

CODE

CITY OF REDMOND
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF REDMOND,
WASHINGTON, AMENDING CHAPTER 12.14 OF THE
REDMOND MUNICIPAL CODE RELATING TO
TELECOMMUNICATIONS IN ORDER TO UPDATE THE
SAME IN ACCORD WITH RECENT CHANGES IN
FEDERAL LAW AND IN ORDER TO IMPROVE THE SAME
OPERATIONALLY; PROVIDING FOR SEVERABILITY
AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Redmond enacted a comprehensive telecommunications ordinance in 1997 in response to the Federal Telecommunications Act of 1996; and

WHEREAS, in 2003 the City Council adopted Ordinance No. 2175, substantially revising Chapter 12.14 of the Redmond Municipal Code in order to comply with the state telecommunications statute Chapter 35.99 of the Revised Code of Washington as well as federal court decisions interpreting the Federal Telecommunications Act of 1996; and

WHEREAS, in 2018 the City Council adopted Ordinance No. 2925, substantially revising Chapter 12.14 of the Redmond Municipal Code in order to accommodate small cell technology and enable their deployment within the City's rights of way; and

WHEREAS, the Federal Communications Commission (FCC) recently adopted a Declaratory Ruling, Order and Regulation (FCC

Order 18-133), which imposes limitations on local municipalities, including the City of Redmond, regarding processing and review of all permits associated with the deployment of small cell facilities which therefore requires modification to Chapter 12.14 of the Redmond Municipal Code; and

WHEREAS, the City Council has reviewed the proposed revisions and has determined to approve the revisions attached to this ordinance.

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

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City Code.

Section 2. Amendment of Chapter. RMC 12.14, Telecommunications, is hereby amended to read as follows:

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TELECOMMUNICATIONS¹

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Article I. General Provisions

12.14.010 Purpose.

The purpose and intent of this Chapter is,
consistent with applicable laws, to:

(A) Establish a local policy concerning the use of public ways and City properties by Telecommunications providers;

(B) Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of Telecommunications providers;

(C) Promote competition in telecommunications;

(D) Minimize unnecessary local regulation of Telecommunications providers;

(E) Encourage the provision of advanced and competitive Telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;

(F) Permit and manage reasonable access to the public ways of the City for telecommunications purposes on a competitively neutral basis;

(G) Conserve the limited physical capacity of the public ways held in public trust by the City;

(H) Assure that the City's current and ongoing costs of granting and regulating private access to and the use of the public ways and City property are paid

for by the Persons seeking such access and causing such costs;

(I) Secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the public ways, other ways and City property in accordance with Federal and State law;

(J) Assure that all Telecommunications providers constructing, repairing or maintaining Telecommunications facilities within the public ways, other ways and City property comply with the ordinances, rules and regulations of the City;

(K) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare; and

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

12.14.020 Definitions.

For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are

used shall indicate otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning:

"Applicant" means any Person or entity that applies for any Master Permit, Facilities Lease, Small Cell Permit or Right-of-Way Use Permit pursuant to this Chapter;

"Cable Act" means the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as now existing or hereafter amended;

"Cable service" for the purpose of this Chapter shall have the same meaning provided by the Cable Act; a separate cable ordinance is currently found in the Redmond Municipal Code;

"City" means the City of Redmond, Washington;

"City property" means and includes all real property owned in fee by the City or dedicated for a specific purpose, other than public ways and utility easements as those terms are defined herein. City property shall

also include all City-owned poles, buildings, antenna support structures, miscellaneous structures (for example: benches, bus stops, and trash cans) and infrastructure inside and outside of the public ways. City property shall not include property dedicated for a specific purpose that has an existing easement for utilities, and which is not intended to extend to other utility easements;

"Director" means the Director of the Public Works Department or his/her designee.

"Emergency" means a condition of imminent danger to the health, safety, and welfare of property or Persons located within the City including, without limitation, damage to Persons or property from natural consequences, such as storms, earthquakes, riots or wars;

"FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to regulate and oversee Telecommunications providers and services on a national level;

"Grantee" means any person, firm, or corporation to whom a Right-of-Way Use Permit, Small Cell Permit,

Master Permit or a Facilities Lease is granted by the City under this Chapter and the lawful successor, transferee, or assignee of said Person, firm, or corporation subject to such conditions as may be defined in this Chapter;

"Macro Cell Facility" means a large wireless communication facility that provides radio frequency coverage served by a high power cellular tower. Generally, macro cell antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro cell facilities typically contain antennas that are greater than three cubic feet and typically cover large geographic areas with relatively high capacity and are capable of hosting multiple wireless service providers.

