

**ORDINANCE NO. 244**

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, ESTABLISHING NEW REGULATIONS FOR SITING TELECOMMUNICATION UTILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY; AND AMENDING SHORELINE MUNICIPAL CODE CHAPTER 12.25 AND ORDINANCE 238, EXHIBIT "A" CHAPTER II AND SECTIONS III 3, IV 3 B (W) 5, 6 AND VII 5 B, D**

WHEREAS, ESSB 6676 passed by the State Legislature in the 2000 Regular Session places new restrictions on municipal authority to grant access to the City's right-of-way for telecommunication and cable utilities; and

WHEREAS, ESSB 6676 requires the City to allow wireless telecommunication facilities into the City's right-of-way in accordance with City zoning regulations, and

WHEREAS, the City Council passed a moratorium on the acceptance and processing of new franchise applications for telecommunications service providers on May 8, 2000 to allow review of right-of way franchise and permit procedures in light of ESSB 6676 requirements; and

WHEREAS, the procedures of this ordinance are consistent with the requirements of ESSB 6676 and the federal Telecommunications Act of 1996;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. Amendment.** Shoreline Municipal Code Chapter 12.25 is amended as set as set forth in Exhibit A attached hereto and incorporated herein.

**Section 2. Amendment.** Ordinance 238, Exhibit "A" Chapter II is amended as follows:

...  
Right of Way Use Agreement — ~~A contractual agreement between a utility and the City setting forth the terms and conditions under which the City grants the utility authority to install and maintain facilities in the public right-~~

Right of Way Permit — A class of permit issued by the City prior to any construction, use, or activity performed at a specific location in the City's public right-of-way. Permits may include long term installation of a facility or improvement in the absence of a franchise (Right of Way Site Permit) or standard maintenance operations by a franchise holder (Right of Way Blanket Permit).

...

**Section 3. Amendment.** Ordinance 238, Exhibit "A" Section III 3 (a) is amended to read as follows:

**Table 1  
Summary of Type A Actions and Target Time Limits for Decision**

Action Type	Target Time Limits for Decision	Code-Pg. # (after codified-Section #) (listed # refers to the Draft Dev. Code issued Jan. 2000)
<b>Type A:</b>		
1. Accessory Dwelling Unit	30 days	pp. 100, 103 & 104
2. Lot Line Adjustment including Lot Merger	30 days	pp. 65 & 66
3. Building Permit	120 days	All applicable standards
4. Final Short Plat	30 days	p. 69
5. Home Occupation, Bed & Breakfast, Boarding House	120 days	pp. 100, 107, 108, 111 & 112
6. Interpretation of Development Code	15 days	pp. 2, 3, & 43
7. Right-of-Way Use Permit	30 days	pp. 256-260
8. Shoreline Exemption Permit	15 days	Shoreline Master Program
9. Sign Permit	30 days	pp. 219-224
10. Site Development Permit	30 days	p. 68
11. Variances from Engineering Standards	30 days	pp. 58 & 59
12. Temporary Use Permit	15 days	p. 116

**Section 4. Amendment.** Ordinance 238, Exhibit "A" Section IV 3 B (W) 5 is amended by adding a new subsection 5 b to read as follows:

5. GROUND-MOUNTED WIRELESS TELECOMMUNICATION FACILITIES STANDARDS.

- a. [unchanged]
- b. No new ground-mounted wireless telecommunication facilities are allowed within the City rights-of-way.
- c.b [unchanged]

**Section 5. Amendment.** Ordinance 238, Exhibit "A" Section IV 3 B (W) 6 is amend to read as follows:

6. STRUCTURE-MOUNTED WIRELESS TELECOMMUNICATION FACILITIES STANDARDS.

a. Wireless telecommunication facilities located on structures other than buildings, such as light poles, flag poles, transformers, existing monopoles, towers and/or tanks shall be designed to blend with these structures and be mounted on them in an inconspicuous manner. (Figures 9 and 10.)

b. The maximum height of structure-mounted facilities shall not exceed the base height limits specified for each zoning designation in this title regardless of exceptions for the particular mounting structure; provided the facility may extend up to 15 feet above the top of the structure on which the facility is installed, including those built at or above the maximum height allowed in a specific zone, so long as the diameter of any portion of a facility in excess of the allowed zoning height does not exceed the shortest diameter of the structure at the point of attachment. The height and diameter of the existing structure

prior to replacement or enhancement for the purposes of supporting wireless facilities shall be utilized to determine compliance with this paragraph.

