

TITLE 16

**Cable Systems,
Open Video Systems,
Telecommunications
Systems, and Private
Communications
Systems**

TITLE 16

Cable Systems, Open Video Systems, Telecommunications Systems, and Private Communications Systems

SUBTITLE 16A - Cable Systems, Open Video Systems, and Private Communications Systems

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Subtitle 16A – Cable Systems, Open Video Systems, and Private Communications Systems

Chapter 16A.01

GENERAL

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16A.01.010 Purpose.

The purpose of this subtitle is to:

- A. Establish a local policy concerning Cable Systems that use the Public Rights-of-Way;
- B. Establish a policy that promotes the availability of diverse, multimedia information resources to the community; provides for enhancing educational opportunities throughout the community and building a stronger community; while ensuring that the City has the authority to act to protect the public, safety, and welfare in the face of a rapidly-changing industry that is placing increasing demand on public resources;
- C. Minimize unnecessary local regulation of providers and services;
- D. Encourage the provision of advanced and competitive Cable Services or Open Video System services on the widest possible basis to the businesses, institutions, and residents of the City;
- E. Secure fair, reasonable, and lawful compensation to the City and the residents of the City, in a non-discriminatory manner, for permitting use of the Public Rights-of-Way;
- F. To encourage economic development, while preserving aesthetic and other community values, and preventing proliferation of above-ground facilities;
- G. Ensure that all Persons providing Cable Services or open video facilities or services within the City comply with the ordinances, rules, and regulations of the City;
- H. Ensure the ability of the City to obtain sufficient information from Persons subject to its jurisdiction to enable effective decisions regarding their access to City Public Rights-of-Way and effective management of activity in the Public Rights-of-Way;
- I. Ensure that the City can continue to fairly and responsibly protect the public health, safety, and welfare; and
- J. Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

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16A.01.020 Policy guidelines.

The administration of this subtitle shall be governed by the following video programming policy guidelines:

A. The City of Tacoma supports efforts to establish an open, competitive marketplace for video programming services. The City promotes and encourages competition for video and video programming services that make the latest and best technology available and keep service prices affordable for all City residents and businesses. An integral component of this open marketplace is the consistent application of regulations to all video programming providers and the preservation of local authority over matters of local impact.

B. The following policy guidelines express the commitment of the City to support video programming services and to manage its Public Rights-of-Way proactively, while balancing the interests and needs of the community:

1. The City will manage access to its Public Rights-of-Way for video programming purposes in a non-discriminatory, competitively neutral, and non-exclusive way to the extent required by applicable law and, to the extent allowed by applicable law, to receive fair compensation. The public interest will be protected by collecting fair, reasonable, and lawful compensation, associated fees, taxes, administrative costs, and construction costs for use of the Public Rights-of-Way.

2. Investments by video programming providers will be encouraged in order to enhance economic development programs and provide jobs, opportunities, and choices for its citizens.

3. Universal access to video programming services is encouraged for all residents and businesses.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.030 Definitions.

For the purposes of this Subtitle 16A, the following terms, phrases, words, and abbreviations shall have the meanings given herein unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number, include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated, words not defined in Title 16 shall be construed consistent with Title 47 of the United States Code, and, if not defined therein, their common and ordinary meaning. References to governmental entities (whether Persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances, or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

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

B. “Application Fee” means the charge specified in Sections 16A.01.050.C.1 and designed to recover the City’s actual costs in processing applications for Franchises, including applications for the Transfer thereof.

C. “Basic Cable Service” means any Service Tier that includes the retransmission of local television broadcast signals.

D. “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

E. “Cable Operator” means any Person or group of Persons: (1) who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

F. “Cable Service” means:

1. The one-way transmission to Subscribers of (a) video programming, or (b) other programming service; and
2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

G. “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming and which is provided to multiple Subscribers within a community; but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves Subscribers without using any Public Rights-of-Way;

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with 47 U.S.C. § 573; or

5. Any facilities of any electric utility used solely for operating its electric utility systems.

H. “City” means the City of Tacoma and all departments, divisions, and agencies thereof, including the Department of Public Utilities.

I. “City Manager” means the City Manager or the City Manager’s designee.

J. “Franchise” refers to the authorization granted by the City to an Operator of a Cable System, or an Open Video System under this subtitle giving the Operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over any Public Rights-of-Way in the City, to provide a Cable Service within a Franchise Area. Any Franchise shall be issued in the form of an ordinance, and must be accepted by the Franchisee to become effective in the time and manner specified in the City Charter, Tacoma Municipal Code, or the Franchise ordinance. Such Franchise shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;

2. Any permit, agreement, or authorization required in connection with operations on or in public streets or property, including, by way of example and not limitation, street cut permits; or

3. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by the Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City, including the Department of Public Utilities, or a private entity.

By way of example, and without limiting the foregoing, this subtitle shall not be read to diminish, or in any way affect, the authority of the Department of Utilities to control and charge for the use of the Light, Water, and Belt Line Divisions’ real estate, fixtures, or personal property. Therefore, any Person who desires to use such property must obtain additional approvals, Franchises, or agreements for that purpose, as may be required by the City.

K. “Franchise Area” means the area of the City that a Franchisee is authorized to serve by the terms of its Franchise or by operation of law.

L. “Franchisee” refers to a Person holding a Franchise granted by City ordinance.

M. “FCC” means the Federal Communications Commission or its successor.

N. “Open Video System” or “OVS” refers to a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which is provided to multiple Subscribers within a community, and which the FCC or its successor has certified as compliant with Part 76 of its rules, 47 C.F.R., Part 76, as amended from time to time. For purposes of Subtitle 16A, and Open Video System shall be considered the same as a Cable System, and all regulations contained in this subtitle governing Cable Systems shall apply equally to Open Video Systems to the extent consistent with applicable law.

O. “Operator” means a Cable Operator.

P. “Overhead Facilities” refers to electric utility and communications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

Q. “Person” includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

R. “Programmer” refers to any Person, other than the Cable Operator, who provides video programming to Subscribers over a Cable System or an Open Video System, excluding video programming delivered not for a charge over a public, educational, or governmental (“PEG”) channel.

S. “Public Rights-of-Way” mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and applicable laws the City has authority to grant Franchises, permits, or licenses for use thereof or has regulatory authority thereover, and as may be more specifically defined in the Franchise, license, or permit granting any right to or use thereof, excluding railroad rights-of-Way, airport, and harbor areas. Public Rights-of-Way, for the purpose of this subtitle, do not include buildings, parks, poles, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles.

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T. "Service Tier" means a package of two or more Cable Services for which a separate charge is made by the Franchisee, other than a package of premium and pay-per-view services that is not subject to rate regulation under the Cable Act and applicable FCC regulations because those services are also sold on a true à la carte basis.

U. "Subscriber" means the City, any government entity, or any Person who legally receives any Cable Service from a Cable Operator delivered over that Cable Operator's Cable System.

V. "Subtitle," when used in the context of referring to this subtitle of the Tacoma Municipal Code, shall mean this Subtitle 16A of the Tacoma Municipal Code and Chapters 16A.01 through 16A.04 hereof.

W. "Telecommunications Service" means the transmission for hire of information in electronic or optical form, including, but not limited to, voice, video, or data, whether or not the transmission medium is owned by the provider itself. Telecommunications Service includes telephone service, but does not include Cable Service or over-the-air broadcasts to the public-at-large from facilities licensed by the FCC or any successor thereto.

X. "Telecommunications System" means a tangible facility that is used to provide one or more Telecommunications Services, any portion of which occupies Public Rights-of-Way. The term Telecommunications System, by way of example, and not limitation, includes wires, equipment cabinets, guys, conduit, radio transmitting towers, poles, other supporting structures, and associated and appurtenant facilities used to transmit telecommunications signals. The term Telecommunications System includes all devices mounted on light poles in the Public Rights-of-Way through which Telecommunications Services are originated or terminated. An Open Video System is not a Telecommunications System to the extent that it provides only video services; a Cable System is not a Telecommunications System to the extent that it provides only Cable Service.

Y. "Transfer" means any transaction in which:

1. All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Public Rights-of-Way);
2. There is any change, acquisition, or direct or indirect Transfer of control of the Franchisee;
3. The rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or
4. The transfer of stock in a corporation so as to create a new controlling interest constitutes a Transfer. The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

In succeeding provisions of this subtitle, all these activities are referred to as Franchise Transfers.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.040 Franchise required.

A. Purpose and characteristics. In order to enable the City to treat Persons providing similar services similarly, as may be appropriate to comply with applicable law and considering differences in circumstances, and to comply with requirements of federal law, which may require the City to separate its authority over Cable Systems from its authority over other providers of Telecommunications Services, the City requires individual franchises for the provision of particular services. The revocation of a franchise for one particular service in and of itself will not affect the authority of a Franchise holder to continue to occupy the Public Rights-of-Way to provide services for which it holds other franchises. No Franchise shall be exclusive. The issuance of a Franchise shall not affect the City's right to itself construct, operate, or repair any communications facility, with or without a Franchise.

B. Franchise requirement. An Operator of a Cable System must obtain a Franchise prior to providing Cable Service; an Operator of an Open Video System must obtain a Franchise before providing services via an Open Video System. No Franchise shall become effective without the Franchisee signing an acceptance of the ordinance which grants it the Franchise. The fact that a particular franchised communications facility may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a Cable Operator of a Cable System must obtain a cable Franchise and, should it intend to provide Telecommunications Services over the same facilities, must also obtain a telecommunications Franchise. No Franchise shall become effective without the Franchisee signing an acceptance of the ordinance which grants it the Franchise.

C. Nature of grant. A Franchise shall not convey title, equitable or legal, in the Public Rights-of-Way. The right granted is only the right to occupy those portions of the Public Rights-of-Way to which the City has the right to grant access, for the purposes and for the period stated in the Franchise, and, subject to the limitations in this section and elsewhere in this subtitle, the right may not be subdivided or subleased. Every Franchise shall be:

1. Interpreted in a manner that conforms to the requirements of Article VIII of the Tacoma City Charter;

2. Deemed to include all the provisions that are required to be in a Franchise under that article, as if fully set forth in the Franchise;

3. Deemed to provide for forfeiture under the circumstances set forth in the Charter, as well as under the provisions of this subtitle and any Franchise ordinance thereunder; and

4. Drafted to specify the specific easements granted by City for Operator's use of the Public Rights-of-Way.

D. No reference herein, or in any Franchise, to a Public Rights-of-Way shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.050 Cost recovery.

A. Purpose. To ensure that the City, as far as possible, is compensated for the rights granted and receives fair, reasonable, and lawful compensation for use of Public Rights-of-Way over which it exercises control, or which is held in public trust; and in order that the City is compensated for reasonable and lawful expenses arising from the use of those Public Rights-of-Way, the City shall, pursuant to this subtitle, require Persons using its Public Rights-of-Way to provide Cable Service to pay compensation as may be permitted under applicable law.

B. Compensation for use. Every Operator of a Cable System shall pay a Franchise fee as required by this subtitle, except as provided in Section 16A.01.050.D. Every Operator that is subject to the exceptions in Section 16A.01.050.D and every Programmer or OVS Operator that uses the rights-of-way is subject to the condition that, should the exception ever be eliminated or modified, the Operator or reseller or Programmer shall be obligated to pay such compensation that would otherwise be required in the absence of the exception.

C. Payments required. Except as otherwise expressly provided in this subtitle, every Cable Operator must:

1. Pay an Application Fee for the consideration of an application for issuance of a Franchise, pursuant to Section 16A.02.030.A. The City Manager, at any time, may require the applicant to deposit additional sums if it appears that the initial deposit or subsequent deposits will be exhausted prior to the final action by the City relating to the consideration by the City of an application for issuance of a Franchise. The applicant will not be entitled to further consideration by the City of its requested action until such time as the additional deposit required by the City Manager has been deposited with the City. In the event the amount of the deposit of an applicant is in excess of the amount of the administrative expenses of the City related to the action requested, then the applicant shall be entitled to a return of any such excess amount; and

2. Pay the fees required by Sections 12.02.050 and 12.02.060 of Title 12 of this code.

D. Exceptions. The Franchise fees required under this subtitle need not be paid if state law or the City Charter requires otherwise, or during any transition period as described in Section 16A.01.190 for a current Franchise holder. This exception shall be read narrowly; an Operator that is engaged in one line of business that is subject to this exception, shall not be excused from paying the Franchise fee for its other lines of business. In cases subject to this exception, the highest permissible fee shall be paid.

E. Application to Persons that provide different types of services. The fact that a fee is paid on one type of service provided over a Cable System, does not excuse an Operator from its duty to pay fees on other types of services provided over that facility as required by Title 16. As an example, and not as a limitation of the foregoing, the operator of a Telecommunications System must pay a franchise fee under Subtitle 16B to the extent it provides Cable Services to Subscribers via a Cable System.

F. General rules for payment of fees and assessments.

1. Unless otherwise specified in a Franchise, Franchise fees shall be paid to the City monthly, and not later than 25 days after the end of the month for which the fee or assessment is owed.

2. No acceptance by the City of any Franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Franchise fee payment be construed as a release of any claim the City may have for additional sums payable.

3. The Franchise fee payment is not a payment in lieu of any tax, fee, or other assessment, except as specifically provided in this subtitle or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable.

4. If payments are late, in addition to paying any applicable penalties or damages, the Person that owes the fee shall pay interest on the amount owed at the rate of 1 percent per month or fraction thereof compounded monthly.

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5. The City may, from time to time and upon reasonable advance written notice, inspect and audit any and all books and records reasonably necessary to determine whether fees have been accurately computed and paid. The Operator must make available the books and records, or copies thereof, to the City, as provided in the Franchise agreement.

6. Notwithstanding the foregoing, in the event that a Person that is obligated to pay a fee ceases to provide service for any reason (including as a result of a Transfer), such Person shall make a final payment of any amounts owed to the City within ten calendar days of the date its operations in the City cease, and shall provide a statement of gross revenues for the calendar year through the date operations ceased, which statement shall contain the information and certification required by Section 16A.01.050.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.060 General conditions upon use of Public Rights-of-Way.

A Franchisee shall be responsible to comply with all provisions of the Tacoma Municipal Code, as amended, any regulations promulgated thereunder, and any other generally applicable laws related to the use of the Public Rights-of-Way.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.070 Protection of the City and residents.

A. Indemnification. Unless otherwise approved by the City's Risk Manager, no Franchise or other authorization to use the Public Rights-of-Way issued to a Cable Operator shall be valid or effective until and unless the City obtains an adequate indemnity from such Operator. The indemnity must at least:

1. Release the City from and against any and all liability and responsibility in or arising out of the construction, operation, or maintenance of the facilities. Each Cable Operator must further agree not to sue or seek any money or damages from the City in connection with the above-mentioned matters;
2. Indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the Cable Operator, or its agents, independent contractors, or employees related to or in any way arising out of the construction, operation, or repair of the Cable System.
3. Provide that the covenants and representations relating to the indemnification provision shall survive the term of any Franchise or other authorization and continue in full force and effect as to the party's responsibility to indemnify.

B. Insurance. Unless otherwise approved by the City's Risk Manager, no Franchise or other authorization to use the Public Rights-of-Way issued to a Cable Operator shall be valid or effective until and unless the City obtains assurance that such Operator (and those acting on its behalf) has adequate insurance. At a minimum, the following requirements must be satisfied:

1. A Cable Operator shall not commence construction or operation of the facility without obtaining all insurance required under this paragraph and approval of such insurance by the Risk Manager of the City, nor shall a Cable Operator allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the Cable Operator has facilities in the Public Rights-of-Way, and for a period thereafter as specified in the minimum coverages described below. If the Operator, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.
2. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured for both ongoing and completed operations, as provided below, shall be filed with the City's Risk Manager. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and, as provided below, in the event of a lapse in coverage. For entities that have facilities in the Public Rights-of-Way as of the effective date of this subtitle, the certificate shall be filed within 60 days of the effective date of this subtitle, annually thereafter, and as provided below in the event of a lapse in coverage, unless a pre-existing Franchise provides for filing of certificates in a different manner.

These certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least 30 days' prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the state of Washington (or issued as a surplus line by a Washington Surplus lines broker). Financial Ratings must be no less than "(A-)VII" in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Franchise, then, in that event, the Cable Operator shall furnish, at least 30 days prior to the expiration of the date of such

insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the Franchise under which the Cable System operates.

3. A Cable System owner or Operator, and its contractors or subcontractors engaged in work on the Operator's behalf in, on, under, or over Public Rights-of-Way, shall maintain the following minimum insurance. The City shall be named as an additional insured for both ongoing and completed operations on the general liability and additional insured on the automotive policies.

Comprehensive general liability insurance to cover bodily injury, personal injury, and property damage. Exposures to be covered are: premises, operations, products/completed operations, and contractual liability. Coverage must be written on an occurrence basis, with the following limits of liability:

(a) Bodily Injury and Property Damage

(1) Each occurrence \$1,000,000.00

(2) Annual aggregate \$2,000,000.00

(b) Personal Injury and Advertising Injury

(1) \$1,000,000 any one person or organization

(2) Annual aggregate \$2,000,000.00

(c) Completed operations and products liability shall be maintained for three years after the termination of the Franchise (in the case of the Cable Operator) or completion of the work for the Cable Operator (in the case of a contractor or subcontractor).