"Master Permit" means the agreement in whatever form whereby the City grants general permission to a service provider to enter, use and occupy the public ways or other ways for the purpose of locating Telecommunications facilities. This definition is not intended to limit, alter or change the status of a

service provider asserting an existing state-wide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution to occupy the right-of-way. For the purposes of this chapter, a Master Permit does not include cable television franchises or Facilities Leases;

"Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within the City as encompassed by RCW 47.24.020 and 47.52.090;

"Overhead facilities" means utility poles, utility facilities and Telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities;

"Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers; "person" shall not include the City unless it offers or furnishes Telecommunications service for hire, sale or resale to the general public;

"Personal wireless services" means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services as defined by federal laws and regulations;

"Public ways" means and includes any highway, street, alley, utility easement (unless their use is otherwise restricted for other users), or other public right-of-way for motor vehicle or other use under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway or other purposes now or hereafter held by the City, but only to the extent of the City's right, title, interest or authority to grant a Right-of-way Use Permit, Small Cell Permit or Master Permit to occupy and use the same for telecommunications facilities;

"Right-of-Way Use Permit" or "Permit" means the authorization in whatever form whereby the City may grant permission for construction to a Telecommunications provider to enter and use the specified public ways or other ways for the purpose of installing, maintaining, repairing or removing identified Telecommunications facilities, except for

those Telecommunications facilities permitted pursuant to a Small Cell Permit;

"Small Cell Facility" means a "small wireless facility" as defined by 47 CFR 1.6002 [~~PERSONAL WIRELESS SERVICES FACILITY THAT MEETS BOTH OF THE FOLLOWING QUALIFICATIONS:~~

~~(1) EACH ANTENNA IS LOCATED INSIDE AN ANTENNA ENCLOSURE OF NO MORE THAN THREE CUBIC FEET IN VOLUME OR, IN THE CASE OF AN ANTENNA THAT HAS EXPOSED ELEMENTS, THE ANTENNA AND ALL OF ITS EXPOSED ELEMENTS COULD FIT WITHIN AN IMAGINARY ENCLOSURE OF NO MORE THAN THREE CUBIC FEET; AND~~

~~(2) PRIMARY EQUIPMENT ENCLOSURES ARE NO LARGER THAN SEVENTEEN CUBIC FEET IN VOLUME. THE FOLLOWING ASSOCIATED EQUIPMENT MAY BE LOCATED OUTSIDE THE PRIMARY EQUIPMENT ENCLOSURE AND IF SO LOCATED, ARE NOT INCLUDED IN THE CALCULATION OF EQUIPMENT VOLUME: ELECTRIC METER, CONCEALMENT, TELECOMMUNICATIONS DEMARCATION BOX, GROUND-BASED ENCLOSURES, BATTERY BACK-UP POWER SYSTEMS, GROUNDING EQUIPMENT, POWER TRANSFER SWITCH, AND CUT-OFF SWITCH.]~~

"Small Cell Network" means a collection of interrelated small cell facilities designed to deliver personal wireless services.

"Small Cell Permit" means the authorization in whatever form whereby the City may grant permission for construction to a Telecommunications provider to enter and use the specified public ways or other ways for the purpose of installing or modifying small cell facilities;

"State" means the State of Washington;

"Telecommunications facilities" or "Facilities" means all of the plant, equipment, fixtures, appurtenances, antennas, electronics, radios and other facilities necessary to furnish and deliver Telecommunications services, including, but not limited to, poles, 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 transmission, reception, distribution, provision, offering and use of Telecommunications services;

"Telecommunications provider" or "provider" means and includes every corporation, company, association,

joint stock association, firm, partnership, Person, city or town owning, operating or managing any facilities used to provide and providing telecommunications for hire, sale or resale to the general public. This definition includes entities providing infrastructure, including but not limited to fiber, conduit, poles, or other structures to another service provider, but does not include electrical utility entities. This further includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, Person, city or town;

"Telecommunications service" means the transmission of information by wire, radio, microwave, optical cable, electromagnetic or other similar means for hire, sale or resale to the general public or the transmission from private users to themselves or to other private Persons. For the purposes of this Chapter, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds or any other symbols. For the purpose of this Chapter, Telecommunications service excludes

the over the air transmission of broadcast television or broadcast radio signals and cable service;

"Underground facilities" means utility and Telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead facilities; and

"Utility easement" means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with Telecommunications facilities. City utility easements shall not include easements dedicated for a specific purpose or easements acquired by prescription by a Telecommunications provider.

12.14.030 Business License Required.

A City of Redmond Business License shall be required, and all other terms and conditions of this Chapter must be adhered to by all Telecommunications providers.

12.14.040 Application to Existing Franchise Ordinances, Agreements, Leases, and Permits -- Effect of Other Laws.

(A) Except as otherwise provided herein or permitted by applicable federal or state law, this

Chapter shall have no effect on any franchise ordinance, franchise agreement, lease, permit, or other authorization existing on or before the effective date of the ordinance codified in this Chapter, to use or occupy public ways or City property until:

(1) The expiration of said franchise ordinance, franchise agreement, lease, permit, or authorization; or

(2) The amendment to an unexpired franchise ordinance, franchise agreement, lease, permit, or authorization, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

(B) Nothing in this Chapter shall be deemed to create an obligation upon any Person for which the City is forbidden to require pursuant to federal, state, or other law.

12.14.050 Relief.

The City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this Chapter. Violation

of the terms of this Chapter may also result in the revocation of any Master Permit, Facilities Lease, Small Cell Permit or Right-of-Way Use Permit issued or granted hereunder, as set forth in RMC 12.14.690 through 12.14.720.

12.14.060 Other Remedies.

Nothing in this Chapter shall be construed as limiting any judicial or other remedies that the City may have, at law, in equity, or otherwise for enforcement of this Chapter.