c. Wireless telecommunication facilities located on structures other than buildings shall be painted with nonreflective colors in a color scheme that blends with the background against which the facility will be viewed.

d. Wireless telecommunication facilities located on structures within the City of Shoreline rights-of-way shall ~~comply with right-of-way use permit requirements (Chapter 12.25 SMC)~~ satisfy the following requirements and procedures:

- (1) Only wireless telecommunication providers holding a valid franchise in accordance with Chapter 12.25.030 shall be eligible to apply for a Right-of-Way Permit, which shall be required prior to installation in addition to other permits specified in this chapter. Obtaining a Right-of-Way Site Permit in accordance with Title 20 may be an alternative to obtaining both a franchise and a Right-of-Way Permit for a single facility at a specific location.
- (2) All supporting ground equipment locating within a public right-of-way shall be placed underground, or if located on private property shall comply with all development standards of the applicable zone.
- (3) Right-of-Way Permit applications are subject to public notice by mailing to property owners and occupants within 500 feet of the proposed facility, posting the site and publication of a notice of application, except permits for those facilities that operate at 1 watt or less and are less than 1.5 cubic feet in size proposed by a holder of a franchise that includes the installation of such wireless facilities as part of providing the services authorized thereby.
- (4) To determine allowed height under subsection 6(b) above, the zoning height of the zone adjacent to the right-of-way shall extend to the centerline except where the right-of-way is classified by the zoning map. An applicant shall have no right to appeal an administrative decision denying a variance from height limitations for wireless facilities to be located within the right-of-way.
- (5) A Notice of Decision issued for a Right-of-Way Permit shall be distributed using procedures for an application. Parties of record may appeal the approval to the Hearing Examiner but not the denial of a permit.

**Section 6. Amendment.** Ordinance 238, Section VII 5 B *Regulated Activities* is amended to read as follows:

**B. ~~Regulated Activities~~ Right-of-Way Permit Issuance**

B-1 Applicability. A Right-of-Way ~~right-of-way~~ Permit shall be required for all construction and usage activities within the public right-of-way as described in this section. Additional requirements for the construction and usage of the right-of-way by utility providers are located in Section 6 *Utility Standards* ~~the utilities standards in the Engineering Section~~. A financial guarantee for all construction and activities within the right-of-way shall be required, unless the director determines such a guarantee to be unnecessary.

a. A Right-of-Way Site Permit is a specific class of Right-of-Way Permit that may be available for utilities or other parties who do not hold a valid City franchise in accordance with SMC 12.25 and are not exempted from that requirement by City regulations. The applicability of a Right-of-Way Site Permit to a particular activity proposed for the City's right-of-way or to a particular applicant shall be an ministerial decision without appeal right based upon the following criteria:

- (1) The scope of the activities included in the requested permit;
  - i. Will the use exceed 1 year;
  - ii. Is the facility or use at a single specific location or for a limited installation path;
  - iii. Will there be little or no need for ongoing entry right to maintain installed facilities;
  - iv. Is the need for the applicant to obtain future permits to enter the right-of-way limited, or does the applicant not desire to obtain a City franchise;
- (2) The impact of these activities on the right-of-way;
- (3) The ease of resolving issues related to proposed activities in the conditions of the requested permit; and
- (4) State and federal law.

B-2 Nonexclusive Right. City right-of-way shall not be privately improved or used for access or other purposes ~~and no development approval shall be issued that requires use of privately maintained city right of way unless a permit has been issued for such use.~~ Permits issued pursuant to this section shall not be construed to convey any vested right or ownership interest in any City right-of-way. Every Right-of-Way permit shall state on its face that any City right-of-way subject to the permit opened pursuant to this section shall be open to use by the general public except in those cases where specific conditions require the closure of the right-of-way to the public for safety reasons.

