Grantee and the City.

1252 (d) Assess and withdraw the amounts specified above from the
1253 Grantee's security fund or other applicable security instrument.

1254 (e) Revoke any franchise or other agreement to use the right-
1255 of-way held by the Grantee pursuant to Section 26.44.060.

1256 (f) Pursue any legal or equitable remedy available under any
1257 applicable law or under any agreement between the Grantee
1258 and the City.

1259 4. Remedies available to the City for violations under this title and
1260 under a franchise or other agreement to use the right-of-way agreement
1261 shall be construed, except as otherwise provided in this title, as
1262 cumulative and not alternative.

1263 5. Unless determined otherwise by an agreement between the parties,
1264 a Grantee shall pay civil penalties or liquidated damages within thirty
1265 days after receipt of notice from the City.

1266 6. The filing of an appeal to any regulatory body or court shall not stay
1267 or release the obligations of a Grantee under applicable law or any
1268 agreements with the City.

1269 7. An assessment of liquidated damages or civil penalties does not
1270 constitute a waiver by the City of any other right or remedy it may have
1271 under applicable law or agreements, including the right to recover from
1272 the Grantee any additional damages, losses, costs, and expenses,
1273 including actual attorneys' fees, that were incurred by the City by reason
1274 of the violation. However, the City's election of liquidated damages
1275 under the franchise or other agreement to use the right-of-way
1276 agreement shall take the place of any right to obtain actual damages
1277 over and above the payment of any amounts otherwise due. This
1278 provision may not be construed to prevent the City from electing to seek
1279 actual damages for a continuing violation if it has imposed civil penalties
1280 or liquidated damages for an earlier partial time period for the same
1281 violation.

1282 **26.44.020 Stop work order.**

1283 1. The Director may issue a stop work order, impose conditions on any
1284 permit, or suspend or revoke a permit if the Director determines that:

1285 (a) A person has violated applicable law or regulations or any
1286 term, condition, or limitation of a permit;

1287 (b) Right-of-way work poses a hazardous situation or
1288 constitutes a public nuisance, public emergency, or other threat
1289 to the public health, safety, or welfare; or

1290 (c) An investigation of the work and/or the permit conditions is
 1291 needed before the work can continue. ~~There is a paramount~~
 1292 public purpose.

1293 2. The Director shall notify the Grantee of action taken under
 1294 subsection (1) of this section by a written communication, and the
 1295 Grantee shall comply immediately after receipt of the notice.

1296 (a) Issuance. A stop work order shall be in writing and shall be
 1297 provided to the Grantee, to the Grantee's authorized agent, or to
 1298 the person doing the work. Upon issuance of a stop work order,
 1299 the cited work shall immediately cease. The stop work order
 1300 shall state the reason for the order and the conditions under
 1301 which the cited work is authorized to resume.

1302 (b) Emergencies. Where an emergency exists, the Director
 1303 shall not be required to provide a written notice prior to stopping
 1304 the work.

1305 (c) Failure to Comply. Any person who shall continue any work
 1306 after having been served with a stop work order, except such
 1307 work as that person is directed to perform to remove a violation
 1308 or unsafe condition, shall be deemed guilty of a misdemeanor
 1309 and/or civil violation in accordance with Chapter 1.12 and the
 1310 violation shall be deemed a strict liability offense.

1311 ~~3. A stop work order shall state the conditions under which~~
 1312 ~~work may be resumed and shall be posted at the site.~~

1313 34. The Grantee may contest the stop work order by providing to the
 1314 Director a written communication detailing the grounds for such
 1315 contestation, within thirty days of receipt of the stop work order.
 1316 However, unless the Director promptly orders otherwise for good cause,
 1317 the submission of such written communication does not excuse the
 1318 Grantee from compliance with the stop work order pending resolution
 1319 of the dispute.

1320 **26.44.030 Order to cure.**

1321 1. The Director may order a Grantee that has violated applicable law
 1322 or regulations, or any term, condition, or limitation of a permit, to cure
 1323 the violation within the time specified in the order.

1324 ~~2. An order issued under this section shall warn the person that a~~
 1325 ~~failure to comply within the time specified makes the person subject to~~
 1326 ~~the imposition of a penalty not to exceed one thousand dollars pursuant~~
 1327 ~~to the provisions of Chapter 1.04 and to liability for any costs incurred~~
 1328 ~~by the department to effectuate compliance.~~

1329 23. The Grantee may contest the cure order by providing to the
 1330 Director a written communication detailing the grounds for such
 1331 contestation within thirty days of receipt of the cure order. Unless the
 1332 Director promptly orders otherwise for good cause, the submission of

1333 such written communication excuses the Grantee from compliance
1334 with the cure order pending resolution of the dispute.