12.14.070 Fees and Compensation Not a Tax.

The fees, charges and fines provided for in this Chapter and any compensation charged and paid for the public ways provided for herein, whether monetary or in-kind (to the extent permitted by law), are separate from, and additional to, any and all federal, state, local, and City taxes as may be lawfully levied, imposed or due from a Telecommunications provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of Telecommunications service.

12.14.075 Single Master Permit.

A Telecommunications provider applying for a Master Permit under this Chapter for multiple Telecommunications services may apply for one Master Permit to cover all such Telecommunications services. If a Telecommunications provider desires to locate Telecommunications facilities upon City property, it must obtain a Facilities Lease, and a Master Permit if the Telecommunications facilities are located in the public ways or other ways.

Article II. Master Permits

12.14.080 Master Permit.

A Master Permit shall be required of any Telecommunications provider or other Person who desires to occupy public ways for the purpose of providing Telecommunications services to Persons or areas within or outside the City; this shall include, but not be limited to, any Telecommunications provider seeking to deploy wireline, wireless, Small Cell facilities, or Macro Cell Facilities.

12.14.090 Entire City.

Master Permits shall be issued for all of the public ways within the City. Initial approval shall be based upon the Public Works Director's evaluation of

the proposal based upon the application materials submitted pursuant to RMC 12.14.100 and the criteria set forth in RMC 12.14.110.

12.14.100 Master Permit Application.

Any Person that desires a Master Permit pursuant to this Chapter shall file an application with the City which shall include the following information:

(A) The identity of the Applicant;

(B) A description of the transmission medium that will be used by the Applicant to offer or provide such Telecommunications services;

(C) To the extent locations for installations are known, preliminary engineering plans, specifications and a map showing where the Telecommunications facilities are to be located within the City, all in sufficient detail to identify:

(1) The location and route requested for the Applicant's proposed Telecommunications facilities;

(2) The location of Applicant's overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the public ways along the proposed route;

(3) The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate;

(D) If the Applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways and to the extent specific locations are known:

(1) The location proposed for the new ducts or conduits;

(2) Evidence that there is sufficient capacity within the public ways for the proposed Telecommunications facilities;

(E) A preliminary construction schedule and completion date;

(F) Evidence that the Applicant is registered to participate in the one-number locator service, as described in RCW Chapter 19.122, if applicable;

(G) *Repealed by Ord. 2925.*

(H) *Repealed by Ord. 2925.*

(I) *Repealed by Ord. 2925.*

(J) If the Applicant is proposing personal wireless facilities, an accurate map showing the

existing locations, if any, of any personal wireless facilities in the public ways, owned or operated by the Applicant;

(K) An application fee which shall be set by the City Council by resolution to recover City costs in accordance with applicable federal and state law; and

(L) Such other information as the Director, in his/her discretion, shall deem appropriate.

12.14.110 Approval/Denial of Master Permit.

~~{WITHIN 120 DAYS A}~~AAfter receiving a complete application under RMC 12.14.100, **and in accordance with the timelines established by state or federal law** the Public Works Director or his or her designee shall issue a written determination granting, granting with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations relating to use and management of the public ways, or denying the Master Permit in whole or in part. The **time period for review** ~~{120 DAY PERIOD}~~ may be extended with the agreement of the Applicant. If the Master Permit is denied, the written determination shall include the reason(s) for denial. The decision to grant, grant with conditions

consistent with this Chapter that are reasonably necessary to assure compliance with this Chapter or other applicable regulations relating to use and management of the public ways, or deny an application for a Master Permit shall be based upon the following standards:

(A) The capacity of the public ways to accommodate the Applicant's proposed Telecommunications facilities;

(B) The capacity of the public ways to accommodate known additional public utility, cable, and Telecommunications facilities if the Master Permit is granted;

(C) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the Master Permit is granted;

(D) The need to minimize the impact and disruption of construction within the public ways;

(E) The effect, if any, on public health, safety and welfare if the Master Permit is granted;

(F) *Repealed by Ord. 2925.*

(G) The scope of the city's authority to condition or deny the proposal under applicable federal and state laws;

(H) Whether the proposed use of the public ways and other ways is in compliance or would be compliant with this Chapter and any other applicable regulations relating to the use and management of the public ways and other ways.

(I) The apparent consistency of the proposal with applicable regulations set forth in the Redmond Zoning Code, and policies set forth in the Redmond Comprehensive Plan.

12.14.120 Appeal of Director's Decision.

An Applicant aggrieved by the conditions or the denial of a Master Permit or the conditions of or denial of the renewal thereof pursuant to this Article shall have the right to appeal to the City Council as follows:

(A) All appeals filed pursuant to this section must be filed in writing with the Public Works Director within ten (10) working days of the date of the decision appealed from;

(B) All appeals filed pursuant to this section shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the Public Works Director's decision, which shall constitute the basis of the appeal;

(C) Upon receipt of a timely written notice of appeal, the Public Works Director shall advise the City Council of the pendency of the appeal and request that a date for considering the appeal be established within ninety (90) days per Redmond Zoning Code Section 21.76.040(D) (2) (a);

(D) The City Council shall have the option of directing that the appeal be heard before the Hearing Examiner who shall forward a recommendation to the City Council which shall take final action on the appeal. Referral to the Hearing Examiner may be made by motion approved by a majority of the City Council members present at the time of voting;