B-3 Right-of-Way Site Permit Conditions. A Right-of-Way Site Permit shall include at a minimum the following terms and conditions:

- a. Scope, nature, and process for permitting future maintenance activities associate with the facilities installed pursuant to this type of permit;
- b. Insurance, indemnification, relocation, and removal and restoration upon termination or abandonment;
- c. Compensation for use of the right-of way consistent with SMC 12.25.090, and for personal wireless facilities, such additional compensation allowed by state law;
- d. A financial guarantee for all construction and activities within the right-of-way shall be required, unless the director determines such a guarantee to be unnecessary; and

e. Duration of the permit grant to occupy the right-of-way and removal and restoration conditions upon the end of that duration, and/or a renewal process.

**Section 7. Amendment.** Ordinance 238, Section VII 5 D is amended as follows:

D. Usage of Right-of-Way

The purpose of this section is to ensure that structure or activities do not unreasonably obstruct, hinder, jeopardize, injure, or delay the use of the right-of-way for its primary functions: vehicular and pedestrian travel.

D-1.1 [No Change]

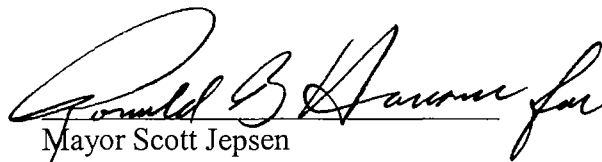
D-1.2 Specific activities requiring Right of Way Permits include, but are not limited to, the following:

- ...
- a. Special and unique structures, such as fountains, clocks, flag poles, wireless telecommunication facilities, awnings, marquees, street furniture, kiosks, signs, banners, mailboxes, and decorations;
- ...

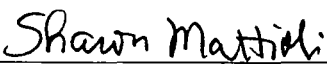
**Section 8. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 9. Effective Date and Publication.** A summary of this Ordinance consisting of the title shall be published in the official newspaper and the Ordinance shall take effect five days after publication.

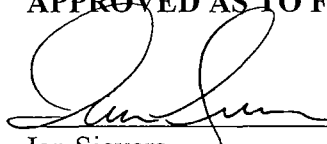
**PASSED BY THE CITY COUNCIL ON JULY 24, 2000.**

  
\_\_\_\_\_  
Mayor Scott Jepsen

**ATTEST:**

  
\_\_\_\_\_  
Sharon Mattioli, CMC  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Ian Sievers  
City Attorney

Date of Publication: July 27, 2000  
Effective Date: August 1, 2000

**Exhibit A**

Chapter 12.25

RIGHT-OF-WAY USE AGREEMENTS FRANCHISES

Sections:

- 12.25.010 Policy.
- 12.25.020 Definitions.
- 12.25.030 ~~Franchise or right of way use agreement required.~~
- 12.25.040 Filing of applications.
- 12.25.050 Content of application.
- 12.25.060 Applicant representatives.
- 12.25.070 Consideration of applications.
- 12.25.080 Length of agreement.
- 12.25.090 ~~Franchise and right of way use agreement fee.~~
- 12.25.100 Required reports.
- 12.25.110 ~~Franchise or right of way use agreement revocation.~~
- 12.25.120 Enforcement.
- 12.25.130 Notice.
- 12.25.140 Federal pre-emption.
- 12.25.150 Conflicts of law.

12.25.010 Policy.

It is the policy of the city of Shoreline to require all entities installing or maintaining facilities in, on, above or below the public right-of-way to comply with an orderly process for obtaining a ~~franchise agreement or right of way use agreement~~ from the city. [Ord. 83 § 1, 1996]

12.25.020 Definitions.

The following terms used in this chapter ~~contained herein~~, unless otherwise indicated, shall be defined as follows:

A. "Activities" includes the installation or maintenance of any assets, structures, or facilities in the public right-of-way, ~~but shall specifically not include activities authorized by a "special limited use permit" or a "limited right of way permit."~~

B. "Applicant" means the entity requesting the grant of a ~~franchise or right of way use agreement~~. The applicant shall identify itself as requested herein by providing the following information:

1. Identification of a natural person shall include:
  - a. Name;
  - b. Title, if appropriate;
  - c. Business address;
  - d. Phone number;

e. Fax number if available.

2. Identification of an entity that is not a natural person:

a. Official name (i.e., the name used to identify the entity in the records of the Washington Secretary of State, or under which the entity has been granted a federal tax identification number if it is not required to file with the Secretary of State);

b. Name and address of agent registered with the Secretary of State for the acceptance of legal service if applicable;

c. Washington State unified business identifier or, if that is not available, federal tax identification number.