(d) Property damage liability insurance shall include coverage for the following hazards: X - explosion, C - collapse, U - underground.

(e) The foregoing limits may be met through any combination of primary and umbrella and/or excess policies.

4. Workers' compensation insurance shall be maintained during the life of any franchise to comply with statutory limits for all employees, and, in the case any work is sublet, each Cable Operator shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each Cable Operator. Each Cable Operator and its contractors and subcontractors shall maintain employer's liability insurance and commercial auto liability insurance for the duration of the Franchise and for three years after the termination of the Franchise (in the case of the Cable Operator) or completion of the work for the Cable Operator (in the case of a contractor or subcontractor). The following minimum limits must be maintained:

(a) Workers' Compensation Statutory

(b) Employer's Liability \$1,000,000.00 per occurrence

(c) Comprehensive Auto Liability

(d) Bodily Injury and Property Damage

(1) Each accident \$1,000,000.00

(2) Annual aggregate \$2,000,000.00

Coverage shall include owned (if any), hired, and non-owned vehicles.

5. Excess or umbrella liability providing coverage in excess of the above required commercial general liability, commercial auto liability, and employer's liability with limits not less than \$5,000,000 each occurrence and \$5,000,000 aggregate.

6. Each Cable Operator shall hold the City, its agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of its construction, operation or repair of its Cable System and name the City as an additional insured, for both ongoing and completed operations on the General Liability and additional insured on the automobile liability, as provided above.

7. In every Franchise agreement, the City shall reserve the right to require any other insurance coverage it deems necessary depending upon the exposures.

8. The insurance shall include a waiver of subrogation rights to the extent that any liability for costs, losses, and damages resulting from any personal injury, death, and/or property damage may be covered by the proceeds of such insurance policies, and include an endorsement that such policy is primary and noncontributing.

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C. Security Fund. Unless reduced as provided hereinbelow, every Cable Operator shall establish a cash security fund or provide the City an irrevocable letter of credit in an amount no less than \$50,000.00, to secure the payment of fees owed, to secure any other performance promised in a Franchise, and to pay any taxes, fees, or liens owed to the City. The letter of credit shall be in a form and with an institution acceptable to the City's Director of Finance and in a form acceptable to the City Attorney. Should the City draw upon the cash security fund or letter of credit, it shall promptly notify the Cable Operator, and the Cable Operator shall promptly restore the fund or the letter of credit to the full required amount. This security fund/letter of credit may be waived or reduced by the City, pursuant to the terms of the Franchise agreement.

(Ord. 28409 Ex. A; passed Feb. 14, 2017; Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.080 Enforcement and remedies.

The City Manager is responsible for enforcing and administering Subtitle 16A and the City Manager is authorized to give any notice required by law or under any Franchise, including, by way of example and not limitation, a notice required under 47 U.S.C. § 546. The City Manager is also authorized to seek information from any Cable Operator, to establish forms for submission of applications and other information, and to take all other actions necessary or appropriate to the administration of this subtitle or any Franchise. Franchises may only be denied, issued, or revoked by action of the City Council.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.090 Minimum contents of every cable Franchise.

A. In addition to satisfying the other applicable requirements of this chapter, every Franchise for a Cable System shall contain the following provisions:

1. The Franchise shall provide that neither the granting of any Franchise, or any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time the Franchise is issued or thereafter be obtained.
2. The Franchise shall only authorize occupancy of the Public Rights-of-Way to provide the services and for the purposes described in the Franchise.
3. A Franchise shall be a privilege that is held in the public trust and personal to the original Franchisee. The Franchise shall ensure that no Transfer of the Franchise may occur, directly or indirectly, without the prior consent of the City; except as contemplated by Section 16A.03.060.F, or as otherwise expressly provided in this subtitle.
4. The Franchise shall ensure that any Person placing a Cable System in the Public Rights-of-Way will not unlawfully discriminate in hiring, in contracting, or in the provision of services.
5. The Franchise shall be for a specified term set forth in the Franchise. No Franchise issued under this subtitle shall be for a term of longer than ten years, unless the Council determines that a longer period would be in the City's interest.
6. Such other terms as are required by the City Charter.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.100 Penalties.

Any Person found to have violated any of the provisions of this subtitle shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$1,000.00 or by imprisonment not exceeding 90 days or by both such fine and imprisonment. Each day that any such violation of this Subtitle 16A continues shall constitute a separate offense. Notwithstanding the forgoing, nothing in this section shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this subtitle.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.110 Revocation, reduction of term, or forfeiture of Franchise.

A. Revocation. In addition to all other rights of the City under a cable Franchise, the City shall have the right to revoke the Franchise: (1) for violations of material provisions of this subtitle or of a Cable Operator's Franchise agreement; (2) for defrauding or attempting to defraud the City or Subscribers; (3) if the Franchisee abandons the Cable System, or willfully refuses to provide service to the City or any part of the City in accordance with its Franchise; (4) for failure to complete any system upgrade required by its Franchise by the prescribed date so that at least 75 percent of all plant miles are rebuilt and are serving Subscribers from the upgraded system will result in the automatic forfeiture of the Franchise if: (a) the City has provided the Franchisee with notice that the upgrade must be completed, and (b) the upgrade is not completed within 90 days after the date on which the City provides notice so that at least 75 percent of all plant miles are rebuilt and are serving Subscribers.

B. Reduction of term. Where, after notice and providing the Franchisee an opportunity to be heard (if such opportunity is timely requested by a Franchisee), the City finds that any conditions exist that would support Franchise revocation, the City may make an appropriate reduction in the remaining term of the Franchise or revoke the Franchise. The City Manager is authorized to establish and conduct a proceeding that complies with the requirements of this Section 16A.01.110.B, and to issue a recommended decision, but any such decision may be appealed to the City Council. Any appeal must be filed within 30 days of the decision of the City Manager or it shall be deemed waived. Notwithstanding the foregoing, the Franchise may only be revoked if the Franchisee: (1) was given notice of the default; and (2) was given 30 days to cure the default; and (3) the Franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in 30 days. The required notice may be given before the City conducts the proceeding required by this paragraph. No opportunity to cure is allowed for fraud which shall be deemed incurable.

C. Forfeiture of Franchise. Notwithstanding the foregoing Section 16A.01.110.B, the City may declare a Franchise forfeited without opportunity to cure or the notice required by Section 16A.01.110.B where the Franchisee: (1) fails to begin to exercise its rights under the Franchise within a period specified in the Franchise; (2) stops providing service it is required to provide in the Franchise; (3) without the prior consent of the City, Transfers the Franchise; (4) fails to pay any undisputed annual occupancy fees or Franchise fees owed hereunder; or (5) defrauds or attempts to defraud the City or the Operator's customers. However, a Franchisee shall have the right to receive 30 days' prior notice of an intent to declare a Franchise forfeited, and shall have the opportunity to show cause why the Franchise should not be forfeited.

D. Bankruptcy. Notwithstanding the foregoing Sections 16A.01.110.B-C, a Franchise will automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless such termination would be prohibited by applicable law. However, the Franchise may be reinstated within that 120-day period, if: (1) such assignment, receivership, or trusteeship has been vacated; or (2) such assignee, receiver, or trustee has fully complied with the terms and conditions of this subtitle and the Franchise and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this subtitle and the Franchise. However, in the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a Franchisee or licensee, the City may revoke the Franchise, following a public hearing before the City Council, by serving notice upon the Franchisee and the successful bidder at the sale, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate 30 calendar days after serving such notice, unless the City has approved the Transfer of the Franchise to the successful bidder, and the successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise and this Subtitle 16A.

E. Relation to insurance and indemnity requirements. Recovery by the City of any amounts under insurance, the construction/performance bond, the letter of credit, or otherwise does not limit the Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve the Franchisee of its obligations under the Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

F. Effect of termination or forfeiture. Upon termination or forfeiture of a Franchise, whether by action of the City as provided above or by passage of time, the Franchisee shall be obligated to cease using the Cable System for the purposes authorized by the Franchise. The City may either take possession of some or all of the Franchisee's facilities in the Public Rights-of-Way or require the Franchisee or its bonding company to remove some or all of the Franchisee's facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to the condition specified in Title 10 of the Tacoma Municipal Code. Should the Franchisee neglect, refuse, or fail to remove such facility, the City may remove the facility at the expense of the Franchisee. The obligation of the Franchisee to remove shall survive the termination of the Franchise for a period of two years; provided, that this provision does not permit the City to take possession of, or require the Franchisee to remove, any facilities that are used to provide another service for which the Franchisee holds a valid Franchise issued by the City.

G. Remedies cumulative. All remedies under this Subtitle 16A and any Franchise are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a Cable Operator of its obligations to comply with its Franchise. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity. Recovery by the City of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise, does not limit a Cable Operator's duty to indemnify the City in any way; nor shall such recovery relieve a Cable Operator of its obligations under a Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.120 Access to books and records.

A. Each Cable Operator shall provide the City reasonable access to all books and records related to the City's oversight and enforcement authority pursuant to any Franchise, this Code, or any other applicable law, in accordance with the provisions of

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a Franchise agreement. The City may inspect any books and records and copy non-confidential books and records. The Operator's obligation includes the obligation to reasonably produce all books and records related to revenues derived from the operation of the Cable System to the extent that system revenues affect the fees or taxes charged or burdens imposed on the Operator under a Franchise. An Operator is responsible for obtaining or maintaining the necessary possession or control of all such books and records related to the construction, operation, or repair of the Cable System, so that it can produce the documents upon request. Books and records must be maintained for a period of five years, except that: (1) any record that is a public record must be maintained for no less than the period required by state law; and (2) a Franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials.

B. For purposes of this subtitle, the terms "books and records" shall be read expansively to include information in whatever format stored. Books and records requested shall be produced to the City in accordance with the provisions of a Franchise agreement.

C. Without limiting the foregoing, the Operator of a Cable System shall make available to the City the following within ten days of their receipt or (in the case of documents created by the Operator or its Affiliate) filing:

1. Notices of deficiency or forfeiture related to the operation of the Cable System; and
2. Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee, directly or indirectly.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.130 Retention of records; relation to privacy rights.

Each Cable Operator shall take all reasonable steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under this subtitle, a Franchise, or applicable law, including by providing appropriate Subscriber privacy notices. Each Operator shall be responsible for redacting any data that applicable law prevents it from providing to the City. Nothing in this section shall be read to require an Operator to violate state or federal law protecting Subscriber privacy.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.140 Reports.

The City Manager may require Operators of a Cable System to maintain records and to prepare reports relevant to determining the compliance of the Cable Operator with the terms and conditions of this subtitle and their Franchises. Operators shall maintain such records and provide such reports additionally as are specifically required by Chapters 16A.01, 16A.02, 16A.03, and 16A.04 of this subtitle.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.150 Compliance with laws.

Each Franchisee shall comply with all applicable laws related to use of the Public Rights-of-Way and all other applicable laws heretofore and hereafter adopted or established during the entire term of its Franchise.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.160 Reservation of authority.

The City may do all things which are necessary and convenient in the exercise of its jurisdiction under this subtitle.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.170 No waiver of Franchise provisions.

The failure of the City to insist on timely performance or compliance by any Person holding a Franchise shall not constitute a waiver of the City's right to later insist on timely performance or compliance by that Person or any other Person holding such a Franchise.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.180 Subtitle not a contract.

The City expressly reserves the right to amend this subtitle from time-to-time in the exercise of its lawful powers. The provisions of this subtitle shall not be construed to create or to be a contract.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.190 Transitional provisions.

A. Persons operating without a Franchise. The Operator of any facility, the operation of which is required to be Franchised under this subtitle, shall have three months from the effective date of this Subtitle 16A to file an application for a Franchise under this ordinance. Any Cable Operator timely filing such an application shall not be subject to a penalty under Section 16A.01.100 hereof for failure to have such a Franchise, as long as said application remains pending; provided, however, nothing herein shall relieve any Cable System Operator of any liability for its failure to obtain any Franchise, permit, or other authorization required under other provisions of the Tacoma Municipal Code, and nothing herein shall prevent the City from requiring removal of any facilities installed in violation of the Tacoma Municipal Code.

B. Persons holding Franchises. Any Person holding an outstanding Franchise from the City for a Cable System may continue to operate under the existing Franchise to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the Franchise; provided, however, that such Franchisee may elect at any time to apply for a superseding Franchise under this subtitle and must seek additional Franchises to provide other services; and, provided further, that, such Person shall be subject to the other provisions of this subtitle to the extent permitted by law.

C. Persons with pending applications. Pending applications shall be subject to this subtitle. A Person with a pending application shall be provided 30 days from the effective date of this subtitle to submit additional information to comply with the requirements of this subtitle governing applications.

D. Transitional rules to be narrowly interpreted. It is the intent of the City to apply the provisions of this subtitle to Cable System Operators, including local exchange carriers that now occupy or may in the future occupy Public Rights-of-Way, except to the extent federal or state law prevents it from doing so.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.200 Special rules for government entities.

Nothing herein requires the City to enforce this subtitle against other governmental agencies providing Cable Services in the City if the City is prevented from doing so as a matter of law. The City is authorized to enter into agreements with other governmental agencies to facilitate the City's use and management of its Public Rights-of-Way, and such agreements shall be enforceable according to their respective terms.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.01.210 No waiver.

The failure of the City to enforce any provision of this subtitle on any occasion shall not operate as a waiver or estoppel of this right to enforce any provision of this subtitle on any other occasion, nor shall the failure to enforce any prior ordinance or City Charter provisions affecting Cable Systems or Cable Operators act as a waiver or estoppel against application of this subtitle or any other provision of applicable law.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

Chapter 16A.02

FRANCHISE APPLICATIONS

Sections:

- 16A.02.010 Relation to 47 U.S.C. §§ 541, 545 and 546.
- 16A.02.020 Applications for grant of Franchise.
- 16A.02.030 New Franchise Application Fees.
- 16A.02.040 Open records/confidentiality.
- 16A.02.050 Review process.
- 16A.02.060 Procedure for cable Franchise renewals.
- 16A.02.070 Applications for modification of Franchise.

16A.02.010 Relation to 47 U.S.C. §§ 541, 545, and 546.

This Chapter 16A.02 shall be read and applied so that it is consistent with Sections 621, 625, and 626 of the Cable Act, 47 U.S.C. §§ 541, 545, and 546 to the extent the City is required to comply with those Cable Act sections; provided, however, that nothing herein shall be read to incorporate those provisions into the Tacoma Municipal Code, or prevent the City from challenging their applicability or to give any entity a right or a right of action or impose any obligation on the City which it would not otherwise have under such federal laws. The City may adopt procedures for conducting any proceedings required under federal law, including, without limitation, procedures for presentation of evidence; and may also specify the person or entity that will conduct any administrative hearing that may be required by federal law, should the City Council decide that it does not wish to conduct the proceeding itself. In any case, however, the final decision to deny or grant renewal shall remain with the City Council.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.02.020 Applications for grant of Franchise.

A. Written application.

1. A written application shall be filed with the City for the grant of an initial Franchise. Each entity that is required to hold a Franchise must submit an application therefore to the City Manager in accordance with the requirements of Chapter 16A.02. To be accepted for filing, an applicant must file an original and six copies of a complete application for a Franchise. An application may be filed by any Person on that Person's own initiative or in response to a request for proposals. The City Manager is authorized to issue requests for proposals from time to time.
2. The City shall accept and review only those applications that include complete responses to every requirement of Section 16A.02.020. Submission of an application that does not include the requisite information set forth in Section 16A.02.020 and the Application Fee shall not commence the time period for granting or denying any application governed by 47 C.F.R. §76.41(d). The applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the City's review of the application.

B. Contents of applications. Except as expressly modified by the City for good cause, a request for proposals for a cable Franchise shall be deemed to require, and any application submitted pursuant to this Section 16A.02.020 shall contain, at a minimum, the following information:

1. Identity of the applicant, including the name, address, telephone number, and web site (if applicable); the name, address, telephone number, and e-mail address of all individual(s) authorized to represent the applicant before the City during its consideration of the Franchise(s) requested; management/organizational information, showing the management structure of the applicant. A similar chart shall also be provided identifying the relationship of the applicant to all general partners, parent corporations, subsidiaries, Affiliates, and all other subsidiaries of parent corporations, including a brief description of each entity's relationship to the applicant.
2. An applicant shall list all Cable Systems in which it or any Affiliate owns more than 5 percent of the system.
3. Identification of the area of the City to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries.
4. Technical qualifications, planned Services and operations.
 - (a) The application shall describe the applicant's planned initial and proposed Cable Services geographic area, including a map of all areas proposed to be served and proposed dates for offering service to each area, including a description of the miles of plant to be installed and a description of the size of equipment cabinets, shielding, and electronics that will be

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installed along the plant route, the power sources that will be used and a description of the noise, exhaust, and pollutants, if any, that will be generated by the operation of the same. Notwithstanding these requirements, if some of the descriptive data is not available at the time of application, a Franchise may be granted subject to conditions that the data be filed and approved by the City before construction begins and that the Franchise will be deemed to be forfeited if the data is not supplied and approved. The application shall additionally state whether the applicant proposes to provide Cable Services to the entire Franchise Area, and, if so, a proposed timetable for meeting that goal.