(E) At the time of notifying the City Council of the pendency of the appeal, the Public Works Director shall make his or her recommendation to the City Council as to whether the appeal should be heard by

the Hearing Examiner or the City Council. The recommendation shall be based upon relevant considerations including, but not limited to, the time required to hear the appeal and the need to create a full, formal record;

(F) Regardless of whether the appeal is heard by the City Council or Hearing Examiner, all relevant evidence shall be received during the hearing on the appeal;

(G) Unless substantial relevant information is presented which was not considered by the Public Works Director, such decision shall be accorded substantial weight, but may be reversed or modified by the City Council or Hearing Examiner if, after considering all of the evidence in light of the applicable goals, policies, and provisions of this Chapter, the City Council or Hearing Examiner determines that a mistake has been made. Where substantial new relevant information which was not considered in the making of the decision appealed from has been presented, the City Council or Hearing Examiner shall make its decision only upon the basis of the facts presented at the hearing of the appeal, or may elect to remand the

matter for reconsideration by the Public Works Director in light of the additional information;

(H) For all appeals decided pursuant to this section, the City shall provide for a record that shall consist of written findings and conclusions and a taped or written transcript;

(I) Unless otherwise provided by state statute or other law, all actions seeking review of a final action of the City shall be filed with a court having jurisdiction over such action within thirty (30) calendar days of the final decision, or the expiration of the reconsideration period, whichever is later, and otherwise shall be barred. Pursuant to RCW 35.99.030, relief shall be limited to injunctive relief; and

(J) No action to obtain judicial review shall be commenced unless all rights of appeal provided by this section are fully exhausted.

12.14.130 Term of Master Permit.

Unless otherwise specified in a Master Permit, a Master Permit granted hereunder shall be in effect for a term up to five (5) years, subject to renewal as provided herein.

12.14.140 Compensation to the City.

(A) Each Master Permit granted pursuant to this Chapter 12.14 is subject to the City's right, which is expressly reserved, to recover its actual administrative expenses incurred that are directly related to receiving and approving a permit or license, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Notwithstanding the foregoing, nothing in this Chapter shall prohibit the City and a Grantee from agreeing to additional compensation to be paid.

(B) In the event that a Telecommunications provider desires to place Telecommunications facilities for personal wireless services within the public ways, the Telecommunications provider and the City shall negotiate an agreement which includes a site-specific charge, unless the City Council has previously established such site-specific charge, for the following: (1) the placement of new structures in the public ways regardless of height, unless the new structure is the result of a mandated relocation and the previous location was not charged; (2) replacement structures when the replacement structure is necessary

for the attachment of wireless Telecommunications facilities and the overall height of the replacement structure and the wireless facility is more than sixty (60) feet; or (3) the placement of personal wireless Telecommunications facilities on structures owned by the City and located within the public ways. This agreement shall comply with the applicable requirements of a Facilities Lease in Article IV of this Chapter 12.14. In the event that the parties cannot agree to a site-specific charge, the amount shall be determined in accordance with RCW 35.21.860.

12.14.150 Amendment of right-of-way use authorization.

Repealed by Ord. 2925.

12.14.160 Renewal of Master Permit.

A Grantee that desires to renew its Master Permit under this Article for an additional term shall, not less than 120 days before expiration of the current Master Permit, file an application with the City for renewal which shall include the following:

(A) The information required pursuant to RMC 12.14.100;

(B) Any information required pursuant to the current Master Permit; and

(C) An application fee for recovery of City costs which shall be set by the City Council by resolution.

12.14.170 Standards for Renewal of Master Permit.

After receiving a complete application for renewal, and in accordance with the timelines established by state or federal law, ~~[WITHIN 120 DAYS~~

~~AFTER RECEIVING A COMPLETE APPLICATION FOR RENEWAL,~~

the Public Works Director or his or her designee shall issue a written determination granting, granting with conditions that are reasonably necessary to ensure compliance with this Chapter or with other applicable regulations relating to use and management of the public ways or denying the renewal application in whole or in part. The **time period for review** ~~[120 DAY TIME PERIOD]~~ may be extended with the agreement of the Applicant. If the renewal application is denied, the written determination shall include the reason(s) for denial. The decision to grant, grant with conditions or deny an application for the renewal of a Master Permit shall, in addition to the standards set forth in RMC 12.14.110, be based upon the following standards:

(A) The Applicant's compliance with the requirements of this Chapter;

(B) The existing Master Permit;

(C) Any other applicable federal, state and local regulations with respect to the use and management of the public ways, other ways, and City property; and

(D) The Applicant's compliance with the requirements of the Redmond Zoning Code, as applicable.

12.14.180 Obligation to Cure as a Condition of Renewal.

No Master Permit shall be renewed until any ongoing violations or defaults in the Grantee's performance under the Master Permit, the requirements of this Chapter, the Redmond Zoning Code, if applicable, and any other lawful applicable regulations with respect to use and management of the public ways, other ways, and City property, have been cured, or a plan detailing the corrective action to be taken by the Grantee has been approved by the City.