C. "Demonstration" means the presentation of any of the following as evidence tending to support the satisfaction of the enumerated requirement:

1. Verifiable historical data;

2. Studies or reports based upon disclosed data sources;

3. Other forms of demonstrations specifically enumerated in this chapter.

D. "Facility" includes, but is not limited to, all structures, equipment, and assets for the operation of railroads and other routes for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated systems for public service.

E. "Franchise" means a contractual agreement, under the authority of RCW 35A.47.040, between a utility and the city setting forth the terms and conditions under which the city grants the utility authority to install and maintain facilities in the public right-of-way.

F. "Grantee" means an applicant that has been granted a franchise or right-of-way use agreement.

~~G. "Right of way use agreement" means a contractual agreement between a utility and the city setting forth the terms and conditions under which the city grants the utility authority to install and maintain facilities in the public right-of-way.~~

GH. "Utility" means persons or private or municipal corporations owning or operating, or proposing to own or operate, facilities that comprise a system or systems for public service. [Ord. 83 § 2, 1996]

12.25.030 Franchise or right-of-way use agreement required.

It shall be unlawful to construct, install, maintain or operate any facility in, on, above or below the public right-of-way without a valid franchise or right-of-way use agreement obtained pursuant to the provisions of this chapter and subsequent amendments. No one utility shall be permitted to perform activities in the public right-of-way without first obtaining a permit pursuant to Chapter 12.10 SMC, Roads and bridges, or pursuant to the city of Shoreline Development Code, when adopted. No utility one shall be granted a permit to perform any activities in, on, under, or above the public right-of-way without first obtaining and maintaining a valid franchise or right-of-way use agreement. All permits to work in, on, under, or above the

public right-of-way will be restricted to those practices specifically enumerated in the applicant's franchise or right-of-way use agreement except:

- A. A permit to perform activities in the right-of-way other than the installation, construction or maintenance of Facilities or to satisfy conditions of any land-use approval related to private property adjacent to the right-of-way,
- B. Entities without a valid City franchise may still be granted a Right-of-way Site Permit pursuant to Title 20.

~~A. In regards to any entity exempted from municipal franchising authority by the operation of state or federal law. Said entity must still comply with the permit requirements established by Chapter 12.10 SMC, and shall be eligible for permits as required by that chapter only if it has obtained from the city a valid "right of way use agreement." The procedures for gaining a "right of way use agreement" shall be those set out in this chapter including any applicable fee.~~

~~B. The city council may, by resolution, authorize the city manager, or his/her designee, to execute a letter of agreement exempting entities operating in the city on the effective date of the ordinance codified in this chapter from the franchise or right of way use agreement requirements of this section for a period not greater than one year from the effective date of the ordinance codified in this chapter. [Ord. 83 § 3, 1996]~~

#### 12.25.040 Filing of applications.

Applications for a franchise or right of way use agreement will be considered pursuant to the procedures set forth in this chapter and amendments hereto. For good cause the city council may elect by resolution to waive any requirement set forth herein unless otherwise required by applicable law.

~~A. An application may be filed at any time or pursuant to a request for Proposals ("RFP") issued by the city.~~

~~B. The city may request additional information from an applicant for a franchise or right of way use agreement at any time.~~

~~C. Applications shall be delivered to the city clerk, and shall be accompanied by a deposit of \$1,500 or, if the application is in response to a Request For Proposals (RFP) issued by the city, such other amount as set forth in the RFP. The city will apply the proceeds of the deposit, or any other filing fees received, against the costs associated with the city's evaluation of the pending application to the extent such is required by RCW 35.21.860. The applicant shall be liable to the city for all costs reasonably associated with the processing of its application. The city shall invoice the applicant for such costs at least on a quarterly basis. All invoiced costs must be paid in full prior to the effective date of any franchise or right of way use agreement or other agreement entered into pursuant to this chapter. Nothing in this subsection will have the effect of limiting the applicant's liability for application review costs to the amount of the deposit.~~

~~D. If required by RCW 35.21.860, the city shall prepare a statement of the amount of deposit funds applied to the costs of application review as of the date the franchise or right of way use agreement is granted, or otherwise ruled on, by the Shoreline city council and refund any deposit amount in excess of costs as of that date within 360 days thereof. The refund shall be in the form of a check or other draft on city accounts and, unless otherwise requested in writing by the~~

applicant, payable and mailed to the person or entity designated by the applicant. [Ord. 83 § 4, 1996]