(b) If the applicant has or asserts existing authority to access the Public Rights-of-Way in any of the initial or proposed service areas listed in subsection 16A.02.020.B.4(a) above, the applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority.

(c) The applicant shall describe with particularity its planned residential Cable Services, including Basic Cable Services, other cable programming Service Tiers, and any additional pay-per-view, on-demand, or digital services; and the projected rates for each category or tier or service.

(d) The applicant shall describe with particularity its planned system technical design, performance characteristics, headend, access (and institutional network) facilities and equipment, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, planned count of households per residential node, and any other information necessary to demonstrate that the applicant's technology will be deployed so as to be able to successfully offer Cable Services in the proposed locations.

(e) The applicant shall describe with particularity its planned non-residential Cable Services.

(f) The applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy, describing when and where construction will begin, how it will proceed, and when it will be completed; and describe the current status of the applicant's existing or proposed arrangements, with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable. Information shall include a designation of the portions of the system that will be placed above ground and the portions that will be placed underground, and the construction techniques that the Operator proposes to use in installing the system above ground and underground; and the expected effect on Public Rights-of-Way usage, including information on the ability of the Public Rights-of-Way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities. In addition, applicant shall provide a description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities.

(g) The applicant shall describe its plan to ensure that the safety, functioning, and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation, or removal of the facilities.

(h) The applicant shall describe its plan to comply with the Subscriber privacy protections set forth in 47 U.S.C. §551, and the privacy protections of any state or local statutes, ordinances, or regulations.

5. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, as reasonably determined or established by the City.

6. A demonstration of the financial qualifications of the applicant, including at a minimum, a statement regarding the applicant's financial ability to complete the construction to meet the time frame proposed and to operate the Cable System proposed certified by the applicant's chief financial officer.

7. A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System.

8. A demonstration that the applicant is legally qualified, which proof must include a statement from the applicant:

(a) Whether it has received, or is in a position to receive, necessary authorizations from state and federal authorities;

(b) Whether it has not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows City to conclude the applicant cannot be relied upon to comply with requirements of Franchise, or provisions of this subtitle;

(c) Whether it or any Affiliate has been found in violation by a regulatory authority or franchising authority of any Franchise ordinance or agreement, contract or regulation governing a Cable System. If so, the applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal, and result or disposition of that proceeding;

(d) Whether it has been found in violation by a regulatory authority of any other type (e.g. utility) of Franchise, ordinance, agreement, permit, contract, or regulation. If so, the applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal, and result or disposition of that proceeding;

(e) Whether it is willing to enter into a Franchise, to pay required compensation, and to abide by the provisions of applicable law, including those relating to the construction, operation, or repair of its facilities, and has not entered into any agreement that would prevent it from doing so.

9. Declaration of applicant. Each application shall be accompanied by a declaration substantially in the form set forth below:

This application is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the applicant and certifies the representations are true and correct.

The applicant recognizes that all representations are binding on it, that all application commitments are enforceable, and that material misrepresentations or omissions, or failure to adhere to any such representation may result in a denial of an application by the City.

The applicant shall comply with all applicable local laws.

Consent is hereby given to the City and its representatives to make inquiry into the legal, character, technical, financial, and other qualifications of the applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

“I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct”:

.....
(Date and Place) (Signature)

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.02.030 New Franchise Application Fees.

A. Minimum deposit. Every application for a new Franchise shall be accompanied by an initial minimum deposit in the amount of \$5,000.00 or, in the discretion of the City Manager, such higher amount as may be necessary to cover the City’s costs in processing the application.

B. Publication expenses. In addition, an applicant that is awarded a Franchise, shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a Franchise, pursuant to the provisions of Subtitle 16A. Such payment shall be made by delivery of payment to the City Treasurer within 30 days after the City furnishes the Franchisee with a written statement of such expenses.

C. Failure to remit fees. No Franchise shall become effective until all required fees and costs are paid.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.02.040 Open records/confidentiality.

Unless otherwise provided by law, information submitted as part of a Franchise application is open to public inspection and subject to the Washington Public Records Act (Chapter 42.56 RCW). It is the applicant’s responsibility to be familiar with the Washington Public Records Act. An applicant may specifically identify any information it considers proprietary by providing said information to City in a separate envelope marked “Proprietary Information.” In the event that: (A) the City receives a request from another party to disclose any information which the applicant has deemed proprietary, and if the City Attorney determines that said information may be subject to being disclosed; or (B) the City determines that the information should be disclosed in connection with its enforcement of any provision of this subtitle, or in the exercise of its police or regulatory powers, then the City shall notify the applicant of the applicant’s opportunity to seek a protective order from a court with appropriate jurisdiction. In the event an action is not commenced within ten working days, the City may disclose said information. By submitting information which the applicant deems proprietary or otherwise exempt from disclosure, the applicant agrees to defend and hold harmless the City from any claim for disclosure, including, but not limited to, any expenses including out-of-pocket costs and attorneys’ fees, as well as any judgment entered against the City for the attorney fees of the party requesting disclosure.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

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16A.02.050 Review process.

A. Acceptance of application. Within ten business days of receipt of an application for a new Franchise, the City shall review the application to ensure all requisite information is included in the application. If the application is not complete, the City will notify the applicant in writing, listing the requisite information that is required to complete the application. Such notification will also inform the applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will not begin to run until such information is received. If the application is complete, the City will notify the applicant in writing that all requisite information has been received.

B. Staff review. The City staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff reasonably requires additional information from the applicant, staff will promptly request the information from the applicant, in writing. Such notification will also inform the applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the City. After completing the review, staff shall provide an analysis of the application to the City Council.

C. Franchise negotiations. Upon acceptance of a complete application, the City shall commence the process for negotiating a Franchise agreement with the applicant. Within the time period set forth in 47 C.F.R. § 76.41(d), the City shall attempt to negotiate a cable Franchise agreement with the applicant, and within that time period, schedule the application and any proposed Franchise for public hearing, as set forth in Section 16A.02.050 D.

D. Public hearing. The City shall hold a public hearing before acting on an application, affording participants a process substantially equivalent to that required by 47 U.S.C. § 546(c)(2) governing renewal of cable Franchises.

E. Review criteria. The City may deny an application if, based on the information provided in the application, at the public hearing, and/or any terms of a proposed Franchise agreement: (1) the applicant does not have the financial, technical, or legal qualifications to provide Cable Service; (2) the applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; or (3) the applicant's proposed terms do not comply with applicable federal, state, and local laws and regulations, including, but not limited to, local customer service standards, or relevant existing contractual obligations of the City.

F. Grant or denial of Franchise application. If the City finds that it is in the public interest to issue a Franchise considering the factors set forth above, the City may adopt a Franchise ordinance setting forth the terms and conditions of the Franchise, which Franchise shall become effective upon satisfaction of conditions precedent to effectiveness, and when signed and accepted by the applicant. If the City denies a Franchise, it will cause a written explanation of the denial to issue, which may be in any appropriate form. Without limiting its authority to deny an application for a Franchise, the City specifically reserves the rights to reject any application that is incomplete or fails to respond to a Request For Proposal. Nothing in this subtitle shall be construed in any way to limit the discretion and legislative authority of the City Council in making decisions relative to the granting, denial, or renewal of a Franchise.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.02.060 Procedure for cable Franchise renewals.

A. Renewal under Cable Act. To the extent required by federal law, requests for cable Franchise renewal under the Cable Act will be received and reviewed in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. § 546.

B. Informal applications for renewal. Notwithstanding the provisions of Section 16A.02.020, a Cable Operator may submit a proposal for renewal of a Franchise, pursuant to 47 U.S.C. § 546(h). Such a proposal may be submitted at any time and the City may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings have been commenced in accordance with 47 U.S.C. § 546(a)). An informal application for renewal may be denied for any reason.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.02.070 Applications for modification of Franchise.

A. An application for modification of a Franchise shall include, at minimum, the following information:

1. The specific modification requested;
2. The justification for the requested modification, including the impact of the requested modification on Subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through submission of pro forma financial statements or similar financial documentation, or other evidence of the impacts on Subscribers;
3. A statement indicating whether the modification is sought, pursuant to Section 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;

4. Any other information that the applicant believes is necessary for the City to make an informed determination on the application for modification; and

5. A declaration of the applicant or applicant's authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with the requirements of applicable law.

B. A request for modification submitted pursuant to 47 U.S.C. § 545 shall be considered in accordance with the requirements of that section.

C. Public hearings. An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given a reasonable opportunity to be heard. In addition, prior to the issuance of a Franchise, the City shall provide for the holding of a public hearing within the proposed Franchise Area, following notice to the public, at which each applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

Chapter 16A.03

ADDITIONAL RULES APPLICABLE TO CABLE SYSTEMS

Sections:

- 16A.03.010 No exclusivity.
- 16A.03.020 Construction provisions and technical standards.
- 16A.03.030 Operation and reporting provisions.
- 16A.03.040 Consumer protection.
- 16A.03.050 Franchise fee.
- 16A.03.060 Transfers.
- 16A.03.070 Connections to Cable Systems; use of antennae.
- 16A.03.080 Discrimination prohibited.

16A.03.010 No exclusivity.

A Franchisee may not require a Subscriber or a building owner or manager to enter into an exclusive contract for the provision of Cable Service as a condition of providing or continuing service.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.03.020 Construction provisions and technical standards.

A. System construction schedule. Every Franchise shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System. The schedule shall provide for prompt completion of the project, considering the amount and type of construction required.

B. Use of Cable Operator's facilities. The City shall have the right to install and maintain, upon any poles owned by a Cable Operator in the City and utilized for Franchisee's cable operations, any wire and pole fixtures that do not unreasonably interfere with the Cable System or other operations of the Franchisee; provided, that the Franchisee may charge the City a fair market rate for the use of such poles. Each Cable Operator shall notify the City when and with whom it enters into an agreement for use of its poles and conduits in the City.

C. Provision of service/quality of service. In addition to satisfying such requirements, as may be established in a Franchise, every Cable Operator shall operate its Cable System subject to the following conditions, except as prohibited by federal law:

1. It is the policy of the City to ensure that every Cable System provide service in the Franchise Area, upon request, to any person or any government building to the extent permitted by applicable law. The City retains the discretion to evaluate any Franchise proposal, and impose construction and service availability requirements in a Franchise in order to meet the needs of the community, so long as consistent with applicable law.

2. A Cable Operator must extend service to any person or to any government building which requests it in the City or (if smaller) its Franchise Area within seven days of the request, where service can be provided by activating or installing a drop within 125 feet of the structure to receive service. In cases where a potential Subscriber's structure is more than 125 feet from a Franchisee's existing cable plant, a Franchisee must still provide service, so long as the potential Subscriber agrees to bear a share of extension or installation costs, equal to the Franchisee's incremental cost of an extension that exceeds the 125-foot limit. A Franchisee that requires a potential Subscriber to bear a portion of installation or extension costs must prepare a written estimate of extension costs within seven days of a request for an installation or extension that would be subject to cost sharing.

3. A Cable System within the City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601–640, as amended, and all other lawful and applicable technical standards.

4. A Cable Operator shall perform all tests necessary to demonstrate compliance with the requirements of its Franchise and other lawful technical standards. Unless a Franchise or applicable law provides otherwise, all tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of the Society of Cable Telecommunications Engineers (SCTE) Recommended Practices; specifically, its Recommended Practices for Fiber Optic Cable Construction and Testing and its Recommended Practices for Coaxial Cable Construction and Testing, or such other manual as may be directed under FCC regulations. A written report of any test results shall be filed with the City within seven days of a request by the City. If a location fails to meet technical or performance specifications, the Operator, without requirement of additional notice or request from City, shall promptly take corrective action, and retest the locations.

D. System maintenance and technical quality. Scheduled maintenance shall be performed so as to minimize the effect of any necessary interruptions of Cable Service and a Cable Operator shall maintain all transmission equipment as necessary to carry a quality signal from the access facilities provided under this section or any Franchise to Subscribers. A Cable Operator shall

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maintain all access channels, interconnects, and return lines at the same or better level of technical quality and reliability required by a Franchise and all other applicable laws, rules, and regulations for other channels, services, and interconnects.

E. Emergency alert capability. A Cable Operator shall provide an Emergency Alert System (“EAS”) and comply with all applicable federal, state, and regional emergency alert and notification statutes, regulations, and plans, and any other requirements that may be contained within a cable Franchise. The City may use the EAS, under procedures established between the City and the Cable Operator, which are consistent with a Cable Operator’s state and federal EAS requirements, to transmit an emergency alert signal, including the ability to override the audio and video on all channels throughout the City from the City’s Emergency Operations Center or other location as may be designated by the City. A Cable Operator shall test the EAS, as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing, up to twice a year, on a schedule formed in consultation with a Cable Operator. If the test indicates that the EAS is not performing properly, a Cable Operator shall make any necessary adjustment to the EAS, and the EAS shall be retested. The City shall permit only appropriately trained and authorized persons to operate the EAS equipment provided, pursuant to this subsection.

F. Continuity of service. Each Franchisee shall, during the term of the Franchise, ensure that Subscribers are able to receive continuous service. In the event the Franchise is revoked or terminated, the Franchisee may be required to continue to provide service for a reasonable period to assure an orderly transition of service from the Franchisee to another entity. A Franchise may establish more particular requirements under which these obligations will be satisfied.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.03.030 Operation and reporting provisions.

A. Communication with regulatory agencies. If requested by the City, a Cable Operator shall file with the City all reports required by the FCC including, without limitation, any proof of performance tests and results; Equal Employment Opportunity (“EEO”) reports; and all petitions, applications, and communications of all types directly related to the Cable System, or a group of Cable Systems of which the Cable Operator’s Cable System in the City is a part, submitted or received by the Cable Operator, an Affiliate, or any other Person on the behalf of the Operator, either to or from the FCC, the Security and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Cable System; provided, that nothing herein requires a Franchisee to produce regulatory or court filings that are treated by the agency or court as confidential, such as Hart-Scott-Rodino Act filings. If any such documents are available on line, in lieu of filing hard copies with the City, the Cable Operator may direct the City to the on-line location of the information. Nothing in this Section 16A.03.030.A affects any rights the City may have to obtain books and records under Chapter 16A.01.

B. Reports.

1. Within 45 days of the end of each calendar quarter, a Cable Operator shall submit a report to the City containing the following information:

(a) The number of service calls (calls requiring a truck roll), received by type, during the prior quarter; and

(b) The number and type of outages known by the Operator for the prior quarter affecting more than ten Subscribers specifying the following: the duration; the geographical area; the number of Subscribers affected; and, if known, the cause.

2. No later than 120 days after the end of its fiscal year, a Cable Operator shall submit a written report that shall contain such information as may be required from time to time by the City, and at least the following, unless the City waives the requirement:

(a) A summary of the previous year’s activities in the development of the Cable System, including descriptions of services begun or discontinued and the number of Subscribers gained or lost for each category of Cable Service;

(b) A summary of complaints for which records are required under Section 16A.03.030.C.1, identifying both the number and nature of the complaints received and an explanation of their dispositions;

(c) A fully audited or certified revenue report from the previous calendar year for the Cable System;

(d) An ownership report, indicating all Persons who, at the time of filing, control or own an interest in the Cable Operator of 10 percent or more;

(e) A list of officers and members of the Board of Directors of the Franchisee and any Affiliates directly involved in the operation or the maintenance of the Cable System;

(f) An organizational chart showing all corporations or partnerships with more than a 10 percent interest ownership in the Cable Operator, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and

showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified, and so on, until the ultimate corporate and partnership interests are identified;

- (g) An annual report of each entity identified in Section 16A.03.030.B.2(f), which issues an annual report;
- (h) A complete report on its plant, which shall state the physical miles of plant construction and plant in operation during the prior calendar year categorized as aerial and underground, identify any cases where Subscribers contributed to plant extension, and report the results of appropriate electronic measurements to show conformity with FCC technical standards;
- (i) A report showing, for each cable customer service standard in force, the Cable Operator's performance with respect to that standard for each quarter of the preceding year. In each case where Cable Operator concludes it did not comply fully, the Cable Operator will describe the corrective actions it is taking to assure future compliance; and
- (j) Once the information required by Sections 16A.03.030.B.2(d)-(e) has been filed, it need be refiled only if it changes.

C. Records required. A Cable Operator shall at all times maintain:

1. Records of all complaints received with information sufficient to allow the Operator to prepare the reports required in this Section 16A.03.030. The term "complaints" as used herein and throughout this ordinance refers to complaints about any aspect of the Cable System or Franchisee's operations, including, without limitation, complaints requiring service calls, and complaints about employee courtesy, billing, prices, programming, outages and signal quality;
2. Records of outages known to the Cable Operator, with information sufficient to allow a Franchisee to prepare the reports required in this Section 16A.03.030;
3. Records of service calls for repair and maintenance indicating the date and time service was requested; the date of acknowledgment; date and time service was scheduled, if it was scheduled; the date and time service was provided; and, if different, the date and time the problem was solved; and
4. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.03.040 Consumer protection.

A. Rate discrimination prohibited. Except to the extent the City may not enforce such a requirement, a Cable Operator is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the Franchise Area. A Franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A Cable Operator shall comply at all times with all applicable federal, state, and City laws, and all executive and administrative orders relating to non-discrimination.

B. Redlining prohibited. A Cable System Operator shall not deny access or charge different rates to any group of Subscribers or potential Subscribers because of the income of the residents of the local area in which such group resides.