12.14.185 Pre-application Conference.

A pre-application meeting is [~~REQUIRED~~] **strongly encouraged** prior to submitting an application for a

Master Permit. The purpose of a pre-application meeting is to discuss the nature of the proposed deployment of Telecommunications facilities, review process and schedule, and applicable plans, policies and regulations. ~~[UPON WRITTEN REQUEST FROM THE APPLICANT, THE DIRECTOR MAY WAIVE THE PRE-APPLICATION MEETING.]~~

Article III.

12.14.190 Franchise.

Repealed by Ord. 2925.

12.14.200 No pre-application conference.

Repealed by Ord. 2925.

12.14.210 Franchise application.

Repealed by Ord. 2925.

12.14.220 Determination by the City.

Repealed by Ord. 2925.

12.14.230 Term of franchise.

Repealed by Ord. 2925.

12.14.240 Compensation to the City.

Repealed by Ord. 2925.

12.14.250 Amendment of franchise grant.

Repealed by Ord. 2925.

12.14.260 Renewal application.

Repealed by Ord. 2925.

12.14.270 Renewal determination.

Repealed by Ord. 2925.

12.14.280 Obligation to cure as a condition of renewal.

Repealed by Ord. 2925.

Article IV. Facilities Lease

12.14.290 Facilities Lease.

The City Council may, in its sole discretion which is hereby reserved, approve Facilities Leases ("Facilities Leases" or "Leases") for the location of Telecommunications facilities upon City property, as that term is defined in this Chapter. The City Council may also delegate to the Mayor or Public Works Director the authority to approve and execute such Facilities Leases to the extent such request is for the attachment of small cell facilities and the city property is located in the public ways. Neither this section, nor any other provision of this Chapter shall be construed to create an entitlement or vested right in any Person or entity of any type, regardless of whether or not a lease application has been submitted to or accepted by the City. Each Person who utilizes

Telecommunications facilities upon City property (including, but not limited to, Persons who locate or colocate) must first obtain a Facilities Lease from the City. If the City property is located within the public ways or other ways, the Applicant must also obtain a Master Permit pursuant to Article II of this Chapter, which may occur concurrently with the request for a Facilities Lease.

12.14.300 Lease Application.

This Section 12.14.300 shall not apply to a request for a Facilities Lease for small cell facilities. Such applicants shall request a Facilities Lease specific to small cell facilities for attachments to city-owned poles either as part of the Small Cell Permit application or in advance of such application. Any Person that desires to solicit the City's approval of a Facilities Lease pursuant to this Article shall file an application with the City which shall include the following:

(A) A description of the Telecommunications facilities or other equipment proposed to be located upon City property;

(B) A description of the City property upon which the Applicant proposes to locate Telecommunications facilities or other equipment;

(C) Preliminary plans and specifications in sufficient detail to identify:

(1) The location(s) of existing Telecommunications facilities or other lines or equipment upon the City property.

(2) The location and source of electric and other utilities, including fiber, required for the installation and operation of the proposed Telecommunications facilities.

(3) Details for raceway separation inside pole, foundation, junction box and equipment attachment and wiring information.

(4) Photometric analysis of roadway and sidewalk 150 feet upstream and downstream of existing light if new location is proposed. Construction method of limiting down time of existing street light if existing location is proposed.

(5) The type and location (horizontally and vertically) of all existing utilities (electrical, communication, water, sewer, stormwater, etc.) within

~~[A 15-FOOT RADIUS OF THE PROPOSED TELECOMMUNICATION FACILITY.]~~ 50 feet of the proposed project area (which the project area shall include the location of the fiber source and power source). Further, the Applicant shall include all existing and proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 50 feet from the proposed project area.

(6) A photo rendering of the proposed Telecommunications facility superimposed on an elevation view of the existing City property.

(D) Accurate scale conceptual drawings and diagrams of sufficient specificity to analyze the aesthetic impacts of the proposed Telecommunications facilities or other equipment;

(E) *Repealed by Ord. 2925.*

(F) *Repealed by Ord. 2925.*

(G) *Repealed by Ord. 2925.*

(H) *Repealed by Ord. 2925.*

(I) Evidence demonstrating that the Applicant has received all of the necessary zoning and land use permits and approvals from the City or evidence that

complete applications for such permits and approvals have been submitted to the City and that the proposed Telecommunications facility meets all applicable zoning and land use codes. This requirement shall not apply to Applicants applying for small cell facilities and on city-owned poles;

(J) Such other and further information as may be reasonably requested by the City; and

(K) An application fee to recover City costs.
~~[WHICH SHALL BE SET BY THE CITY COUNCIL BY RESOLUTION.]~~

12.14.310 Determination by the City.

Recognizing that the City is under no obligation to grant a Facilities Lease for the use of City property, the City shall strive to consider and take action on applications for Facilities Leases within 120 days after receiving a complete application for such a Lease, or such other time period as required by state or federal law. In the event that a Lease is approved by the City Council for a Macro Cell Facility on City property and the zoning and land use permits for the Macro Cell Facility are denied or subsequently revoked by the City, the Applicant's rights under the

Lease shall terminate simultaneously with the denial or revocation.

(A) -

(K) *Repealed by Ord. 2925.*

12.14.320 Term of Facilities Lease.

Unless otherwise specified in a Lease agreement, a Facilities Lease granted hereunder shall be valid for a term of up to five (5) years, subject to renewal as provided within the Lease.