12.25.050 Content of application.

An application made pursuant to a RFP shall contain all the information required thereby. Where an application is not filed pursuant to an RFP, it shall contain, at a minimum, the following:

A. All applicants that are not fully owned by, or a division of, a governmental agency, whether municipal, state, or federal, shall provide the following:

1. Identification of the applicant and proposed system owner, and, if the applicant or proposed owner is not a natural person, a list of all partners or stockholders holding 10 percent or more ownership interest in a grantee and any parent corporation; provided, however, that when any parent corporation has in excess of 1,000 shareholders and its shares are publicly traded on a national stock exchange, then identification of the parent corporation and its relationship to the subsidiary, if any, shall be provided. ~~a list of the 20 largest stockholders of the voting stock of such corporation shall be disclosed.~~ An application shall also include, if applicable, the identification of all officers and directors and shall state any other primary business affiliation of each.

2. An affirmed statement of whether the applicant, or any person controlling the applicant, or any affiliate of said controlling person, including any officer of a corporation or major stockholder thereof, has voluntarily filed for relief under any provision of the bankruptcy laws of the United States (Title 11 of the United States Code), had an involuntary petition filed against it pursuant to the Bankruptcy Code, been subject of any state law insolvency proceeding such as a transfer for the benefit of creditors, had a franchise or right-of-way use agreement revoked, or has been found guilty by any court or administrative agency in the United States of:

- a. A violation of a security or antitrust law; or
- b. A felony or any other crime involving moral turpitude.

If so, the application shall identify any such person and fully explain the circumstances.

3. A demonstration of the applicant's ~~technical, legal and~~ financial ability to construct and operate the proposed system, including, at the city's option:

a. For a sole proprietorship or partnership:

i. A detailed, complete, and audited financial statement of the applicant, duly certified as true and correct by an executive officer of the company, for the five fiscal years last preceding the date of the application hereunder (three years may be substituted if five years of data is not available); or

ii. A letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the city, setting forth the basis of a study performed by such lending institution or funding source, a statement of the criteria used to evaluate that basis, and a clear statement of its intent as a lending institution or

funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the city; or

eiii. A statement from an independent certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed system in the city.

b. For a corporation publicly traded on a national stock exchange:

i. The most recent public annual report filed with the Securities Exchange Commission, or

ii. For a wholly owned subsidiary, the most recent public annual report filed with the Securities and Exchange Commission of the parent corporation along with a statement of the parents responsibility for the obligations of the subsidiary.

c. For any applicant, demonstration of an ability to obtain a bond sufficient, as determined by the Director, to ensure adequate performance under the terms of the franchise.

~~4. A complete list of all systems in which the applicant, controlling entity of applicant, subsidiary or affiliate of applicant or its controlling entity, or a principal thereof, holds an equity interest. For each system listed, provide the following information as appropriate:~~

~~a. Name of the system operator and location of franchise;~~

~~b. Relationship to the applicant;~~

~~c. Franchise term;~~

~~d. Date of expiration;~~

~~e. Number of subscribers;~~

~~f. Number of dwelling units passed;~~

~~g. Number of route miles;~~

~~h. Name of franchising authority, including the address, phone number, and name of the person responsible for oversight of the franchise or right of way use agreement.~~

B. All applicants shall provide the following:

1. A description of the physical facility proposed, the area to be served, a description of the technical characteristics of the existing service facilities and a map in a digital format acceptable to the city of the proposed and existing service system and distribution scheme.

2. A description of how any construction will be implemented, identification of areas having above ground or below ground facilities and the proposed construction schedule.