C. Cable customer service standards. The City retains the continuing authority to enforce provisions of federally-adopted customer service standards in accordance with applicable law or to adopt local customer service standards, in its discretion.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.03.050 Franchise fee.

A Cable Operator shall pay to the City a Franchise fee in an amount equal to 5 percent of gross revenues, or such other amount as may be specified in the Franchise; provided, however, that if the Franchise specifies an amount, that amount shall be subject to increase or decrease should federal limits on fee payments be eliminated or changed.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.03.060 Transfers.

A. City approval required. No Transfer shall occur without prior written notice to and approval of the City Council. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

B. Application.

1. The Franchisee shall promptly notify the City of any proposed Transfer involving a Cable System.

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2. At least 120 calendar days prior to the contemplated effective date of a Transfer involving a Cable System, the Franchisee shall submit to the City an application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the Transferee subject to applicable law, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the following information must be included in the application, provided that, a Franchisee is not required to duplicate information that it submits to the City to comply with its obligations under federal or state law:

(a) All information and forms required by FCC Form 394 and any other form that may be promulgated under federal law, or, the equivalent of such forms if no longer required by federal law or if Operator elects not to utilize such forms, any contracts or other documents that relate to the proposed transaction or other documents, schedules, or exhibits that would have been provided to the City under FCC form 394;

(b) Any shareholder reports or filings with the Securities and Exchange Commission (“SEC”) that discuss the transaction;

(c) Other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed Transfer; and

(d) Complete information regarding any potential impact of the Transfer on Subscriber service.

3. For the purposes of determining whether it shall consent to a Transfer, the City, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law as the City may deem necessary to determine whether the Transfer is in the public interest and should be approved, denied, or conditioned as provided under Section 16A.03.060.C. The Franchisee and any prospective transferees shall assist the City in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

C. Determination by City. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise under this Section 16A.03.060.C, the City shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential impact of the Transfer on Subscriber services; whether the incumbent Cable Operator is in compliance with its Franchise and this subtitle and, if not, the proposed transferee’s commitment to cure such noncompliance; whether the transferee owns or controls any other Cable System in the City, and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the City; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the public, or the City’s interest under this subtitle, the Franchise, or other applicable law.

D. Transferee’s agreement. No application for a Transfer of a Franchise, subject to this Section 16A.03.060, shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this subtitle and the Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this subtitle and the Franchise for all purposes, including renewal, unless the City, in its sole discretion, expressly waives this requirement in whole or in part.

E. Approval does not constitute waiver. Approval by the City of a Transfer of a Franchise, pursuant to this Section 16A.03.060, does not constitute a waiver or release of any of the rights of the City under this subtitle or a Franchise, whether arising before or after the date of the Transfer.

F. Exception for intra-company Transfers. Notwithstanding the foregoing, a Franchise may provide that Transfers to Affiliates of a Franchisee shall be excepted from the requirements of Section 16A.03.060.A-B where (1) the Affiliate is wholly-owned and managed by an entity that will guarantee the performance under a Franchise or provide other adequate assurance acceptable to the City; and (2) the transferee Affiliate:

1. Notifies the City of the Transfer at least 60 days before it occurs and, at that time provides the agreements and warranties required by this Section 16A.03.060, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Cable System after the Transfer;

2. Warrants that it has read, accepts, and agrees to be bound by each and every term of the Franchise and related amendment, regulations, ordinances, and resolutions then in effect;

3. Agrees to assume all responsibility for all liabilities, acts, and omissions known and unknown, of its predecessor Franchisees for all purposes, including renewal;

4. Agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisees;

5. Warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;

6. Warrants that the Transfer will not in any way adversely affect the City or Subscribers (including by increasing rates);
7. Notifies the City that the Transfer is complete within five business days of the date the Transfer is complete; and
8. Agrees that the Transfer in no way affects any evaluation of its legal, financial, or technical qualifications that may occur under the Franchise or applicable law after the Transfer, and does not directly or indirectly authorize any additional Transfers.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.03.070 Connections to Cable System; use of antennae.

A. Subscriber right to attach. To the extent consistent with federal law, Subscribers shall have the right to attach DVRs, receivers, and other terminal equipment to a Franchisee's Cable System. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

B. Removal of existing antennae. A Franchisee shall not, as a condition of providing service, require a Subscriber or potential Subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the Subscriber or potential Subscriber, or prohibit installation of a new antenna, provided that such antenna is connected with an appropriate device and complies with applicable law.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.03.080 Discrimination prohibited.

A. A Cable Operator shall not discriminate among persons or the City or take any retaliatory action against a person or the City because of that entity's exercise of any right it may have under federal, state, or local law, nor may the Operator require a person or the City to waive such rights as a condition of taking service.

B. A Cable Operator shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, age, disability, religion, ethnic background, or marital status. A Cable Operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

Chapter 16A.04
MISCELLANEOUS

Sections:

- 16A.04.010 Captions.
- 16A.04.020 Calculation of time.
- 16A.04.030 Severability.

16A.04.010 Captions.

The captions to sections throughout this subtitle are intended solely to facilitate reading and reference to the sections and provisions of this subtitle. Such captions shall not affect the meaning or interpretation of this subtitle.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.04.020 Calculation of time.

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this subtitle or any Franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

16A.04.030 Severability.

If any term, condition, or provision of this subtitle shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the Franchisee and the City.

(Ord. 27787 Ex. A; passed Feb. 24, 2009)

Subtitle 16B – Telecommunications Systems¹

Chapter 16B.01

GENERAL

Sections:

- 16B.01.010 Purpose.
- 16B.01.020 Policy guidelines.
- 16B.01.030 Definitions.

16B.01.010 Purpose.

The purpose of this Subtitle is to:

- A. Establish a local policy concerning use of the Public Rights-of-Way for Telecommunication Systems;
- B. Establish a policy that promotes the availability of diverse, multimedia information resources to the community; provides for enhancing educational opportunities throughout the community and building a stronger community; while ensuring that the City has the authority to act to protect the public, safety, and welfare in the face of a rapidly-changing industry that is placing increasing demand on public resources;
- C. Minimize unnecessary local regulation of providers and Services;
- D. Encourage the provision of advanced and competitive Telecommunications Services on the widest possible basis to the businesses, institutions, and residents of the City;
- E. Ensure that the City can continue to fairly and responsibly protect the public health, safety, and welfare;
- F. Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development;
- G. Permit and manage reasonable access to the Public Rights-of-Way of the City for telecommunications purposes on a competitively neutral basis;
- H. Ensure that the City’s current and ongoing costs of granting and regulating private access to and use of the Public Rights-of-Way are fully paid by the Persons seeking such access and causing such costs;
- I. Secure fair, reasonable, and lawful compensation to the City, in a nondiscriminatory manner, for impacts to the Public Rights-of-Way resulting from permitting private use of the Public Rights-of-Way;
- J. To encourage economic development while preserving aesthetic and other community values and preventing proliferation of above-ground facilities; and
- K. Ensure that all Persons using the Public Rights-of-Way to provide Telecommunications Services within the City comply with the ordinances, rules, and regulations of the City.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.01.020 Policy guidelines.

The administration of this Subtitle shall be governed by the following Telecommunications policy guidelines:

- A. The City supports efforts to establish an open, competitive marketplace for Telecommunications Services. The City promotes and encourages competition for Telecommunications Services that make the latest and best technology available and keep Service prices affordable for all City residents and businesses. An integral component of this open marketplace is the preservation of local authority over matters of local impact.
- B. The following policy guidelines express the commitment of the City to support Telecommunications Services and to manage its Public Rights-of-Way proactively, while balancing the interests and needs of the community:
 - 1. The City will manage access to its Public Rights-of-Way for Telecommunications purposes in a nondiscriminatory, competitively neutral, and non-exclusive way to the extent required by applicable law and, to the extent allowed by applicable law, to receive fair compensation. The public interest will be protected by collecting fair, reasonable, and lawful compensation, associated fees, taxes, administrative costs, and construction costs for use of the Public Rights-of-Way.

¹ Subtitle 16B repealed and reenacted by Ord. 27910 Ex. A, passed Aug. 3, 2010.

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2. Investments by Telecommunications providers will be encouraged in order to enhance economic development programs and provide jobs, opportunities, and choices for its citizens.

3. Universal access to Telecommunications Services is encouraged for all residents and businesses.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.01.030 Definitions.

For the purposes of this Subtitle, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural number, and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated, words not defined in this Subtitle shall be construed consistent with Title 47 of the United States Code, and, if not defined therein, their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances, rules, or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations, now in force or hereinafter enacted or amended.

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

B. “Application Fee” means the charge specified in Sections 16B.02.070, 16B.03.110.B, 16B.04.050.B, and 16B.05.030.A, and designed to recover the City’s actual costs in processing applications for Franchises, Special Street Use Permits, or Licenses, including applications for the Transfer thereof.

C. “Cable Service” means:

1. The one-way transmission to subscribers of (a) video programming, or (b) other programming service; and
2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

D. “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves subscribers without using any Public Rights-of-Way;
3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
4. Any facilities of any electric utility used solely for operating its electric utility systems; or
5. An open video system that is certified by the FCC.

A reference to a Cable System includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics, and other equipment necessary to operate the Cable System.

E. “City” means the City of Tacoma and all departments, divisions, and agencies thereof, including Tacoma Public Utilities.

F. “City Manager” means the City Manager or the City Manager’s designee.

G. “De minimis” shall mean insignificant, minimal, or a trifle.

H. “Exempt Operator” or “Exempt,” or any derivations thereof, shall, unless the context clearly indicates otherwise, mean any Telecommunications System Operator that, pursuant to applicable provisions of state law, cannot be required to obtain a Franchise to occupy the Public Rights-of-Way with wireline facilities.

I. “Franchise” refers to the authorization granted by the City to an Operator of a Telecommunications System under this Subtitle giving the Operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over any Public Rights-of-Way in the City, or to provide a specified Service within a Franchise Area. Any Franchise shall be issued in the form of an ordinance, and must be accepted by the Franchisee to become effective in the time and manner specified in the City Charter, Tacoma Municipal Code, or the Franchise ordinance. Such Franchise shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;
2. Any permit (with the exception of a Special Street Use Permit as herein defined), agreement, or authorization required in connection with operations on, or in a specific part of, the public streets or property, including, by way of example and not limitation, street cut permits;
3. Any permits or agreements for occupying any property of the City other than Public Rights-of-Way or property of private entities to which access is not specifically granted by the Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City, including Tacoma Public Utilities or a private entity; or
4. The right to place devices in the Public Rights-of-Way, such as pay telephones, for end-user use in terminating or originating transmissions.

By way of example, and without limiting the foregoing, this Subtitle shall not be read to diminish, or in any way affect, the authority of Tacoma Public Utilities to control and charge for the use of the Light, Water, and Belt Line Divisions' real estate, fixtures, or personal property. Therefore, any Person who desires to use such property must obtain additional approvals, Franchises, or agreements for that purpose, as may be required by the City.

J. "Franchise Area" means the area of the City that a Franchisee is authorized to serve by the terms of its Franchise or by operation of law.

K. "Franchisee" refers to a Person holding a Franchise granted by City ordinance.

L. "FCC" means the Federal Communications Commission or its successor.

M. "License" refers to the legal authorization, terminable at will, to use a particular, discrete, and limited portion of the Public Rights-of-Way to construct, operate, or repair a Telecommunications Facility. The term License shall not mean or include:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;
2. Any permit (with the exception of a Special Street Use Permit as herein defined), agreement, or authorization required in connection with operations on, or in a specific part of, the public streets or property, including, by way of example and not limitation, street cut permits;
3. Any permits or agreements for occupying any property of the City other than Public Rights-of-Way or property of private entities to which access is not specifically granted by the License including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City, including Tacoma Public Utilities or a private entity; or
4. The right to place devices in the Public Rights-of-Way, such as pay telephones, for end-user use in originating and terminating transmissions.

N. "Licensee" means a Person holding a License granted by the City.

O. "Operator," when used with reference to a Telecommunications System, refers to a Person who has ownership of any part of such Telecommunications System or has control over the use of any part of such Telecommunications System through a lease, swap, rental or other similar bargained for arrangement.

P. "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City, unless the City department provides Telecommunications Service as defined herein.

Q. "Public Rights-of-Way" mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and applicable laws, the City has authority to grant Franchises, permits, or Licenses for use thereof or has regulatory authority thereover, and as may be more specifically defined in the Franchise, License, or permit granting any right to or use thereof, excluding railroad rights-of-way, airport, and harbor areas. Public Rights-of-Way for the purpose of this Subtitle do not include buildings, parks, poles, similar facilities, or property owned by or leased to the City, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles.

R. "Special Street Use Permit" refers to the authorization granted by the City to an Exempt Operator of a Telecommunications System, giving the Operator permission to enter upon and use specified Public Rights-of-Way for the purpose of installing, maintaining, repairing, or removing identified facilities to provide Telecommunications Service. Such Special Street Use Permit shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;

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2. Any permit, agreement, or authorization required in connection with operations on or in specific parts of the public streets or property, including by way of example and not limitation, street cut permits;
3. Any permits or agreements for occupying any property of the City other than Public Rights-of-Way or property of private entities to which access is not specifically granted by the Special Street Use Permit including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City, including Tacoma Public Utilities or a private entity; or
4. The right to place devices in the Public Rights-of-Way, such as pay telephones, for end-user use in terminating or originating transmissions.

By way of example, and without limiting the foregoing, this Subtitle shall not be read to diminish or in any way affect the authority of Tacoma Public Utilities to control and charge for the use of the Light, Water, and Belt Line Division's real estate, fixtures, or personal property. Therefore, any Person who desires to use such property must obtain additional approvals, Franchises, or agreements for that purpose, as may be required by the City.

For purposes of this section, facilities shall mean all of the plant, equipment, fixtures, appurtenances, antennas, and other facilities necessary to furnish and deliver Telecommunications Services, including, but not limited to, poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of Telecommunications Services.

S. "Special Street Use Permittee" or "Permittee" means a Person holding a Special Street Use Permit granted by the City.

T. "Subtitle," when used in the context of referring to this Subtitle, shall mean Subtitle 16B of the Tacoma Municipal Code and all chapters thereof.

U. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. An entity provides telecommunications when it both provides a transparent transmission path and it does not change the form or content of the information.

V. "Telecommunications Service" or "Service" means the transmission for hire of information in electronic or optical form, including, but not limited to, voice, video, or data, whether or not the transmission medium is owned by the provider itself. Telecommunications Service includes telephone service, but does not include Cable Service or over-the-air broadcasts to the public-at-large from facilities licensed by the FCC or any successor thereto.

W. "Telecommunications System" or "Telecommunications Facility" means a tangible facility that is used to provide one or more Telecommunications Services, any portion of which occupies Public Rights-of-Way. The term Telecommunications System, by way of example and not limitation, includes wires, equipment cabinets, guys, conduit, radio transmitting towers, poles, other supporting structures, and associated and appurtenant facilities used to transmit telecommunications signals. The term Telecommunications System includes all devices mounted on light poles in the Public Rights-of-Way through which Telecommunications Services are originated or terminated. An open video system is not a Telecommunications System to the extent that it provides only video services; a Cable System is not a Telecommunications System to the extent that it provides only Cable Service. The term Telecommunications Facility includes any of the tangible components of a Telecommunications System which occupies Public Rights-of-Way.

X. "Title," when used in the context of referring to this title of the Tacoma Municipal Code, shall mean Title 16 of the Tacoma Municipal Code, inclusive of Subtitles 16A and 16B.

Y. "Transfer" means any transaction in which:

1. All or a portion of the Telecommunications System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Public Rights-of-Way);
2. There is any change, acquisition, or direct or indirect Transfer of control of the Franchisee;
3. The rights and/or obligations held by the Franchisee, Special Street Use Permittee, or Licensee under the Franchise, Special Street Use Permit, or License are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; provided, however, that a lease of network capacity to third parties shall not be considered a Transfer; or
4. The transfer of stock in a corporation so as to create a new controlling interest constitutes a Transfer. The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

In succeeding provisions of this Subtitle, all these activities are referred to as Franchise, Special Street Use Permit, or License Transfers.

Z. “Transferee” means any Person holding a Franchise, License, or Special Street Use Permit that has been transferred from a prior holder, pursuant to applicable law.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

Chapter 16B.02

FRANCHISE REQUIRED AND FRANCHISE APPLICATIONS
GENERAL

Sections:

16B.02.010	Purpose and characteristics.
16B.02.020	Franchise requirement.
16B.02.030	Nature of grant.
16B.02.040	Rights limited.
16B.02.050	Minimum contents of every Franchise.
16B.02.060	Applications for grant of Franchise.
16B.02.070	New Franchise Application Fees.
16B.02.080	Open records/confidentiality.
16B.02.090	Review process.
16B.02.100	Telecommunications Franchise renewals.
16B.02.110	Applications for modification of Franchise.
16B.02.120	Transfers.

16B.02.010 Purpose and characteristics.