12.14.330 Interference with Other Users.

No Facilities Lease shall be granted under this Chapter unless it contains a provision which provides that: the City shall not be responsible for interference with the lessee's Telecommunications facilities caused by the electronics equipment of the City or any senior lessee; that a lessee may cancel its Lease if such interference cannot be remedied; that the lessee has an obligation to cooperate with other users to remedy interference; that a lessee may not cause interference with the equipment of the City or of senior lessees, provided such equipment is lawfully installed and properly operated; and, that the lessee shall remedy interference caused to radio

or television equipment in the vicinity of the subject property.

12.14.340 Ownership and removal of improvements.

Repealed by Ord. 2925.

12.14.350 Cancellation of lease by lessee.

Repealed by Ord. 2925.

12.14.360 Compensation to the City.

Each Facilities Lease granted under this Article is subject to the City's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the rights granted to the lessee; provided, nothing in this Chapter shall prohibit the City and a lessee from agreeing to the compensation to be paid. [~~SUCH COMPENSATION SHALL BE PAYABLE ANNUALLY FROM THE EFFECTIVE DATE OF THE LEASE.~~]

12.14.370 Amendment of Facilities Lease.

Except as provided within a specific Lease agreement, a new lease application and Lease agreement shall be required of any Telecommunications provider or other entity that desires to expand or relocate its Telecommunications facilities or other equipment located upon City property. Further, all Lease amendments must obtain City Council approval, unless

such authority is delegated to the Public Works

Director. If ordered by the City to locate or relocate its Telecommunications facilities or other equipment on the City property, the City shall grant a lease amendment without further application.

12.14.380 Renewal.

Repealed by Ord. 2925.

12.14.390 Obligation to Cure as a Condition of Renewal.

No Facilities Lease shall be renewed until any ongoing violations or defaults in the lessee's performance of the Lease agreement, or of the requirements of this Chapter and any other lawful applicable regulations relating to the use and management of City property, have been cured, or a plan detailing the corrective action to be taken by the lessee has been approved by the City.

Article V. Conditions of Master Permits

12.14.400 Purpose.

The purpose of 12.14.400–12.14.780 is to set forth certain terms and conditions which are common to all Master Permits. Except as otherwise provided in this Chapter or in such an agreement or Permit, the

provisions of this Article apply to all such Master Permits approved or granted by the City.

12.14.410 Non-Exclusive Grant.

No Master Permit or Right-of-Way Use Permit or Small Cell Permit issued thereunder shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways, other ways or City property for delivery of Telecommunications services or any other purposes.

12.14.420 Rights Granted.

No Master Permit or Right-of-Way Use Permit, Small Cell Permit, or Facilities Lease granted under this Chapter shall convey any right, title or interest in public ways or on City property, but shall be deemed a license only to use and occupy the same for the limited purposes and term stated in said agreement or Permit. Further, no such Master Permit shall be construed as any warranty of title.

12.14.430 Fee for recovery of City costs.

Each Master Permit and the Small Cell Permits and Right-of-Way Use Permits issued thereunder are subject to the City's right, which is expressly reserved, to recover its actual administrative expenses incurred

that are directly related to receiving and approving a permit (including the Master Permit) or license, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to Chapter 43.21C RCW in accordance with RCW 35.21.860. Grantee shall reimburse such costs within 30 days after written demand from the City.

12.14.440 Other City costs.

Repealed by Ord. 2925.

12.14.450 Acceptance.

No Master Permit shall become effective unless and until the Master Permit has been unconditionally accepted by the Grantee following its approval by the City. A Master Permit shall be accepted by filing executed copies of the document related thereto, together with the bonds, insurance policies, and security fund required by this Chapter with the Public Works Director within 60 days after the approval of the Master Permit, or within such shorter or extended period of time as may be required or authorized by the City. No Right-of-Way Use Permit or Small Cell Permit may be granted until the Master Permit is accepted.

12.14.460 Police Power.

In accepting any Master Permit and the applicable Right-of-Way Use Permits or Small Cell Permits issued thereunder, the Grantee acknowledges that its rights thereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, it being understood that such exercise must be done in accordance with applicable law and be related to use and management of the public ways, other ways and City property.

12.14.470 Rules and Regulations by the City.

In addition to the inherent powers of the City to regulate and control any Master Permit, Right-of-Way Use Permit, or Small Cell Permit it issues, and those powers expressly reserved by the City, or agreed to and provided for in any Master Permit, the right and power is hereby reserved by the City to adopt such additional regulations as it may find necessary in the exercise of its lawful powers to manage the public ways, other ways and City property giving due regard to the rights of Grantees hereunder. The City reserves the right to delegate its authority for issuance of

the Master Permit, Small Cell Permit and Right-of-Way Use Permit administration to a designated agent.

12.14.480 Location of Telecommunications Facilities.

All Telecommunications facilities shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a Master Permit, Right-of-Way Use Permit, or Small Cell Permit.

(A) A Grantee with permission to occupy the public ways must, to the extent practicable and in accordance with RCW 35.99.060, locate all new Telecommunications facilities underground. This requirement shall not apply to Small Cell Facilities or Macro Cell Facilities, but does apply to any new electrical or wireline infrastructure used to support such facilities. For purposes of this Section, new facilities shall not include maintenance or replacement of existing aerial facilities.