3. A description of the proposed services to be provided over the system.

4. Information as necessary to demonstrate compliance with all relevant requirements contained in this chapter.

~~F. A demonstration of how the proposal is reasonable to meet current and future community needs and interests.~~

~~G. A demonstration that the proposal is designed to be consistent with all federal and state requirements.~~

~~H5. An affidavit of the applicant, or duly authorized person, certifying, in a form acceptable to the city, the truth and accuracy of the information contained in the application and acknowledging the enforceability of application commitments.~~

~~I.C. In the case of an application by an existing grantee for a renewed franchise or right-of-way use agreement, a demonstration that said grantee has substantially complied with the material terms of the existing agreement and with applicable law.~~

~~J.D. Other information that the city, or its agents, may reasonably request of the applicant in a timely manner. [Ord. 83 § 5, 1996]~~

#### 12.25.060 Applicant representatives.

Any person or entity who submits an application under this chapter shall have a continuing obligation to notify the city, in writing, of the names, addresses and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application. The requirement to make such disclosure shall continue until the city has approved or disapproved an applicant's application or until an applicant withdraws its application. [Ord. 83 § 6, 1996]

#### 12.25.070 Consideration of applications.

A. The city will consider each application for a new or renewed franchise or right-of-way use agreement where the application is found to be in substantial compliance with the requirements of this chapter and any applicable RFP. In evaluating an application, the city will consider, among other things: (1) the applicant's past service record in the city and in other communities, (2) the nature of the proposed facilities and services, (3) the proposed area of service, (4) the proposed rates (if applicable), (5) and whether the proposal would adequately serve the public needs and the overall interests of the city residents.

In addition, where the application is for a renewed franchise or right-of-way use agreement, the city shall consider whether: (1) the applicant has substantially complied with the material terms of the existing franchise or right-of-way use agreement and with applicable law, (2) the quality of the applicant's service, response to consumer complaints, and billing practices, (3) the applicant has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the application, and (4) the applicant's proposal is reasonable to meet the future community needs and interests, taking into account the cost of meeting such needs and interests.

B. If the city determines that an applicant's proposal, including the proposed service area, would serve the public interest, it may grant a franchise or right-of-way use agreement to the applicant, subject to terms and conditions as agreed upon between the applicant and the city. No franchise or right-of-way use agreement shall be deemed granted unless and until an agreement has been

fully executed by all parties. The ~~franchise or right of way use~~ agreement will constitute a contract, freely entered into, between the city and the grantee. Any such ~~franchise or right of way use~~ agreement must be approved by ordinance of the city council in accordance with applicable law.

C. In the course of considering an application for a renewed ~~franchise or right of way use~~ agreement, the city council shall adhere to all requirements of applicable state and federal law. ~~Any denial of an application for a renewed franchise or right of way use agreement shall be based on one or more adverse findings made with respect to the factors described in subsection A of this section, pursuant to the requirements of then applicable federal law.~~ Neither grantee nor the city shall be deemed to have waived any right it may have under federal or state law by participating in a proceeding pursuant to this subsection. [Ord. 83 § 7, 1996]

#### 12.25.080 Length of agreement.

The period of a ~~franchise or right of way use~~ agreement shall be as specified in the specific agreement, but it shall not exceed 15 years. If a grantee seeks authority to operate in the city beyond the term of its ~~franchise or right of way use~~ agreement, it shall file an application for a new agreement not earlier than 36 nor later than 30 months prior to the expiration of its term. [Ord. 83 § 8, 1996]

#### 12.25.090 Franchise ~~and right of way use~~ agreement fee.

A. All ~~franchises or right of way use~~ agreements executed by the city shall include terms requiring a grantee to pay a fee in consideration of the privilege granted under a ~~franchise or right of way use~~ agreement to use the public right-of-way and the privilege to construct and/or operate in the city. Said franchise fee shall provide the city with compensation equal to six percent of the gross revenues generated by the grantee within the city unless limited by state or federal law; provided, however, that this fee may be offset by any utility tax paid by grantee or in-kind facilities or services provided to the city. Any grantee that does not provide revenue-generating services within the city shall provide alternate compensation as set out in the ~~franchise or right of way use~~ agreement.

~~B. A grantee shall file, no later than May 30th of each year, the grantee's financial statements for the preceding year. If the city reasonably determines, after examination of the financial statements provided, that a material underpayment of franchise fees may exist, the city may require a grantee to submit a financial statement audited by an independent public accountant. If the city's determination of underpayment is ultimately correct, the grantee shall bear the cost of such audit.~~

~~C. The city shall have the right, upon reasonable notice and consistent with the provisions of SMC 12.25.100, to inspect a grantee's income records, to audit any and all relevant records, and to recompute any amounts determined to be payable under a franchise and this chapter.~~

~~D. In the event that any franchise payment is not received by the city on or before the applicable due date, interest shall be charged from such date at the statutory rate for judgments.~~

~~E. In the event a franchise is revoked or otherwise terminated prior to its expiration date, a grantee shall file with the city, within 90 days of the date of revocation or termination, a verified~~

or, if available, an audited financial statement showing the gross revenues received by the grantee since the end of the previous year and shall make adjustments at that time for the franchise fees due up to the date of revocation or termination.