In order to enable the City to treat Persons providing similar Services similarly, as may be appropriate to comply with applicable law and considering differences in circumstances, and to comply with requirements of federal law which may require the City to separate its authority over Cable Systems from its authority over other providers of Telecommunications Services, the City requires individual Franchises for the provision of particular Services. The revocation of a Franchise for one particular Service in and of itself will not affect the authority of a Franchise holder to continue to occupy the Public Rights-of-Way to provide services for which it holds other Franchises. No Franchise shall be exclusive. The issuance of a Franchise shall not affect the City's right to itself construct, operate, or repair any Telecommunications Facility, with or without a Franchise.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.02.020 Franchise requirement.

A. Any Person, other than an Exempt Operator or as otherwise provided in this subsection, must obtain a Franchise prior to constructing a Telecommunications Facility or providing Telecommunications Services. An Exempt Operator may, but is not required to, apply for and obtain a Franchise prior to constructing a Telecommunications Facility or providing Telecommunications Services.

B. A Person that has received a Franchise pursuant to Subtitle 16A shall not, unless otherwise directed by the City, be required to obtain a Franchise to provide Telecommunications Services pursuant to Subtitle 16B. Should state or federal law change in a manner that provides the City with regulatory authority over telecommunications providers that does not exist as of the effective date of this Subtitle, the City may, in its discretion, require a Franchise of such Person pursuant to Subtitle 16B. If the City requires a Franchise from any Person that already holds a franchise awarded under Subtitle 16A, the City must impose such requirement upon all similarly situated holders of franchises under Subtitle 16A that also provide Telecommunications Services. Nothing herein shall prevent Persons holding a franchise under Subtitle 16A from challenging the City's authority to require a Franchise under Subtitle 16B, to the extent permitted by state or federal law.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.02.030 Nature of grant.

No Franchise shall convey title, equitable or legal, in the Public Rights-of-Way. The right granted is only the right to occupy those portions of the Public Rights-of-Way to which the City has the right to grant access, for the purposes and for the period stated in the Franchise, and, subject to the limitations in this Subtitle or applicable law, the right may not be subdivided or subleased to a person other than the holder of the Franchise. Every Franchise shall be:

A. Interpreted in a manner that conforms to the requirements of Article VIII of the Tacoma City Charter; provided, however, that unless otherwise authorized by state law, the provisions of Section 8.2 of the Charter shall not apply;

B. Deemed to include all the provisions that are required to be in a Franchise under that article, as if fully set forth in the Franchise;

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C. Deemed to provide for forfeiture under the circumstances set forth in provisions of this Subtitle and any Franchise ordinance thereunder; and

D. Drafted to specify the specific easements granted by City for Operator's use of the Public Rights-of-Way.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.02.040 Rights limited.

No reference herein, or in any Franchise to a Public Rights-of-Way, shall be deemed to be a representation or guarantee by the City that its interest, or other right to control the use of such property, is sufficient to permit its use for such purposes, and a Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.02.050 Minimum contents of every Franchise.

In addition to satisfying the other applicable requirements of this Subtitle, every Franchise for a Telecommunications System shall contain the following provisions:

A. The Franchise shall provide that neither the granting of any Franchise, or any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time the Franchise is issued or thereafter be obtained.

B. The Franchise shall only authorize occupancy of the Public Rights-of-Way to provide the Services and for the purposes described in the Franchise.

C. The rights granted, pursuant to a Franchise, shall be a privilege that is held in the public trust and personal to the original Franchisee. The Franchise shall ensure that no Transfer of the Franchise may occur, directly or indirectly, without the prior consent of the City; except as contemplated by Section 16B.02.120, or as otherwise expressly provided in this Subtitle.

D. A Franchise shall ensure that any Person placing a Telecommunications System in the Public Rights-of-Way will not unlawfully discriminate in hiring, in contracting, or in the provision of Services.

E. The Franchise shall be for a specified term set forth in the Franchise. No Franchise issued under this Subtitle shall be for a term of longer than ten years, unless the Council determines that a longer period would be in the City's interest.

F. Such other terms as are required to be included by the City Charter.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.02.060 Applications for grant of Franchise.

A. Written application.

1. A written application shall be filed with the City for the grant of an initial Franchise. Each entity that is required to hold a Franchise must submit an application therefore to the City Manager in accordance with the requirements of this Chapter 16B.02. To be accepted for filing, an applicant must file an original and one electronic copy of a complete application for a Franchise. An application may be filed by any Person on that Person's own initiative or in response to a request for proposals. The City Manager is authorized to issue requests for proposals from time to time.

2. The City shall accept and review only those applications that include complete responses to every requirement of this Section 16B.02.060. Submission of an application that does not include the requisite information set forth in Section 16B.02.060 and the Application Fee shall not commence the time period for granting or denying any application. The applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the City's review of the application.

B. Contents of applications. Except as expressly modified by the City for good cause, a request for proposals for a Telecommunications Franchise shall be deemed to require, and any application submitted pursuant to this Section 16B.02.060 shall contain, at a minimum, the following information:

1. Identity of the applicant, including the name, address, telephone number, and web site (if applicable); the name, address, telephone number, and e-mail address of all individual(s) authorized to represent the applicant before the City during its consideration of the Franchise(s) requested; and representatives of the applicant who will be responsible for management and oversight of Franchise related issues.

2. An applicant shall list all Telecommunications Systems in which it owns more than 5 percent of the system. In the discretion of the City, the applicant may list only those Telecommunications Systems in the state of Washington in which it owns more than 5 percent of the system.

3. Identification of the area of the City to be served by the proposed Telecommunications System, including a description of the proposed Franchise Area's boundaries.

4. Technical qualifications, planned Services, and operations.

(a) The application shall describe the applicant's planned initial and proposed Telecommunications Services geographic area, including a map of all areas proposed to be served and proposed dates for offering Service to each area, including a description of the miles of plant to be installed and a description of the size of equipment cabinets, shielding, and electronics that will be installed along the plant route, the power sources that will be used and a description of the noise, exhaust, and pollutants, if any, that will be generated by the operation of the same. Notwithstanding these requirements, if some of the descriptive data is not available at the time of application, a Franchise may be granted subject to conditions that the data be filed and approved by the City before construction begins and that the Franchise will be deemed to be forfeited if the data is not supplied and approved. The application shall additionally state whether the applicant proposes to provide Telecommunications Services to the entire Franchise Area, and, if so, a proposed timetable for meeting that goal.

(b) If the applicant has or asserts existing authority to access the Public Right-of-Way in any of the initial or proposed Service areas listed in Section 16B.02.060.B.4(a) above, the applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority.

(c) The applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy, describing when and where construction will begin, how it will proceed, and when it will be completed; and describe the current status of the applicant's existing or proposed arrangements, with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable. Information shall include a designation of the portions of the system that will be placed above ground and the portions that will be placed underground, and the construction techniques that the Operator proposes to use in installing the system above ground and underground; and the expected effect on Public Rights-of-Way usage, including information on the ability of the Public Rights-of-Way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities. In addition, applicant shall provide a description, where appropriate, of how Services will be converted from existing facilities to new facilities, and what will be done with existing facilities. If an applicant reasonably believes that any information provided pursuant to this subsection is proprietary or a trade secret, as defined in RCW 42.56.270(11), it shall so note in a conspicuous manner on its application.

(d) The applicant shall describe its plan to ensure that the safety, functioning, and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation, or removal of the facilities.

5. A demonstration of the financial qualifications of the applicant, including at a minimum, a statement regarding the applicant's financial ability to complete the construction to meet the time frame proposed and to operate the Telecommunications System proposed certified by the applicant's chief financial officer or most senior financial officer; or alternatively, a public company may submit Securities and Exchange Commission ("SEC") filings to the extent they provide substantive information on the applicant's financial qualifications.

6. A demonstration of the applicant's technical ability to construct and/or operate the proposed Telecommunications System.

7. A demonstration that the applicant is legally qualified, which proof must include a statement from the applicant:

(a) Whether it has received, or is in a position to receive, necessary authorizations from state and federal authorities;

(b) Whether it has not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows City to conclude the applicant cannot be relied upon to comply with requirements of Franchise, or provisions of this Subtitle;

(c) Whether it or any Affiliate that will be directly or indirectly involved in Franchise operational or management issues has been found in violation by a regulatory authority or franchising authority of any Franchise ordinance or agreement, contract or regulation governing a Telecommunications System during the preceding five years. If so, the applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal, and result or disposition of that proceeding;

(d) Whether it has been found in violation by a regulatory authority of any other type (e.g. utility or cable) of Franchise, ordinance, agreement, permit, contract, or regulation during the preceding five years. If so, the applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal, and result or disposition of that proceeding;

(e) Whether it is willing to enter into a Franchise and to abide by the provisions of applicable law, including those relating to the construction, operation, or repair of its facilities, and has not entered into any agreement that would prevent it from doing so.

8. Declaration of applicant. Each application shall be accompanied by a declaration substantially in the form set forth below:

the information from the applicant, in writing. After completing the review, staff shall provide an analysis of the application to the City Council.

C. Franchise negotiations. Upon acceptance of a complete application, the City shall commence the process for negotiating a Franchise agreement with the applicant. Unless otherwise agreed to by the parties, Franchise negotiations shall be completed, and a date scheduled for the initial City Council consideration within 120 days of acceptance of a complete application.

D. Review criteria. The City may deny an application if, based on the information provided in the application and/or any terms of a proposed Franchise agreement: (1) the applicant does not have the financial, technical, or legal qualifications to provide Telecommunications Service; or (2) the applicant's proposed terms do not comply with applicable federal, state, and local laws, policies and regulations, including, but not limited to, relevant existing contractual obligations of the City.

E. Grant or denial of Franchise application. If the City finds that it is in the public interest to issue a Franchise considering the factors set forth above, the City may adopt a Franchise ordinance setting forth the terms and conditions of the Franchise, which Franchise shall become effective upon satisfaction of conditions precedent to effectiveness, and when signed and accepted by the applicant. If the City denies a Franchise, it will cause a written explanation of the denial to issue, which may be in any appropriate form. Without limiting its authority to deny an application for a Franchise, the City specifically reserves the right to reject any application that is incomplete. Nothing in this Subtitle shall be construed in any way to limit the discretion and legislative authority of the City Council in making decisions relative to the granting, denial, or renewal of a Franchise.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.02.100 Telecommunications Franchise renewals.

An Operator may submit a proposal for renewal of a Franchise. Such a proposal may be submitted at any time and the City may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time. An application for renewal will be considered under the same substantive criteria as new applications, and may be denied for failure to meet those criteria, and/or failure to comply with the obligations of the current Franchise.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.02.110 Applications for modification of Franchise.

A. An application for modification of a Franchise shall include, at minimum, the following information:

1. The specific modification requested;
2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through submission of pro forma financial statements or similar financial documentation, or other evidence of the impacts on subscribers;
3. Any other information that the applicant believes is necessary for the City to make an informed determination on the application for modification; and
4. A declaration of the applicant or applicant's authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with the requirements of applicable law.

B. Public meetings. An applicant shall be notified of any public meetings held in connection with the evaluation of its application and shall be given a reasonable opportunity to be heard.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.02.120 Transfers.

A. City approval required. No Transfer shall occur without prior written notice to and approval of the City Council, which shall not be unreasonably withheld. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

B. Application.

1. The Franchisee shall promptly notify the City of any proposed Transfer involving a Telecommunications System.
2. At least 120 calendar days prior to the contemplated effective date of a Transfer involving a Telecommunications System, the Franchisee shall submit to the City an application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the Transferee subject to applicable law. At a minimum, the following information must be included in the application, provided

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that, a Franchisee is not required to duplicate information that it submits to the City to comply with its obligations under federal or state law:

- (a) Any contracts or other documents that relate to the proposed Transfer;
- (b) A demonstration statement regarding the applicant's financial ability to comply with the Franchise and to operate the Telecommunications System proposed, certified by the applicant's chief financial officer; or alternatively, a public company may submit SEC filings to the extent they provide substantive information on the applicant's financial qualifications.
- (c) Any shareholder reports or filings with the SEC that discuss the transaction;
- (d) Other information necessary to provide a complete and accurate understanding of the financial position of the Telecommunications System before and after the proposed Transfer; and

3. For the purposes of determining whether it shall consent to a Transfer, the City, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law as the City may deem necessary to determine whether the Transfer is in the public interest and should be approved, denied, or conditioned, as provided under Section 16B.02.120.C. The Franchisee and any prospective Transferees shall assist the City in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

C. Determination by City. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise under this Section 16B.02.120.C, the City shall consider the legal, financial, and technical qualifications of the Transferee to operate the Telecommunications System; whether the incumbent Telecommunications Operator is in compliance with its Franchise and this Subtitle and, if not, the proposed Transferee's commitment to cure such noncompliance; whether the Transferee owns or controls any other Telecommunications System in the City, and whether operation by the Transferee or approval of the Transfer would adversely affect the public, or the City's interest under this Subtitle, the Franchise, or other applicable law.

D. Transferee's agreement. No application for a Transfer of a Franchise, subject to this Section 16B.02.120, shall be granted unless the Transferee agrees in writing that it will abide by and accept all lawful terms of this Subtitle and the Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this Subtitle and the Franchise for all purposes, including renewal, unless the City, in its sole discretion, expressly waives this requirement in whole or in part.

E. Approval does not constitute waiver. Approval by the City of a Transfer of a Franchise, pursuant to this Section 16B.02.120, does not constitute a waiver or release of any of the rights of the City under this Subtitle or a Franchise, whether arising before or after the date of the Transfer.

F. Exception for intra-company Transfers. Notwithstanding the foregoing, a Franchise may provide that Transfers to Affiliates of a Franchisee shall be excepted from the requirements of Section 16B.02.120.A-B where (1) the Affiliate is wholly-owned and managed by an entity that will guarantee the performance under a Franchise or provide other adequate assurance acceptable to the City; and (2) the Transferee Affiliate:

1. Notifies the City of the Transfer at least 60 days before it occurs and, at that time provides the agreements and warranties required by this Section 16B.02.120, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Telecommunications System after the Transfer;
2. Warrants that it has read, accepts, and agrees to be bound by each and every term of the Franchise and related amendment, regulations, ordinances, and resolutions then in effect;
3. Agrees to assume all responsibility for all liabilities, acts, and omissions known and unknown, of its predecessor Franchisees for all purposes, including renewal;
4. Agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisees;
5. Warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the Transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;
6. Warrants that the Transfer will not in any way adversely affect the City;
7. Notifies the City that the Transfer is complete within 30 days of the date the Transfer is complete; and
8. Agrees that the Transfer in no way affects any evaluation of its legal, financial, or technical qualifications that may occur under the Franchise or applicable law after the Transfer, and does not directly or indirectly authorize any additional Transfers.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

Chapter 16B.03

LICENSE AUTHORIZED AND LICENSE APPLICATIONS

Sections:

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16B.03.030	General requirements.
16B.03.040	Rights limited.
16B.03.050	Separate Licenses required.
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16B.03.090	Effect of termination or expiration.
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16B.03.130	City review.
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16B.03.150	Fraud.
16B.03.160	Public inspection.
16B.03.170	Payment of fees/costs required.
16B.03.180	Mortgage/pledge/lease.

16B.03.010 De minimis use.

Subject to the requirements of the City Charter, a Franchise requirement and the Franchise application process may be waived, in whole or in part, for a Telecommunications System where the use of the Public Rights-of-Way by the Operator is De minimis. For such facilities, the City acting through the City Manager or his designee may issue a License.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.020 Nature of grant.

No License shall convey title, equitable or legal, in the Public Rights-of-Way. The right granted is only the right to occupy those portions of the Public Rights-of-Way to which the City has the right to grant access, for the purposes and for the period stated in the License, and, subject to the limitations in this Subtitle or applicable law, the right may not be subdivided or subleased to a person other than the holder of the License.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.030 General requirements.

Every License shall be:

A. Construed to exclude the grant of any rights in any easement granted for, or in favor of, public utility facilities or operations, unless the License shall expressly state otherwise; and

B. Revocable at will.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.040 Rights limited.

No reference herein or in any License to a Public Rights-of-Way shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a License shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.050 Separate Licenses required.

In order to enable the City to treat Persons providing similar Services similarly, as may be appropriate to comply with applicable law and considering differences in circumstances, and to comply with requirements of federal law which may require the City to separate its authority over Cable Systems from its authority over other providers of Telecommunications Services, the City requires separate Licenses for the provision of cable, telecommunication, and other Services. The revocation

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of a License for one particular Service in and of itself will not affect the authority of an Operator to continue to occupy the Public Rights-of-Way to provide Services for which it holds other Franchises, Licenses, or Special Street Use Permits.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.060 License not exclusive.

No License shall be exclusive.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.070 City's rights unaffected.

The issuance of a License shall not affect the City's right to itself construct, operate, or repair any Telecommunications Facility, with or without a License.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.080 Minimum contents of every License.

In addition to satisfying the other applicable requirements of this Subtitle, every License for a Telecommunications System shall contain the following provisions:

- A. The License shall provide that neither the granting of any License, or any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City, as may exist at the time the License is issued or thereafter be obtained. Licensees must comply with all applicable provisions of Chapter 10.22, and any other City ordinances and regulations governing Public Rights-of-Way use.
- B. The License shall only authorize occupancy of the Public Rights-of-Way for the purposes described in the License and for no other purpose whatsoever.
- C. The rights granted pursuant to a License shall be a privilege that is held in the public trust and personal to the original Licensee.
- D. The License shall be for a specified term set forth in the License. Unless otherwise provided or authorized by law, no License issued under this Subtitle shall be for a term of longer than one year.
- E. Such other terms as are required to be included in the License by the City Charter.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.090 Effect of termination or expiration.