(B) Whenever any new or existing electric utilities, cable facilities, or Telecommunications facilities are located or relocated underground within the public ways, a Grantee that currently occupies the same public ways shall relocate its Telecommunications

facilities underground if so ordered by the City. If a pole or antenna support structure supporting a Small Cell Facility or Macro Cell Facility is relocated or removed, Grantee must also relocate or remove its Small Cell Facility or Macro Cell Facility. Absent extraordinary circumstances or undue hardship as determined by the Public Works Director, such relocation shall be made concurrently to minimize the disruption of the public ways. No such extension granted by the Public Works Director under this subsection shall exceed a period of 12 months. The costs and expenses of such relocations shall be allocated as set forth in RMC 12.14.540.

12.14.490 Compliance with One-Number Locator Service.

All Grantees shall, before commencing any construction in the public ways, comply with all regulations of Chapter 19.122 RCW, the One Number Locator Service, to the extent such regulations are applicable.

12.14.500 Interference with the public ways.

No Person may locate or maintain its Telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City,

by the general public or other Persons authorized to use or be present in or upon the public ways. All such Telecommunications facilities shall be moved by the Grantee or other Person at its own cost, temporarily or permanently, as determined by the Public Works Director.

12.14.510 Damage to Property.

No Grantee or other Person shall take any action or permit any action to be done which may impair or damage any City property, public ways, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto.

12.14.520 Notice of Work.

(A) Unless otherwise provided in a Master Permit, no Grantee or other Person shall commence any non-emergency work in or about the public ways or other ways without first obtaining a Right-of-Way Use Permit or Small Cell Permit and providing advance written notice to the City of such work as required by the Right-of-Way Use Permit or the Small Cell Permit.

(B) In the event of an unexpected repair or emergency, a Grantee may commence such repair and emergency response work as required under the

circumstances, provided the Grantee shall notify the City as promptly as possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable. Further, Grantee shall apply for a Right-of-Way Use Permit and pay all associated fees as soon as the emergency is abated.

12.14.530 Maintenance of Telecommunications Facilities.

Each Grantee shall maintain its Telecommunications facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

12.14.540 Relocation or Removal of Telecommunications Facilities.

(A) A Grantee shall temporarily or permanently remove, relocate, change, or alter the position of any Telecommunications facilities within the public ways whenever the Public Works Director has determined that such removal, relocation, change, or alteration is reasonably necessary for the construction, alteration, repair or improvement of the public ways for purposes of public welfare, health or safety. Except as

otherwise provided in this section or by state law, such relocation shall be performed at the cost and expense of the Grantee.

(B) When the Public Works Director orders relocations under this section, the Grantee shall be given reasonable advance notice thereof, which period of time shall be no less than ninety (90) days except for emergency situations, provided, that if the Public Works Director discovers following such order any unidentified (as required by RMC 12.14.490), non-permitted or misplaced Telecommunications facilities, such facilities shall be removed immediately. The actual number of days shall be specified by the Public Works Director in the relocation notice.

(C) The Grantee may, after receipt of said notice, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if any one or more of the alternatives, including the amount of time required to safely complete such relocation, is suitable to accommodate the work which would otherwise necessitate relocation of the Telecommunications facilities as stated in the City's

order. If requested, the Grantee shall submit additional information to assist the City in making such an evaluation. The City shall give each alternative proposed full and fair consideration, within a reasonable period of time, so as to allow the relocation work to be performed in a timely manner. In the event that the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its Telecommunications facilities as otherwise provided in the order.

(D) The costs and expenses associated with relocation of Telecommunications facilities shall be the responsibility of Grantee unless: (1) the Grantee has paid for the relocation cost of the same Telecommunications facilities at the request of the City within the past five (5) years; (2) aerial to underground relocation of Telecommunications facilities is required by the City and the Grantee has an ownership share of the aerial supporting structures, in which case the City shall be responsible for the additional incremental cost of aerial to underground relocation compared to aerial to aerial relocation, or as provided for in a

telecommunication carrier's tariff, if said amount is less; or (3) when the City requests relocation solely for aesthetic purposes, unless the Grantee agrees to be responsible for the costs thereof.

(E) In the event that the City orders a Grantee to relocate its Telecommunications facilities for a project which is primarily for private benefit, the private party or parties causing the need for such project shall reimburse the grantee for the cost of relocation in the same proportion as their contribution to the cost of the project.

(F) In the event of an unforeseen emergency which creates a threat to the public health, safety, or welfare, the City may require a Grantee to relocate its Telecommunications facilities at its own expense, any other portion of this section notwithstanding.

(G) If payment of the costs of relocation is in dispute, Grantee shall still commence and complete the relocation as provided herein on a timely basis for public works projects undertaken by the City and as provided by RCW 35.99.060. Grantees shall indemnify, hold harmless, and pay the costs of defending the City against claims or liabilities for delay or delays on

public improvement projects caused by their failure to relocate their Telecommunications facilities in a timely manner, unless caused by:

(i) circumstances beyond Grantee's control;

or

(ii) the City's gross negligence or willful misconduct.