FD. Nothing in this chapter shall limit the city's authority to tax a grantee, or to collect any fee or charge permitted by law, and no immunity from any such obligations shall attach to a grantee by virtue of this chapter. [Ord. 221 § 1, 1999; Ord. 83 § 9, 1996]

~~12.25.100 — Required reports.~~

~~To facilitate timely and effective enforcement of this chapter and any franchise or right of way use agreement, and to develop a record for purposes of determining whether to renew any franchise or right of way use agreement, the city may, upon reasonable notice, require reports as specified in this section or as otherwise provided in the franchise or right of way use agreement.~~

~~A. Annual Report. Unless otherwise set forth in the franchise or right of way use agreement, no later than May 30th of each year, if requested by the city, a grantee shall file a written report with the city, which may include:~~

- ~~1. A summary of the previous calendar year's activities in development of its system.~~
- ~~2. A verified or, if available, an audited financial statement, which may include at the city's request a statement of income, a statement of retained earnings, a balance sheet, a statement of sources and applications of funds, a fixed asset statement showing for each account or category, the original cost and accumulated depreciation balances and activity, and a depreciation statement showing the detailed calculation of depreciation expense for the year. The statement shall include notes that specify all significant accounting policies and practices upon which it is based (including, but not limited to, depreciation rates and methodology, overhead and intrasystem cost allocation methods, and basis for interest expense). A summary shall be provided comparing the current year with previous years since the beginning of a franchise or right of way use agreement. The statement shall contain a summary of franchise fee payments and any adjustment thereto. In any year the city requires an audited financial statement pursuant to this subsection, and an audited financial statement in compliance with this subsection is provided by a grantee, that grantee shall not be required to submit another audited financial statement for that year which otherwise may be required by SMC 12.25.090. If reasonably deemed necessary by the city, it may request additional financial information reviewed or prepared by an independent auditor approved by the city. If the city's determination of a financial error is ultimately correct, the grantee shall bear the cost of such audit.~~
- ~~3. A current statement of cost of any construction by component category.~~
- ~~4. Information reasonably requested by the city for the purpose of enforcing any consumer protection and customer service requirements applicable to grantees, including a summary of complaints by subscribers and users, identifying the number and nature of complaints and their disposition.~~
- ~~5. If a grantee is a corporation, a list of officers and members of the board and the officers and board members of any parent corporation.~~
- ~~6. A list of all partners or stockholders holding 10 percent or more ownership interest in a grantee and any parent corporation; provided, however, that when any parent corporation has in~~

excess of 1,000 shareholders and its shares are publicly traded on a national stock exchange, then a list of the 20 largest stockholders of the voting stock of such corporation shall be disclosed.

7. A copy of a grantee's written customer service rules and regulations, as well as technical requirements applicable to users of the system.

8. Any additional information related to the operation of the grantee's system as reasonably requested by the city based on demonstrated legitimate need.

B. Unless otherwise set forth in the franchise or right of way use agreement, the city may specify the form and details of all reports, with grantee given an opportunity to comment in advance upon such forms and details. The city may change the filing dates for reports upon reasonable request of a grantee.

C. A grantee shall, annually, make available to the city for inspection a construction plan and schedule for the following 24 months.

D. Unless otherwise specified in the franchise or right of way use agreement, a grantee shall make available to the city for inspection and copying, as the city may request, a copy of all maps and charts of asset and system locations prepared by or for the grantee during the duration of the franchise or right of way use agreement.