- A. Possession or removal. Upon termination or expiration of a License, without renewal or other authorization, whether by action of the City, or by passage of time, the Licensee shall be obligated to cease using the Telecommunications System for the purposes authorized by the License. The City may either take possession of some or all of the Licensee's facilities in the Public Rights-of-Way or, upon written order, require the Licensee or its bonding company to remove some or all of the Licensee's facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to its same, or better, condition as existed just prior to removal. Should the Licensee neglect, refuse, or fail to remove such facility from the Public Rights-of-Way, the City may remove the facility at the expense of the Licensee.
- B. Survival of terms. The obligation of the Licensee to remove shall survive the termination, forfeiture, or expiration of the License; provided that, such obligation shall terminate if the City does not exercise its authority to require removal within two years after termination, forfeiture, or expiration of the License.
- C. Other services. The provisions of Section 16B.03.090.A do not permit the City to take possession of, or require the Licensee to remove, any facilities that are used to provide another service for which the Licensee holds a valid Franchise, Special Street Use Permit, or License issued by the City.
- D. Time for removal. In no case shall the Telecommunications System Operator be provided less than 12 months to remove its facilities, measured from the date the Telecommunications System Operator is ordered to remove its facilities.
- E. Service of order. Any order by the City issued, pursuant to this Section 16B.03.090 to remove the Telecommunications System in whole or in part, shall be sent by registered or certified mail to the Telecommunications System Operator not later than 24 months following the date of License termination, forfeiture, or expiration.
- F. Removal plan. The Telecommunications System Operator shall file a written removal plan with the City not later than 30 calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal

plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal, as required by TMC 10.22.

G. Abandonment. To the extent any portion of the Telecommunications System in the Public Rights-of-Way or on any other public property is not removed by the Telecommunications System Operator within the time period specified herein or such other period as the City may establish, the property will be deemed abandoned and shall become the property of the City if the City wishes to own it. Within 60 days of a request by the City, the Telecommunications System Operator shall execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.100 Applications - general.

A. Application required. Each entity that is authorized by this Subtitle to hold a License, must file an application for an initial License, Transfer of a License, or renewal of a License in accordance with the requirements of this Subtitle.

B. Who may file. An application may be filed by any Person, on that Person's own initiative or in response to a request for proposals.

C. Form of application. All applications required by this Subtitle shall be made on a form prescribed by the City Manager and on file with the City Clerk. All License applications shall be filed with the City Clerk unless otherwise directed by the City Manager.

D. Review. All applications for a License shall be reviewed by the City to determine if the application is complete. An application shall be deemed to be complete if it is made on the form prescribed by the City Manager, filed as required by this Subtitle, contains all information required by this Subtitle, and is in compliance with all requirements of Sections 16B.03.100-16B.03.180.

E. Notice upon review. Except as otherwise provided in Section 16B.03.100.F, an applicant shall be notified, within ten business days of filing of an application, if the application is incomplete and the basis for the determination that the application is incomplete. Notice shall be in writing and deemed to have been duly given upon placing such notice in the United States mail, postage prepaid, properly sealed, correctly addressed to the applicant at the address stated on the application or when hand delivered to said address. In the event that such notice is not timely given, the application shall be deemed to have been complete at the time of filing for purposes of Section 16B.03.100.G.

F. Notice of incomplete application. In the event that an application has been filed and the City, upon review, is unable to determine within ten business days of filing that the application is complete, notice shall be given, as provided in Section 16B.03.100.E, stating the amount of time necessary to complete the review to determine if the application is complete and the reason for the additional period of time.

G. Applications acted upon. Except as otherwise provided in Section 16B.03.100.H, completed applications for a License shall be acted upon within 120 days of filing of the completed application.

H. Tolling. The time period for acting upon a filed and completed application for a License shall be tolled for (1) any period of time agreed to by the applicant; or (2) a reasonable period of time necessary, in the ordinary course, to submit the License to the City Council for approval or denial, when such action by the City Council cannot reasonably be scheduled within the 120-day period.

I. Acted upon defined. An application for an initial License is acted upon if the City Council has taken action to grant, conditionally grant, or deny the License application.

J. Denial. The City may (1) approve or disapprove a License; and (2) require such terms and conditions in the License agreement as deemed in the best interests of the City. In the event that the City takes action to deny a License, the reasons for denial shall be available in a written record. A License shall be deemed denied only in circumstances in which the City has taken action to deny a License in any form. Denial of a License shall not prejudice the rights of the applicant to apply for a Franchise or Special Street Use Permit.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.110 Contents of applications.

Every application for an initial License, a Transfer of a License, or a renewal of a License, shall include the following:

A. Identity of authorized parties. The names and addresses of Persons authorized to act on behalf of the applicant with respect to the application and Person(s) who are authorized to receive all notices required pursuant to Section 16B.03.100.E.

B. Initial deposit. An initial refundable Application Fee deposit in the amount of \$1,000.

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C. Identity of applicant. Identity of the applicant, the Persons who exercise working control over the applicant, and the Persons who control those Persons, to the ultimate parent.

D. Affidavit verifying status as Operator of Telecommunications System. An affidavit of an authorized officer of the applicant that the operation of its facilities in the Public Rights-of-Way will be limited to providing Telecommunications Services as defined herein; provided that, if such facilities will be used to provide services other than Telecommunications Services as defined herein, the applicant shall state what other services will be provided and under what authority applicant will be utilizing facilities located within the Public Rights-of-Way to provide such services.

E. Location/Description of Facilities. Identification of the area of the City in which the applicant proposes to initially install facilities in the Public Rights-of-Way, including the approximate linear feet of overhead facilities, the approximate linear feet of underground facilities, and the type of facilities to be installed.

F. Affidavit verifying authorizations. An affidavit of an authorized officer of the applicant stating that prior to the granting of this License that the applicant has received, or is in a position to receive, necessary authorizations from state and federal authorities to provide Telecommunications Services using facilities within the Public Rights-of-Way.

G. Affidavit of compliance. An affidavit of an authorized representative of the applicant stating that the applicant is not in default relative to any existing Franchise, Special Street Use Permit, or License for facilities in the Public Rights-of-Way. An applicant may show that it would be inappropriate to deny it a License under Section 16B.03.130.D, by virtue of: the particular circumstances surrounding the default at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals or the remoteness of the acts or omissions from the operation of Telecommunications Facilities.

H. Affidavit of De minimis use. An affidavit of an authorized representative of the applicant stating that the applicant's use of the Public Rights-of-Way during the term of the License will be De minimis and explaining in detail the factual basis for such assertion.

I. Affidavit of acceptance. An affidavit of an authorized representative of the applicant stating that the applicant is willing to accept a License and abide by the provisions of applicable law, including those relating to the construction, operation, or maintenance of its Telecommunications Facilities in the Public Rights-of-Way, and that the applicant has not entered into any agreement that would prevent it from doing so.

J. Affidavit verifying truth/accuracy. An affidavit of an authorized representative of the applicant certifying the truth and accuracy of the information in the application and certifying that the application meets all requirements of applicable law.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.120 Applications for Transfer.

An application for a Transfer of a License shall be filed by the Transferee. The application shall contain the same information required by Section 16B.03.110.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.130 City review.

The City Manager may request such additional information as it finds necessary and which may be lawfully required. A completed application for a License shall be subject to review by the City Manager and approval shall be subject to the City Manager's determination that:

A. Completed application. The applicant has submitted a complete and accurate application.

B. Acceptance of License. The applicant will enter into a License agreement upon terms and conditions required or authorized by this Subtitle and comply with any conditions precedent to its effectiveness as required by this Subtitle.

C. Authorizations. The applicant has received, or is in a position to receive, necessary authorizations from state and federal authorities to provide Telecommunications Services using facilities within the Public Rights-of-Way

D. Default. The applicant is not in material default as to any other Franchise, Special Street Use Permit, or License for facilities in the Public Rights-of-Way and, if the applicant is in such default, has demonstrated that it would be inappropriate to deny it a License by virtue of: the particular circumstances surrounding the default at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals or the remoteness of the acts or omissions from the operation of Telecommunications Facilities.

E. De minimis use determination. The applicant's use of the Public Rights-of-Way during the term of the License will be De minimis.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.140 Requirement for Transfer.

In the case of a Transfer, any approval will also be subject to the requirements that:

- A. Transferee will agree to be bound by all the conditions of the License and to assume all the obligations of its predecessor; and
- B. Any outstanding compliance issues will be resolved or preserved to the satisfaction of the City.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.150 Fraud.

An applicant shall not be issued a License if it files, or in the previous three years filed, materially inaccurate or misleading information in a Franchise, Special Street Use Permit, or License application or intentionally withheld information that the applicant lawfully is required to provide; provided that, an applicant may show that it would be inappropriate to deny it a License under this section, by virtue of: the particular circumstances surrounding the filing or failure to provide information at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals or the remoteness of the acts or omissions from the operation of Telecommunications Facilities.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.160 Public inspection.

All applications for a License shall be available for public inspection.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.170 Payment of fees/costs required.

No License shall become effective until all required fees and costs are paid.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.03.180 Mortgage/pledge/lease.

Notwithstanding any other provision of this Subtitle, pledges in trust or mortgages of the assets of a licensed Telecommunications System to secure the construction, operation, or repair of the system may be made without application and without the City's prior consent; except that no such arrangement may be made if it would, in any respect, under any condition, prevent the Telecommunications System Operator or any successor from complying with the License and applicable law, nor may any such arrangement permit a third party to succeed to the interest of the Operator, or to own or control the Telecommunications System, without the prior consent of the City. Any mortgage, pledge, or lease shall be subject to, and subordinate to, the rights of the City under any License, this Subtitle, or other applicable law.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

Chapter 16B.04

SPECIAL STREET USE PERMITS AND APPLICATIONS

Sections:

- 16B.04.010 General.
- 16B.04.020 Conditions.
- 16B.04.030 Minimum contents of every Special Street Use Permit.
- 16B.04.040 Application for Special Street Use Permit – general.
- 16B.04.050 Contents of application.
- 16B.04.060 City review.
- 16B.04.070 Requirement for Transfer.
- 16B.04.080 Fraud.
- 16B.04.090 Public inspection.
- 16B.04.100 Payment of fees/costs required.
- 16B.04.110 Mortgage/pledge/lease.

16B.04.010 General.

A. Nature of grant. In lieu of a Franchise, an Exempt Operator shall, except as may otherwise be provided in this Subtitle, apply to the City Manager for and obtain a Special Street Use Permit to enter upon and use specified Public Rights-of-Way for the purpose of installing, maintaining, repairing, or removing identified facilities within such Public Rights-of-Way to provide Telecommunications Service. The authorization granted shall be conditioned upon Special Street Use Permittee's compliance with the terms and conditions of Chapter 16B.05 and the Special Street Use Permit.

B. Reservation of rights. Every Special Street Use Permit shall include, or be read to include, as if stated therein, a reservation of rights by the City to require the Special Street Use Permittee to obtain a Franchise as to those facilities for which the Exemption is inapplicable or to which the Exemption is otherwise determined by a court of law not to be applicable.

C. Special Street Use Permit required. An Exempt Operator must apply for, obtain, and have in effect a Special Street Use Permit as a condition precedent to issuance of a permit from the City to perform any work in the Public Rights-of-Way. No Special Street Use Permit shall become effective until approved by the City Manager and accepted by the Exempt Operator.

D. Limitations. A Special Street Use Permit does not convey title, equitable or legal, in the Public Rights-of-Way nor is it an authorization to operate facilities located within the Public Rights-of-Way.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.04.020 Conditions.

A. Form of Special Street Use Permit. The City Manager, with any needed technical and legal assistance, is authorized and directed, upon submission of a completed application by an Exempt Operator for a Special Street Use Permit, to prepare a street use permit which will incorporate the requirements which are intended to be included pursuant to this Subtitle.

B. Effective date. If the Exempt Operator, within 30 days after approval of the Special Street Use Permit by the City Manager: (1) files with the City Manager an executed original of the Special Street Use Permit unconditionally accepting the terms and conditions thereof; (2) pays any costs and fees it is required to pay to the City relating to such Special Street Use Permit; and (3) provides such bonds, insurance, financial security, or other payments or documents it is required under the Special Street Use Permit to provide to the City, then the Special Street Use Permit shall become effective on the 30th day after such approval. If the above-stated conditions have not been met by the Exempt Operator within the 30-day period, the Special Street Use Permit shall be null and void.

C. Term. The term of a Special Street Use Permit shall not exceed ten years.

D. No vested rights. A Special Street Use Permit does not grant any vested right to have any facility installed thereunder to remain at a specific location in the Public Right-of-Way or to remain in the Public Right-of-Way.

E. Application of regulations. Even in the absence of a Special Street Use Permit, all requirements of this Subtitle or any other applicable provision of the Tacoma Municipal Code or ordinance which have been promulgated under the City's police or other regulatory powers shall apply and be enforceable against the Exempt Operator, except to the extent, and only to that extent, the application and enforcement of any such requirement is expressly prohibited by applicable and valid laws.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

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16B.04.030 Minimum contents of Every Special Street Use Permit.

In addition to satisfying the other applicable requirements of this Subtitle, every Special Street Use Permit for a Telecommunications System shall contain the following provisions:

- A. The Special Street Use Permit shall provide that neither the granting of any Special Street Use Permit, nor any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time the Special Street Use Permit is issued or thereafter be obtained. Permittees must comply with all applicable provisions of Chapter 10.22, and any other City ordinances and regulations governing Public Rights-of-Way use.
- B. The Special Street Use Permit shall only authorize work to be performed within the Public Rights-of-Way for the purposes described in the Special Street Use Permit and for no other purpose whatsoever.
- C. The rights granted pursuant to a Special Street Use Permit shall be a privilege that is held in the public trust and personal to the original Special Street Use Permittee.
- D. The Special Street Use Permit shall be for a specified term set forth in the Special Street Use Permit.
- E. Such other terms as may be lawfully required to be included in the Special Street Use Permit by the City Charter.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.04.040 Application for Special Street Use Permit - general.

- A. Application required. Each entity that is required by this Subtitle to hold a Special Street Use Permit must file an application for an initial Special Street Use Permit, Transfer of a Special Street Use Permit, or renewal of a Special Street Use Permit in accordance with the requirements of this Subtitle.
- B. Who may file. An application may be filed by any Person on that person's own initiative or in response to a request for proposals.
- C. Application form. All applications for a Special Street Use Permit shall be made on a form prescribed by the City Manager and on file with the Office of the City Clerk. All Special Street Use Permit applications shall be filed with the City Clerk.
- D. Review. The application shall be reviewed by the City Manager to determine if the application is complete. An application shall be deemed to be complete if it is made on the form prescribed by the City Manager, filed as required by this Subtitle, contains all information required by this Subtitle, and is in compliance with all requirements of this Subtitle.
- E. Notice upon review. An applicant shall be notified, within ten business days of filing of application, if the application is incomplete and the basis for the determination that the application is incomplete. Notice shall be in writing and deemed to have been duly given upon placing such notice in the United States mail, postage prepaid, properly sealed, correctly addressed to the applicant at the address stated on the application or when hand delivered to said address. In the event that such notice is not timely given, the application shall be deemed to have been complete at the time of filing for purposes of Section 16B.04.040.F.
- F. Applications acted upon. Except as otherwise provided in Section 16B.04.040.G, completed applications for an initial Special Street Use Permit shall be acted upon within 30 days of filing of the completed application.
- G. Acted upon defined/tolling. A completed application for a Special Street Use Permit is acted upon when the City Manager makes the decision to grant, conditionally grant, or deny the Special Street Use Permit, or when the City Manager notifies the applicant in writing of the amount of time that will be required to make the decision to issue or deny the Special Street Use Permit and the reasons supporting the additional time period.
- H. Appeal. An applicant for a Special Street Use Permit may appeal a decision to deny a Special Street Use Permit to the Hearing Examiner for the City. The appeal shall, except as otherwise provided in this Subtitle, be governed by and in conformance with Chapter 1.23 of the Tacoma Municipal Code and the rules of procedure applicable to hearings before the Hearing Examiner.
- I. Standard for granting relief. The standard for granting relief and burden of proof shall be as set forth in appeals of land use decisions, as set forth at Section 1.23.070.C of the Tacoma Municipal Code. The final decision of the Hearing Examiner shall not operate to preclude either party from litigating any issues or claims that were or could have been adjudicated by the Hearing Examiner.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.04.050 Contents of application.