1335 34. If the Grantee fails, neglects, or refuses to comply with an order
1336 issued under this section that involves right-of-way work, the Director
1337 may complete the right-of-way work or other work in the rights-of-way in
1338 any manner the Director deems appropriate, and the Grantee shall
1339 compensate the Department for all costs incurred, including costs for
1340 administration, construction, consultants, equipment, inspection,
1341 notification, remediation, repair, and restoration. The cost of the work
1342 may be deducted from any construction bond or other security
1343 instrument of the Grantee. The Department's completion of right-of-
1344 way work or other work in the rights-of-way does not relieve the
1345 Grantee from the warranty and liability provisions of Section 26.40.010,
1346 the indemnification provisions of Section 26.40.030, or any other term
1347 or condition of this title.

1348 **26.44.040 Fines.**

1349 Any person found violating, disobeying, omitting, neglecting or refusing
1350 to comply with any of the provisions of this Title shall be guilty of a
1351 misdemeanor. Upon conviction any person violating any provision of this
1352 title shall be subject to a fine of up to one thousand dollars or by
1353 imprisonment for a period of up to ninety days, or both such fine and
1354 imprisonment. A separate and distinct violation shall be deemed
1355 committed each day on which a violation occurs or continues.

1356 **26.44.050 Removal.**

1357 1. Within thirty days following written notice from the City, any
1358 Grantee with facilities in the City's rights-of-way that are not authorized
1359 pursuant to this Title shall, at its own expense, remove such facilities
1360 from the rights-of-way. If such Grantee fails to remove such facilities,
1361 the City may cause the removal and charge the Grantee for the costs
1362 incurred. Facilities are unauthorized and subject to removal in the
1363 following circumstances:

1364 (a) Upon termination of the Grantee's authorization under this
1365 Title.

1366 (b) If the facilities were constructed or installed without the prior
1367 grant of a franchise or other agreement to use the right-of-way.

1368 (c) Upon abandonment of a facility within the rights-of-way.

1369 (d) If the facilities were constructed or installed at a location
1370 not permitted by the franchise or other agreement to use the
1371 right-of-way.

1372 2. The City retains the right to cut or move any facilities located within
1373 the City's rights-of-way to the extent the City may determine such action
1374 to be necessary in response to any public health or safety emergency.
1375

1376 **26.44.060 Revocation.**

1377 1. A franchise or other agreement to use the right-of-way granted by
 1378 the City may be revoked for any one or more of the following reasons:

- 1379 (a) Construction or operation at an unauthorized location.
- 1380 (b) Material misrepresentation by or on behalf of a Ggrantee in
 1381 any application to the City.
- 1382 (c) Abandonment of facilities in the rights-of-way without the
 1383 express written permission of the City.
- 1384 (d) Failure to relocate or remove facilities as required in this
 1385 Ttitle.
- 1386 (5) Failure to pay fees or costs when and as due the City.
- 1387 (e) Violation of a material provision of this Ttitle.
- 1388 (f) Violation of a material term of a franchise or other agreement
 1389 to use the right-of-way.
- 1390 (g) Violation of any federal, state or local law.

1391 2. In the event that the Director believes that grounds exist for
 1392 revocation of a franchise or other agreement to use the right-of-way, the
 1393 Ggrantee shall be given written notice of the apparent violation or
 1394 noncompliance, be provided a short and concise statement of the nature
 1395 and general facts of the violation or noncompliance, and be given a
 1396 reasonable period of time not exceeding thirty (30) days from receipt of
 1397 notice to provide~~furnish~~ evidence to the Director on any or all of the
 1398 following points:

- 1399 (a) That corrective action has been, or is being, actively and
 1400 expeditiously pursued to remedy the violation or noncompliance;
- 1401 (b) That rebuts the alleged violation or noncompliance; and
- 1402 (c) That it would be in the public interest to impose civil
 1403 penalties or sanctions less than revocation.