E. The city shall have the right to inspect all construction and installation work performed by a grantee subject to this chapter as it shall find necessary to insure compliance with governing ordinances and the franchise or right of way use agreement, and shall have the right to inspect a grantee's system during normal business hours and upon reasonable advance notice to the grantee. [Ord. 83 § 10, 1996]

#### 12.25.1+00 Franchise or right of way use agreement revocation.

A. In addition to all other rights and powers retained by the city under this chapter and any franchise or right of way use agreement issued pursuant thereto, the city council reserves the right to revoke and terminate a franchise or right of way use agreement and all rights and privileges of a grantee in the event of a substantial violation or breach of its terms and conditions. A substantial violation or breach by a grantee shall include, but shall not be limited to, the following:

1. An uncured violation of any material provision of this chapter or an uncured breach of any material provision of a franchise or right of way use agreement or other agreement issued thereunder, or any material rule, order or regulation of the city made pursuant to its power to protect the public health, safety and welfare;
2. An intentional evasion or knowing attempt to evade any material provision of a franchise or right of way use agreement or practice of any fraud or deceit upon the system customers or upon the city;
3. Failure to begin or substantially complete any system construction or system extension as set forth in a franchise or right of way use agreement;
4. Failure to provide the services promised in the application or specified in a franchise or right of way use agreement, or a reasonable substitute therefor;

5. Failure to restore service after 10 consecutive days of interrupted service, except when approval of such interruption is obtained from the city;
6. Misrepresentation of material fact in the application for, or during negotiations relating to, a franchise or right of way use agreement;
7. A continuous and willful pattern of grossly inadequate service and failure to respond to legitimate customer complaints;
8. An uncured failure to pay franchise or right of way use agreement fees as required by the franchise or right of way use agreement.

B. None of the foregoing shall constitute a substantial violation or breach if a violation or breach occurs which is without fault of a grantee or occurs as a result of circumstances beyond a grantee's reasonable control. A grantee shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees; provided, however, that damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond a grantee's control if it is caused by any negligent act or unintended omission of its employees (assuming proper training) or agents (assuming reasonable diligence in their selection), or sabotage or vandalism or malicious mischief by its employees or agents. A grantee shall bear the burden of proof in establishing the existence of such conditions.

C. Except in the case of termination pursuant to subsection (A)(5) of this section, prior to any termination or revocation, the city shall provide a grantee with detailed written notice of any substantial violation or material breach upon which it proposes to take action. A grantee shall have a period of 60 days following such written notice to cure the alleged violation or breach, demonstrate to the city's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the city to correct the violation or breach. If at the end of said 60-day period the city reasonably believes that a substantial violation or material breach is continuing and a grantee is not taking satisfactory corrective action, the city may declare a grantee in default, which declaration must be in writing. Within 20 days after receipt of a written declaration of default from the city, a grantee may request, in writing, a hearing before a "hearing examiner" as described in Chapter 2.15 SMC. The hearing examiner shall conduct a full public proceeding in accordance with applicable procedures. The hearing examiner's decision may be appealed to any court of competent jurisdiction.

The City may, in its discretion, provide an additional opportunity for a grantee to remedy any violation or breach and come into compliance with this chapter so as to avoid the termination or revocation. [Ord. 83 § 11, 1996]

#### 12.25.1120 Enforcement.

Any violation of any provision, or failure to comply with any of the requirements of this chapter, shall be a civil violation subjecting the offender to a civil penalty of up to \$100.00 for each of the first five days that a violation exists and up to \$500.00 for each subsequent day that a violation exists. Notice and order and hearing procedures, other than civil penalties, shall correspond to those established for the enforcement of Development Code violations under Title 20 land use regulations by Chapter 12.10 SMC. Payment of any such monetary penalty shall not relieve any person of the duty to correct the violation as set forth in the applicable notice and order. Any

violation existing for a period greater than 30 days may be remedied by the city at the violator's expense. [Ord. 83 § 12, 1996]

~~12.25.1320~~ — Notice.

~~All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified or registered mail, return receipt requested, and shall be deemed received on the date of personal delivery or five days after being deposited in the mail, postage prepaid. [Ord. 83 § 13, 1996]~~

12.25.12430 Federal pre-emption.

Nothing in this chapter shall authorize the city to impose burdens or apply standards on the applicant beyond those permitted by federal law. [Ord. 83 § 14, 1996]

~~12.25.1540~~ — Conflicts of law.

~~This chapter shall control over any conflicting provision of any ordinance passed prior to the effective date of the ordinance codified in this chapter. The Shoreline City Development Code, when adopted, shall control over any conflicting provision(s) of this chapter. [Ord. 83 § 16, 1996]~~