Every application for a Special Street Use Permit, a Transfer of a Special Street Use Permit, or a renewal of a Special Street Use Permit shall include the following:

- A. Identity of authorized parties. The names and addresses of Persons authorized to act on behalf of the applicant with respect to the application and those Person(s) who are authorized to receive all notices required pursuant to Section 16B.04.040.E.
- B. Initial deposit. An initial refundable Application Fee deposit in the amount of \$5,000 for a Special Street Use Permit.
- C. Identity of applicant. Identity of the applicant, the Persons who exercise working control over the applicant, and the Persons who control those Persons to the ultimate parent.
- D. Affidavit verifying status as Exempt Operator. An affidavit of an authorized officer of the applicant stating, that the operation of its facilities in the Public Rights-of-Way will be limited to providing Telecommunications Services and the facts and circumstances that qualify it as a Telecommunications System Operator that, pursuant to applicable provisions of state law, cannot be required to obtain a Franchise or other authorization from the City to occupy the Public Rights-of-Way with facilities; provided that, if such facilities will be used to provide services other than those qualifying it as an Exempt Operator, the applicant shall state what other services will be provided and under what authority the applicant will be utilizing facilities located within the Public Rights-of-Way to provide such services.
- E. Location/Description of Facilities. Identification of the area of the City in which the applicant proposes to initially install facilities in the Public Rights-of-Way, including the approximate linear feet of overhead facilities, the approximate linear feet underground facilities, and the type of facilities to be installed.
- F. Affidavit verifying authorizations. An affidavit of an authorized officer of the applicant stating that, prior to the granting of this Special Street Use Permit, the applicant has received, or is in a position to receive, necessary authorizations from state and federal authorities to provide Telecommunications Services using facilities within the Public Rights-of-Way.
- G. Affidavit of compliance. An affidavit of an authorized officer of the applicant stating that the applicant is not in default relative to any existing Franchise, Special Street Use Permit, or License for facilities in the Public Rights-of-Way. An applicant may show that it would be inappropriate to deny it a Special Street Use Permit under Section 16B.04.060.D, by virtue of: the particular circumstances surrounding the default at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals or the remoteness of the acts or omissions from the operation of Telecommunications Facilities.
- H. Affidavit of acceptance. An affidavit of an authorized officer of the applicant stating that the applicant is willing to accept a Special Street Use Permit and abide by the provisions of applicable law, including those relating to the construction and maintenance of its Telecommunications Facilities in the Public Rights-of-Way, and that the applicant has not entered into any agreement that would prevent it from doing so.
- I. Affidavit verifying truth/accuracy. An affidavit of an authorized officer of the applicant certifying the truth and accuracy of the information in the application, and certifying that the application meets all requirements of applicable law.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.04.060 City review.

The City Manager may request such additional information as it finds necessary and which may be lawfully required. A completed application for a Special Street Use Permit shall be subject to review by the City Manager and approval shall be granted subject to the City Manager's determination that:

- A. Completed application. The applicant has submitted a complete and accurate application.
- B. Acceptance of Special Street Use Permit. The applicant will enter into a Special Street Use Permit upon terms and conditions required or authorized by this Subtitle and comply with any conditions precedent to its effectiveness as required by this Subtitle.
- C. Authorizations. The applicant has received, or is in a position to receive, necessary authorizations from state and federal authorities to provide Telecommunications Services using facilities within the Public Rights-of-Way.
- D. Default. The applicant is not in material default as to any other Franchise, Special Street Use Permit, or License for facilities in the Public Rights-of-Way and, if the applicant is in such default, has demonstrated that it would be inappropriate to deny it a License by virtue of: the particular circumstances surrounding the default at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals or the remoteness of the acts or omissions from the operation of Telecommunications Facilities.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

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16B.04.070 Requirement for Transfer.

In the case of a Transfer, any approval will also be subject to the requirements that:

A. Transferee will agree to be bound by all the conditions of the Special Street Use Permit and to assume all the obligations of its predecessor; and

B. Any outstanding compliance issues will be resolved or preserved to the satisfaction of the City.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.04.080 Fraud.

An applicant shall not be issued a Special Street Use Permit if it files, or in the previous three years filed, materially inaccurate or misleading information in a Franchise, Special Street Use Permit, or License application or intentionally withheld information that the applicant lawfully is required to provide; provided that, an applicant may show that it would be inappropriate to deny it a Special Street Use Permit under this chapter, by virtue of: the particular circumstances surrounding the filing or failure to provide information at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals or the remoteness of the acts or omissions from the operation of Telecommunications Facilities.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.04.090 Public inspection.

All applications for a Special Street Use Permit shall be available for public inspection.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.04.100 Payment of fees/costs required.

No Special Street Use Permit shall become effective until all required fees and costs are paid.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.04.110 Mortgage/pledge/lease.

Notwithstanding any other provision of this Subtitle, pledges in trust or mortgages of the assets of a permitted Telecommunications System to secure the construction, operation, or repair of the system may be made without application and without the City's prior consent; except that no such arrangement may be made if it would in any respect under any condition prevent the Telecommunications System Operator or any successor from complying with the Special Street Use Permit and applicable law, nor may any such arrangement permit a third party to succeed to the interest of the Operator, or to own or control the Telecommunications System, without the prior consent of the City. Any mortgage, pledge, or lease shall be subject to and subordinate to the rights of the City under any Special Street Use Permit, this Subtitle, or other applicable law.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

Chapter 16B.05

ADDITIONAL RULES APPLICABLE TO TELECOMMUNICATIONS SYSTEMS

Sections:

- 16B.05.010 Purpose.
- 16B.05.020 Compensation for use.
- 16B.05.030 Payments required.
- 16B.05.040 Payment of costs.
- 16B.05.050 Application to all Persons performing work in the Public Rights-of-Way.
- 16B.05.060 General rules for payment of fees and assessments.
- 16B.05.070 Late payments.
- 16B.05.080 Administrative review.
- 16B.05.090 Protection of the City and residents.
- 16B.05.100 Enforcement and remedies.
- 16B.05.110 Access to books and records.
- 16B.05.120 Transitional provisions.
- 16B.05.130 Wireless communication service facilities.
- 16B.05.140 Miscellaneous.

16B.05.010 Purpose.

To ensure that the City, as far as possible, is compensated for the rights granted and receives reasonable and lawful compensation for use of Public Rights-of-Way over which it exercises control, or which is held in public trust; and, in order that the City is compensated for reasonable and lawful expenses arising from the use of those Public Rights-of-Way, the City shall, pursuant to this Subtitle, require Persons using its Public Rights-of-Way to provide Telecommunications Service to pay compensation as may be permitted under applicable law.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.020 Compensation for use.

Every Telecommunications System Operator uses the Public Rights-of-Way subject to the condition that, should the exception from payment of Franchise or other fees established pursuant to Chapter 35.21.860 RCW ever be eliminated or modified, such Operator shall be obligated to pay to the City such compensation that would otherwise be allowed in the absence of the exception.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.030 Payments required.

Except as otherwise expressly provided in this Subtitle, every Operator of a Telecommunications System must:

A. Pay an Application Fee for the consideration of an application for issuance of a Franchise, License or Special Street Use Permit, pursuant to Section 16B.02.070, 16B.03.110.B, 16B.04.050.B, and 16B.05.030.A. The City Manager, at any time, may require the applicant to deposit additional sums if it appears that the initial deposit or subsequent deposits will be exhausted prior to the final action by the City relating to the actual costs of consideration by the City of an application for issuance of a Franchise. The applicant will not be entitled to further consideration by the City of its requested action until such time as the additional deposit required by the City Manager has been deposited with the City. In the event the amount of the deposit of an applicant is in excess of the amount of the actual administrative expenses of the City related to the action requested, then the applicant shall be entitled to a return of any such excess amount; and

B. Pay the fees required by Sections 12.02.050 and 12.02.060 of Title 12 of this code.

C. City may draw upon deposit. The City may, as administrative expenses are incurred, draw upon the deposit to recover its actual administrative expenses, including, but not limited to, the reasonable cost of outside consultants retained by the City related to the City's consideration and processing of a Franchise, Special Street Use Permit, or License.

D. Requirement to replenish deposit. The City Manager, at any time, may require the applicant to deposit additional sums if it appears that the initial deposit or subsequent deposits will be insufficient to cover the City's actual administrative expenses incurred through final action by the City on an application for issuance, renewal, Transfer, or modification of a Franchise, Special Street Use Permit, or License.

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E. Reimbursement of applicant. In the event the amount of the deposit of an applicant is in excess of the amount of the actual administrative expenses incurred by the City related to the action requested, then the applicant shall be entitled to a return of any such excess amount.

F. Police powers. The requirement to pay actual administrative expenses set forth herein is pursuant to the police powers of the City and as authorized by law and any obligation to pay such costs, including reasonable consultant fees, shall not be construed to arise by contract or to be incurred to enforce the provisions of a contract.

G. Billable work order. Establish a billable work order, in accordance with Section 10.22.080, to cover the expense of issuing and administering work order permits and inspecting facilities.

H. Impact assessment. In the event the City determines by resolution or ordinance that an impact assessment shall be chargeable to an Operator based on the activities of the Operator in the Public Rights-of-Way, pay such impact assessment to compensate, as far as permissible under applicable law, the actual loss to the City resulting from damage caused to the Public Rights-of-Way by the installation of the facility.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.040 Payment of costs.

Nothing in this section relieves any Telecommunications System Operator of its obligation to bear costs associated with its operations, including, but not limited to, relocation of facilities in accordance with TMC 10.22.180.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.050 Application to all Persons performing work in the Public Rights-of-Way.

The fact that an Operator has paid an application deposit, as set forth in Section 16B05.030.A, and billable work order deposit, as set forth in Section 10.22.080, does not excuse that Operator from its duty to pay other types of fees as required elsewhere by Title 16. As an example, and not as a limitation of the foregoing, the Operator of a Telecommunications System must pay a Franchise fee under Subtitle 16A to the extent it provides Cable Services to subscribers via a Cable System.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.060 General rules for payment of fees and assessments.

A. No acceptance by the City of any fee or assessment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee or assessment payment be construed as a release of any claim the City may have for additional sums payable.

B. Within 90 days following the end of the calendar year, the chief financial or executive officer or other duly authorized representative of each Telecommunications System Operator shall submit an affidavit, stating that such Operator did not provide Services using facilities within the Public Rights-of-Way during the preceding year for which a Franchise, License or Special Street Use Permit is lawfully required pursuant to this Subtitle, other than to provide Telecommunications Services as defined herein. If a Telecommunications System Operator provided any other services for which City authorization is lawfully required within the preceding year using facilities within the Public Rights-of-Way, the chief financial or executive officer or other duly authorized representative of such Telecommunications System Operator shall identify each such non-Telecommunications Service that was provided and identify the Franchise, License, or Special Street Use Permit Telecommunications System authorizing the provision of such services.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.070 Late payments.

If payments are late, in addition to paying any applicable penalties or damages, the Person that owes the fee or assessment shall pay interest on the amount owed at the rate of 1 percent per month or fraction thereof compounded monthly.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.080 Administrative review.

A Franchisee, Licensee, Special Street Use Permittee, or, when applicable, an applicant for a Franchise, License, or Special Street Use Permit, may, in accordance with Chapter 1.23, request administrative review of the following:

A. The determination by a City official of the amount of the assessment for any expense(s) required to be paid by the Franchisee, Licensee, Special Street Use Permittee, or applicant for Franchise, License, or Special Street Use Permit for work performed by the City pursuant Section 16B.05.030.G of this Subtitle;

B. The determination by a City official of the amount of the fee deposit, if any, that the Franchisee, Licensee, Special Street Use Permittee, or applicant for a Franchise, License, or Special Street Use Permit fee, is entitled to reimbursement of, pursuant to Section 16B.05.030.E, or must deposit additional sums, pursuant to Section 16B.05.030.D; and

C. The determination by a City official of the amount of the billable work order deposit, if any, that the Franchisee, Licensee, Special Street Use Permittee, or applicant for a Franchise, License, or Special Street Use Permit fee is entitled to reimbursement of or credit for, pursuant to Section 10.22.080, or must deposit additional sums, pursuant to Section 10.22.080.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.090 Protection of the City and residents.

A. Indemnification. Unless otherwise approved by the City’s Risk Manager, no Franchise, Special Street Use Permit, License, or other authorization to use the Public Rights-of-Way issued to a Telecommunications System Operator or a private Telecommunications System owner shall be valid or effective until and unless the City obtains an adequate indemnity from such Operator. The indemnity shall at a minimum require the Operator to:

1. Release the City from and against any and all liability and responsibility in or arising out of the construction, operation, or maintenance of the Telecommunications Facilities. Each Telecommunications Facility Operator must further agree not to sue or seek any money or damages from City, its trustees, elected and appointed officers, agents, and employees in connection with the above-mentioned matters;
2. Indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys’ fees, liabilities, damages, orders, judgments, or decrees, sustained by the City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the Telecommunications System Operator, or its agents, independent contractors, or employees related to, or in any way arising out of, the construction, operation, or repair of the Operator’s facility.
3. Provide that the covenants and representations relating to the indemnification provision shall survive the term of any Franchise, Special Street Use Permit, License, or other authorization and continue in full force and effect as to the party’s responsibility to indemnify.

B. Insurance. Unless otherwise approved by the City’s Risk Manager, no Franchise, Special Street Use Permit, License, or other authorization to use the Public Rights-of-Way issued to a Telecommunications System Operator shall be valid or effective until and unless the City obtains assurance that such Operator (and those acting on its behalf) has adequate insurance. At a minimum, the following requirements must be satisfied:

1. A Telecommunications System Operator shall not commence construction of the facility without obtaining all insurance required under this paragraph and approval of such insurance by the Risk Manager of the City, nor shall a Telecommunications System Operator allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the Telecommunications System Operator has facilities in the Public Rights-of-Way, and for a period thereafter as specified in the minimum coverages described below. If the Operator, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.
2. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured for both ongoing and completed operations, as provided below, shall be filed with the City’s Risk Manager. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage. For entities that have facilities in the Public Rights-of-Way as of the effective date of this Subtitle, annually thereafter, and as provided below in the event of a lapse in coverage, unless a pre-existing Franchise or License provides for filing of certificates in a different manner.

These certificates shall contain a provision that the insurers providing coverages afforded under these policies will not cancel same until at least 30 days’ prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the state of Washington (or issued as a surplus line by a Washington Surplus lines broker). Financial Ratings must be no less than “(A)-VII” in the latest edition of “Bests Key Rating Guide,” published by A.M. Best Guide.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse prior to the expiration of the Franchise, Special Street Use Permit, or License, then, in that event, the Telecommunications System Operator shall furnish, promptly following renewal or replacement of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination of insurance during the balance of the period of the Franchise, Special Street Use Permit, or License under which the Telecommunications System operates.

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3. A Telecommunications System owner or Operator, and its contractors or subcontractors engaged in work on the Operator's behalf in, on, under, or over Public Rights-of-Way, shall maintain the following minimum insurance. The City shall be named as an additional insured for both ongoing and completed operations on the general liability and additional insured on the automobile policies.

Commercial general liability insurance to cover bodily injury, personal injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and contractual liability. Coverage must be written on an occurrence basis, with the following limits of liability:

(a) Bodily Injury and Property Damage

(1) Each occurrence \$1,000,000.00

(2) Annual aggregate \$2,000,000.00

(b) Personal Injury and Advertising Injury

(1) \$1,000,000 any one person or organization

(2) Annual aggregate \$2,000,000.00

(c) Completed operations and products liability shall be maintained for three years after the termination of the Franchise (in the case of the Telecommunications System Operator) or completion of the work for the Telecommunications System Operator (in the case of a contractor or subcontractor).

(d) Property damage liability insurance shall include coverage for the following hazards: X - explosion, C - collapse, U-underground.

(e) The foregoing limits may be met through any combination of primary and umbrella and/or excess policies.

4. Workers' compensation insurance shall be maintained during the life of any franchise to comply with statutory limits for all employees, and, in the case any work is sublet, each Telecommunications System Operator shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each Telecommunications System Operator. Each Telecommunications System Operator and its contractors and subcontractors shall maintain employer's liability insurance and commercial auto liability insurance for the duration of the Franchise and for three years after the termination of the Franchise (in the case of the Telecommunications System Operator) or completion of the work for the Telecommunications System Operator (in the case of a contractor or subcontractor). The following minimum limits must be maintained, which limits may be met through any combination of primary and umbrella and/or excess policies:

(a) Workers' Compensation Statutory

(b) Employer's Liability \$1,000,000 per occurrence

(c) Commercial Auto Liability

(d) Bodily Injury and Property Damage

(1) Each accident \$1,000,000.00

(2) Annual aggregate \$2,000,000.00

Coverage shall include owned (if any), hired, and non-owned vehicles.

5. Excess or umbrella liability providing coverage in excess of the above required commercial general liability, commercial auto liability, and employer's liability with limits not less than \$5,000,000 each occurrence and \$5,000,000 aggregate.

6. Each Telecommunications System Operator shall hold the City, its agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of its construction, operation or repair of its Telecommunications System and name the City as an additional insured for both ongoing and completed operations on the General Liability and additional insured on the automobile liability, as provided above.

7. In every Franchise agreement, Special Street Use Permit or License, the City shall reserve the right to require any other insurance coverage it deems necessary depending upon the exposures.

8. The insurance shall include a waiver of subrogation rights to the extent that any liability for costs, losses, and damages resulting from any personal injury, death, and/or property damage may be covered by the proceeds of such insurance policies, and include an endorsement that such policy is primary and noncontributing.

C. Security fund. Unless reduced as provided hereinbelow, every Telecommunications System Operator shall establish a cash security fund or provide the City an irrevocable letter of credit in the minimum amount of \$50,000, to secure the payment of fees owed, to secure any other performance promised in a Franchise, License, or Special Street Use Permit issued pursuant to this Subtitle and to pay any taxes, fees, or liens owed to the City. The letter of credit shall be in a form and with an institution acceptable to the City's Director of Finance and in a form acceptable to the City Attorney. Should the City draw upon the cash security fund or letter of credit, it shall promptly notify the Telecommunications System Operator and the Telecommunications System Operator shall promptly restore the fund or the letter of credit to the full required amount. This security fund/letter of credit may be waived or reduced by the City, pursuant to the terms of the Franchise Agreement, or with respect to a Special Street Use Permit or License, in the discretion of the Director.