1404 3. In the event that a Ggrantee fails to provide evidence reasonably
 1405 satisfactory to the Director as provided hereunder, the Director shall
 1406 issue~~make a preliminary~~ determination as to whether an event of default
 1407 by the Ggrantee has occurred and initially~~prescribe~~ remedies in
 1408 accordance with Section 26.44.060. ~~In the event that a grantee wishes~~
 1409 ~~to appeal such determination, it shall do so to the hearing examiner. In~~
 1410 ~~the event a further appeal is sought by the grantee, it shall make such~~
 1411 ~~appeal to the City Council. With respect to apparent violations or~~
 1412 ~~noncompliance, appeals provided for herein shall be made within~~
 1413 ~~fourteen days of a determination adverse to the grantee. In any event,~~
 1414 ~~the City shall provide the grantee with notice and a reasonable~~
 1415 ~~opportunity to be heard concerning the matter.~~

1416
1417

Chapter 26.48

1418

MISCELLANEOUS PROVISIONS

1419 **26.48.010 Further rules and regulations.**

1420 The City Manager is authorized to establish further rules, regulations
1421 and procedures with respect to the City's authority to manage, regulate
1422 and control public rights-of-way for the implementation of this Ttitle.
1423 ~~Except in cases of emergency, the City shall attempt to notify and~~
1424 ~~provide an opportunity for comment to persons who may be affected by~~
1425 ~~rules, regulations and procedures adopted pursuant to this section.~~

1426 **26.48.020 Captions.**

1427 The captions to sections are inserted solely for information and shall not
1428 affect the meaning or interpretation of this title.

1429 **26.48.030 Severability.**

1430 If any section, subsection, sentence, clause, phrase, or other portion of
1431 this Ttitle, or its application to any person, is for any reason declared
1432 invalid, in whole or in part by any court or agency of competent
1433 jurisdiction, said decision shall not affect the validity of the remaining
1434 portions hereof.

1435 **26.48.040 Costs.**

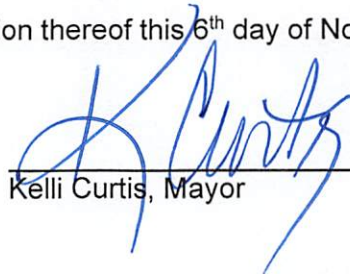
1436 Except where otherwise expressly stated herein, all costs incurred by a
1437 Grantee in connection with any provision of this Ttitle shall be borne by
1438 the Grantee.
1439

1440 Section 2. If any provision of this ordinance or its application to
1441 any person or circumstance is held invalid, the remainder of the
1442 ordinance or the application of the provision to other persons or
1443 circumstances is not affected.
1444

1445 Section 3. This ordinance shall be in force and effect five days
1446 from and after its passage by the Kirkland City Council and publication,
1447 as required by law.
1448


1449 Passed by majority vote of the Kirkland City Council in open
1450 meeting this 6th day of November, 2024.
1451

1452 Signed in authentication thereof this 6th day of November, 2024.



Kelli Curtis, Mayor

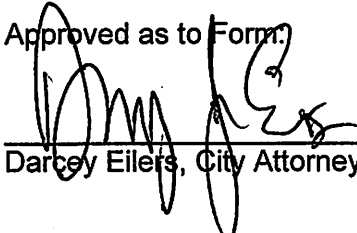
Attest:



Elizabeth Adkisson, Acting City Clerk

Approved as to Form:

Publication Date: November 11, 2024



Darcey Eilers, City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. O-4891

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE
USE OF RIGHTS-OF-WAY FOR TELECOMMUNICATIONS
PURPOSES, AND AMENDING TITLE 26 OF THE KIRKLAND
MUNICIPAL CODE AND APPROVING A SUMMARY FOR
PUBLICATION; FILE NO. CAM24-00633.

1 SECTION 1. Provides amendments to Kirkland Municipal
2 Code Title 26 related to the use of rights-of way for telecommunications
3 purposes.

4 SECTION 2. Provides a severability clause for the ordinance.
5
6

7 SECTION 3. Authorizes publication of the ordinance by
8 summary, which summary is approved by the City Council pursuant to
9 Section 1.08.017 Kirkland Municipal Code and establishes the effective
10 date as five days after publication of summary.

11
12 The full text of this Ordinance will be mailed without charge to
13 any person upon request made to the City Clerk for the City of Kirkland.
14 The Ordinance was passed by the Kirkland City Council at its meeting
15 on the 6th day of November, 2024.
16

17 I certify that the foregoing is a summary of Ordinance O-4891
18 approved by the Kirkland City Council for summary publication.



Elizabeth Adkisson, Acting City Clerk