(Ord. 28409 Ex. B; passed Feb. 14, 2017; Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.100 Enforcement and remedies.

A. Administration of Subtitle. The City Manager is responsible for enforcing and administering this Subtitle, and the City Manager is authorized to give any notice required by law or under any Franchise, Special Street Use Permit, or License. The City Manager is also authorized to seek information from any Telecommunications System Operator, to establish forms for submission of applications and other information, and to take all other actions necessary or appropriate to the administration of this Subtitle or any Franchise, Special Street Use Permit, or License in furtherance of the City's Public Rights-of-Way management authority; provided that, a Franchise may only be denied, issued, transferred, assigned, or revoked by action of the City Council.

B. Penalties. Except as provided at Section 16B.05.120, any Person found to have violated a provision of this Subtitle, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$1,000, by imprisonment not exceeding 90 days, or by both such fine and imprisonment. Each day that any such violation of this Subtitle 16B continues shall constitute a separate offense. Notwithstanding the foregoing, nothing in this section shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Subtitle.

C. Revocation or forfeiture of Franchise, Special Street Use Permit, or License.

1. Revocation. In addition to all other rights of the City under a Franchise or Special Street Use Permit, the City shall have the right to revoke the Franchise or permit, (1) for violations of material provisions of this Subtitle or of a Telecommunications Systems Operator's Franchise agreement or permit; (2) for defrauding or attempting to defraud the City or subscribers; (3) if the Franchisee abandons the Telecommunications System. A License is revocable at will.

2. Forfeiture of Franchise, Special Street Use Permit, or License. Notwithstanding the foregoing Section 16B.05.100.C.1, the City may declare a Franchise, Special Street Use Permit, or License forfeited without opportunity to cure or the notice required by this Section 16B.05.100.C.2 where the Franchisee, Permittee or Licensee: (1) fails to begin to exercise its rights under the Franchise, Special Street Use Permit, or License within a period specified in the Franchise, Special Street Use Permit, or License; (2) stops providing Service it is required to provide in the Franchise, Special Street Use Permit, or License; (3) without the prior consent of the City, Transfers the Franchise, Special Street Use Permit, or License; (4) fails to pay any undisputed annual occupancy fees or Franchise, Special Street Use Permit, or License fees owed hereunder; or (5) is found by a court or regulatory body with jurisdiction to have defrauded or attempted to defraud the City or the Telecommunications Operator's customers within the City. In other cases, a Franchisee, Permittee or Licensee shall have the right to receive 30 days' prior notice of an intent to declare a Franchise, Special Street Use Permit, or License forfeited, and shall have the opportunity to show cause why the Franchise, Special Street Use Permit, or License should not be forfeited.

3. Bankruptcy. Notwithstanding the foregoing Sections 16B.05.100.C.1-2, to the extent permitted by applicable law, a Franchise, Special Street Use Permit, or License will automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, Permittee or Licensee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless such termination would be prohibited by applicable law. However, the Franchise, Special Street Use Permit, or License may be reinstated within that 120-day period, if: (1) such assignment, receivership, or trusteeship has been vacated; or (2) such assignee, receiver, or trustee has fully complied with the terms and conditions of this Subtitle and the Franchise, Special Street Use Permit, or License and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Subtitle and the Franchise, Special Street Use Permit, or License. However, in the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a Franchisee, Permittee or Licensee, the City may revoke the Franchise, Special Street Use Permit, or License, following a public hearing before the City Council, by serving notice upon the Franchisee, Permittee or Licensee and the successful bidder at the sale, in which event the Franchise, Special Street Use Permit, or License and all rights and privileges of the Franchise, Special Street Use Permit, or License will be revoked and will terminate 30 calendar days after serving such notice, unless the City has approved the Transfer of the Franchise, Special Street Use Permit, or License to the successful bidder, and the

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successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise, Special Street Use Permit, or License and this Subtitle 16B.

4. Relation to insurance and indemnity requirements. Recovery by the City of any amounts under insurance, the construction/performance bond, the letter of credit, or otherwise does not limit the Franchisee's, Permittee's or Licensee's duty to indemnify the City in any way; nor shall such recovery relieve the Franchisee, Permittee or Licensee of its obligations under the Franchise, Special Street Use Permit, or License, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

5. Effect of termination or forfeiture. Upon termination or forfeiture of a Franchise, Special Street Use Permit, or License, whether by action of the City as provided above or by passage of time, the Franchisee, Permittee or Licensee shall be obligated to cease using the Telecommunications System for the purposes authorized by the Franchise, Special Street Use Permit, or License. After 30 days' written notice to the Franchisee, Permittee or Licensee, the City may either take possession of some or all of the Franchisee's, Permittee's or Licensee's facilities in the Public Rights-of-Way or require the Franchisee, Permittee, or Licensee or its bonding company to remove some or all of the Franchisee's, Permittee's or Licensee's facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to the condition specified in Title 10 of the Tacoma Municipal Code. Should the Franchisee, Permittee or Licensee neglect, refuse, or fail to remove such facility, the City may remove the facility at the expense of the Franchisee, Permittee or Licensee. The obligation of the Franchisee, Permittee or Licensee to remove shall survive the termination of the Franchise, Special Street Use Permit, or License for a period of two years; provided, that this provision does not permit the City to take possession of, or require the Franchisee to remove, any facilities that are used to provide another Service for which the Franchisee, Permittee or Licensee holds a valid Franchise, Special Street Use Permit, or License issued by the City.

6. Remedies cumulative. All remedies under this Subtitle 16B and any Franchise, Special Street Use Permit, or License are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a Telecommunications System Operator of its obligations to comply with its Franchise, Special Street Use Permit, or License. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity. Recovery by the City of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise, does not limit a Telecommunications System Operator's duty to indemnify the City in any way; nor shall such recovery relieve a Telecommunications System Operator of its obligations under a Franchise, Special Street Use Permit, or License, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.110 Access to books and records.

A. Purpose.

1. Each franchised Telecommunications System Operator shall provide the City reasonable access to the City's oversight and enforcement authority pursuant to any Franchise, this Code, or any applicable law, in accordance with the provisions of a Franchise. The City may inspect any books and records and copy non-confidential books and records. The Telecommunication System Operator's obligation includes the obligation to reasonably produce all books and records related to revenues derived from the operation of the Telecommunications System to the extent that system revenues affect the fees or taxes charged or burdens imposed on the Telecommunications System Operator under a Franchise. An Operator is responsible for obtaining or maintaining the necessary possession or control of all such books and records related to the construction, installation, or repair of the Telecommunications System so that it can produce the documents upon request. Books and records must be maintained for a period of five years, except that: (1) any record that is a public record must be maintained for no less than the period required by state law; and (2) a Franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials.

2. For purposes of this Subtitle, the terms "books and records" shall be read expansively to include information in whatever format stored. Books and records requested shall be produced to the City in accordance with the provisions of a Franchise agreement.

3. Without limiting the foregoing, a Telecommunications System Operator shall make available to the City the following within ten days of their receipt or (in the case of documents created by the Telecommunications System Operator or its Affiliate) filing:

(a) Notices of deficiency or forfeiture related to the operation of the Telecommunications System; and

(b) Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee, Permittee or Licensee or by any partnership or corporation that owns or controls the Franchisee, Permittee or Licensee, directly or indirectly.

B. Retention of records; relation to privacy rights. Each Telecommunications Systems Operator shall take all reasonable steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under this Subtitle, Franchise, Special Street Use Permit, License, or applicable law. Each Operator shall be responsible for redacting any data that applicable law prevents it from providing to the City. Nothing in this section shall be read to require an Operator to violate state or federal law protecting subscriber privacy.

C. Reports. The City Manager may require Operators of Telecommunications Systems to maintain records and to prepare reports relevant to determining the compliance of the Telecommunications System Operator with the terms and conditions of this Subtitle and their Franchises, Special Street Use Permits, or Licenses. Operators shall maintain such records and provide such reports additionally as are specifically required by Chapters 16B.01, 16B.02, 16B.03, and 16B.04 of this Subtitle.

D. Compliance with laws. Each Franchisee, Special Street Use Permittee, and Licensee shall comply with all applicable laws related to the use of the Public Rights-of-Way and all other applicable laws heretofore and hereafter adopted or established during the entire term of its Franchise, Special Street Use Permit, or License.

E. Reservation of authority. The City may do all things that are necessary and convenient in the lawful exercise of its jurisdiction under this Subtitle.

F. No waiver. The failure of the City to insist on timely performance or compliance by any Person holding a Franchise, Special Street Use Permit, or License shall not constitute a waiver of the City's right to later insist on timely performance or compliance by that Person, or any other Person holding such a Franchise, Special Street Use Permit, or License.

G. Subtitle not a contract. The City expressly reserves the right to amend this Subtitle from time to time in the exercise of its lawful powers. The provisions of this Subtitle shall not be construed to create or be a contract.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.120 Transitional provisions.

A. Persons operating without a Franchise, Special Street Use Permit, or License. The Operator of any facility, the operation of which is required to be franchised, permitted, or licensed under this Subtitle, shall have three months from the effective date of this Subtitle to file one or more applications for a Franchise, Special Street Use Permit, or a License under this Subtitle. Any Telecommunications System Operator timely filing such an application shall not be subject to a penalty under Section 16B.05.100.B hereof for failure to have such a Franchise, Special Street Use Permit, or License, as long as said application remains pending; provided, however, nothing herein shall relieve any Telecommunications System Operator of any liability for its failure to obtain any Franchise, permit, or other authorization required under other provisions of the Tacoma Municipal Code, and nothing herein shall prevent the City from requiring removal of any facilities installed in violation of the Tacoma Municipal Code.

B. Persons with pending applications. Pending applications shall be subject to this Subtitle. A Person with a pending application shall be provided 30 days from the effective date of this Subtitle to submit additional information to comply with the requirements of this Subtitle governing applications.

C. Transitional rules to be narrowly interpreted. It is the intent of the City to apply the provisions of this Subtitle to Telecommunications System Operators, including local exchange carriers that now occupy or may in the future occupy, Public Rights-of-Way, except to the extent federal or state law prevents it from doing so.

D. Special rules for government entities. Nothing herein requires the City to enforce this Subtitle against other governmental agencies providing Telecommunications Services in the City if the City is prevented from doing so as a matter of law. The City is authorized to enter into agreements with other governmental agencies to facilitate the City's use and management of its Public Rights-of-Way, and such agreements shall be enforceable according to their respective terms.

E. No Waiver. The failure of the City to enforce any provision of this Subtitle on any occasion shall not operate as a waiver or estoppel of this right to enforce any provision of this Subtitle on any other occasion, nor shall the failure to enforce any prior ordinance or Charter provisions affecting Telecommunications Facilities or Telecommunications System Operators act as a waiver or estoppel against application of this Subtitle or any other provision of applicable law.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.130 Wireless communication service facilities.

In addition to any other requirements of the Subtitle, wireless communication antennas and wireless communication facilities may be located in the Public Rights-of-Way, subject to the following requirements:

A. Application of Chapter 13.06. Wireless communication antennas and facilities may be located in the Public Rights-of-Way, subject to the substantive requirements of Sections 13.06.545, as now or hereafter amended, provided that the requirements of

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Section 13.06.545 for a special use permit or waiver shall not be applicable to wireless communication antennas and facilities in the Public Rights-of-Way.

To the extent that any provision of Chapter 13.06 is inconsistent with or conflicts with this Subtitle, Chapter 13.06 shall control. Otherwise, this Subtitle shall be construed consistently with the other provisions and regulations of the City.

B. Co-location. Co-locations on existing structures are the only allowable installations when locating wireless communication antennas and related facilities in the Public Rights-of-Way; provided however, that ground mounted equipment is permitted in accordance with Section 16B.05.130.G.

C. Antennas attached to existing structures. Antennas may be attached to existing structures, including, but not limited to, light standards, utility poles, bridges, and sign structures. Such installations shall not be approved on Public Rights-of-Way in areas zoned R-1, R-2, R-2 SRD, or R-3, except immediately adjacent to public or quasi-public uses, as set forth in Section 13.06.545 or as set forth in Section 16B.05.130.F below. The complete removal and replacement of such existing structure to accommodate the attached facility is subject to approval by the owner of the facility. Proposed installations on bridges shall be reviewed carefully with respect to the visual impacts related to the design of the bridge. In the event that the bridge proposed for installation of an antenna is designated on a historic register (local, state, or federal), the proposal shall be reviewed by the Tacoma Landmarks Commission, or its successor.

D. Installation of new structure. In order to accommodate a wireless communication antenna, the Director of Public Works may approve removal and replacement of an existing utility pole, streetlight standard, or similar structure normally associated with the use of the street Public Rights-of-Way within the City of Tacoma; provided, that the removal or replacement is consistent with the substantive requirements of Sections 13.06.545. Such installations shall not be approved on Public Rights-of-Way in areas zoned R-1, R-2, R-2 SRD, or R-3, except immediately adjacent to public or quasi-public uses, as set forth in Section 13.06.545 or as provided pursuant to Section 16B.05.130.F below. Examples where such installations would be prohibited include placing streetlight structures in undeveloped Public Rights-of-Way that do not currently have such lighting, or installation of new utility poles in Public Rights-of-Way in an area in which the overhead utilities have been placed underground.

E. Antenna installations within Public Rights-of-Way. Antenna installations within Public Rights-of-Way shall not be approved in areas reserved primarily for aesthetic and/or recreational purposes, including, but not limited to, traffic circles, small traffic islands not presently containing a utility pole or light standard, parks developed within undeveloped Public Rights-of-Way, pocket parks, and planted medians. Planted medians involved in this limitation include, by way of example but not limitation, North Mason Street, North Pearl Street, and North Union Avenue. Proposed installations on City Public Rights-of-Way within park and open-space areas under the ownership, control, or management of Metro Parks Tacoma shall be subject to the review and approval of Metro Parks Tacoma.

Antennas attached to structures in the Public Rights-of-Way may extend a maximum of 16 feet above the structure to which they are attached. Antennas extending up to 25 feet above the structure may be approved by the Director of Public Works upon a demonstration that such additional height is necessary for safety or operational considerations.

A new street light standard, utility pole, or similar structure, which is installed in the Public Rights-of-Way to accommodate a wireless communication antenna and which replaces an existing street light standard, utility pole, or similar structure, may not exceed 16 feet above the height of the structure replaced; provided that, such a new structure extending up to 25 feet above the height of the structure replaced may be approved by the Director of Public Works upon a demonstration that such additional height is necessary for safety or operational considerations.

F. Special provision for small antennas. An attached antenna that, together with all aboveground antenna facilities does not exceed 15 inches cubed in volume and does not extend above the structure to which it is attached, may be approved by the Director of Public Works to be installed in the Public Rights-of-Way in all areas zoned R-1, R-2, R-2 SRD, or R-3.

A new street light standard, utility pole, or similar structure, which is installed in the Public Rights-of-Way in all areas zoned R-1, R-2, R-2 SRD, or R-3 to accommodate a wireless communication antenna and which replaces an existing street light standard, utility pole, or similar structure, may not exceed the height of the structure replaced.

G. Ground-mounted equipment. Ground-mounted equipment serving antennas in the Public Rights-of-Way shall be located immediately adjacent to or within the footprint of the structure on which the antenna will be mounted, subject to safe sight-distance requirements as determined by the City Traffic Engineer and to the operational requirements of the owner of the structure. In addition, care shall be taken to make the ground-mounted equipment as unobtrusive as possible, including increased setbacks from edge of roadway or sidewalk, landscaping, attachment to utility, or light pole for suitable small equipment or undergrounding. Ground-mounted equipment may be located on adjacent property out of the Public Rights-of-Way, subject to the location and setback requirements of Section 13.06.545 (nonresidential, public or quasi-public, or commercial).

H. Construction standards and permits. All antennas and related equipment, facilities, or installations shall, at the time of construction or installation, meet or exceed all current construction industry standards, applicable federal, state, and City codes and regulations. Repair shall not be made to an existing antenna or its related equipment, facilities, and installations which will cause the existing antenna and related equipment, facilities, or installations to be in violation of the current APWA construction standards, nor shall any repair be made when such existing antenna or its related equipment, facilities, or installations are not in compliance with the current APWA construction standards. No person, firm, or corporation shall construct, repair, or install an antenna or its related equipment, facilities, or installations in the Public Rights-of-Way, pursuant to Section 16B.05.130, without first having obtained a special installation permit to do so from the Director of Public Works.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

16B.05.130 Miscellaneous.

A. Captions. The captions to sections throughout this Subtitle are intended solely to facilitate reading and reference to the sections and provisions of this Subtitle. Such captions shall not affect the meaning or interpretation of this Subtitle.

B. Calculation of time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Subtitle or any Franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

C. Severability. If any term, condition, or provision of this Subtitle shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the Franchisee, Special Street Use Permittee, or Licensee and the City.

(Ord. 27910 Ex. A; passed Aug. 3, 2010)