12.14.550 Building Moving.

Whenever any Person shall have obtained permission from the City to use any public ways for the purpose of moving any building, a Grantee upon seven (7) days' written notice from the City shall raise or remove, at the expense of the Person desiring to move the building, any of the Grantee's Telecommunications facilities which may obstruct the removal of such building; provided, that the Person desiring to move the building shall comply with all requirements of the City for the movement of buildings and remit the applicable cost of raising or removing Grantee's Telecommunications facilities prior to Grantee's commencement of such work.

12.14.560 Removal of Unauthorized Telecommunications Facilities.

Within 30 days following written notice from the City, any Grantee or other Person who owns, controls, or maintains any unauthorized Telecommunications facilities or related appurtenances within the public ways shall, at its own expense, provide written confirmation acknowledging the City's notice. Within ninety (90) days Grantee or other Person must provide a corrective action plan to either remove such Telecommunications facilities or bring such Telecommunications facilities into compliance. Telecommunications facilities are unauthorized and subject to removal in the following circumstances:

(A) Upon abandonment of the Telecommunications facilities within the public ways of the City, or if a Grantee does not respond within thirty (30) days after notice from the City such property shall be deemed abandoned;

(B) If the Telecommunications facilities were constructed or installed without a valid Master Permit or prior permit or franchise;

(C) If the Telecommunications facilities were constructed or installed without the prior issuance of

a required Right-of-Way Use Permit or Small Cell Permit; or

(D) If the Telecommunications facilities were constructed or installed at a location not permitted by a Right-of-Way Use Permit, Small Cell Permit, Master Permit, or Facilities Lease.

Provided, however, that the City may, in its sole discretion, allow a Grantee or other such Persons who may own, control, or maintain Telecommunications facilities within the public ways of the City to abandon such Telecommunications facilities in place. No Telecommunications facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment or removal of such Telecommunications facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment of the property of Grantee in place, the property shall become that of the City, and Grantee shall submit to the City an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. The provisions of this section shall survive

the expiration, revocation, or termination of a Master Permit, Small Cell Permit, Right-of-Way Use Permit or Facilities Lease granted under this Chapter.

12.14.570 Emergency Removal or Relocation of Telecommunications Facilities.

The City retains the right and privilege to cut or move any Telecommunications facilities located within the public ways of the City and upon City property, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to any Telecommunications provider, or any other Person for any direct, indirect, or any other such damages suffered by any Person or entity of any type as a direct or indirect result of the City's actions under this section. The City shall attempt to contact the Telecommunications provider and provide an opportunity for the Telecommunications provider to perform the necessary cutting or moving unless the emergency necessitates City action prior to such contact.

12.14.580 Damage to Telecommunications Facilities.

Unless directly and proximately caused by the sole negligence, ~~[WILLFUL, INTENTIONAL,]~~ or willful

misconduct [~~, OR MALICIOUS ACTS~~] by the City, the City shall not be liable for any damage to or loss of any Telecommunications facilities upon City property or within the public ways as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such City property or within the public ways by or on behalf of the City nor shall the City be liable with respect to any actions in connection with Section 12.14.570 above.

12.14.590 Restoration of public ways, other ways, and City Property.

(A) When a Grantee or other Person does any work in or affecting any public ways, other ways or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such public ways, other ways and City property to the condition as existed before the work was undertaken, unless otherwise directed by the City.

(B) If weather or other conditions do not permit the complete restoration required by this section, the Grantee shall temporarily restore the affected public ways, other ways and City property. Such temporary

restoration shall be at the Grantee's sole expense and the Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(C) A Grantee or other person acting in its behalf shall use suitable barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle, or property by reason of such work in or affecting such public ways, other ways or City property.

(D) The Public Works Director shall be responsible for inspection and final approval of the condition of the public ways and City property following any construction and restoration activities therein.

(E) A Grantee that has determined to discontinue its operations in the City and that plans to leave its Telecommunications facilities in place must submit to the City, within ninety (90) days of the planned date for discontinuance of operation, a proposal and instruments for transferring ownership of its

Telecommunications facilities to the City. If a Grantee proceeds under this clause, the City may at its option:

(1) Purchase the Telecommunications facilities at a mutually determined price or the Grantee may seek bids from other Persons; or

(2) Require the Grantee, at its own expense, to remove the Telecommunications facilities.

(F) Telecommunications facilities of a Grantee who fails to comply with subsection E above and which, for ninety (90) days, remain unused, shall be deemed to be abandoned. Abandoned Telecommunications facilities are deemed to be a nuisance. After the lapsing of such ninety (90) days and upon thirty (30) days' notice to the occupant, the City may exercise any remedies or rights it has at law or in equity, including but not limited to:

(1) Abating the nuisance, at the expense of the Grantee;

(2) Requiring removal of the telecommunications facilities at the expense of the Grantee; or

(3) Removing abandoned Telecommunications facilities at the expense of the Grantee.

(G) The requirements of this Section 12.14.590 shall survive the expiration, revocation, or termination of a Master Permit.

12.14.600 Duty to Provide Information.

Within 10 days of a written request from the City, each Grantee shall furnish the City with information sufficient to demonstrate:

(A) That the Grantee has complied with all requirements of this Chapter; and

(B) All books, records, maps and other documents maintained by the Grantee with respect to the location of its Telecommunications facilities within the public ways and upon City property shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require a Grantee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require a Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

12.14.610 Leased Capacity.

A Grantee shall have the right, without prior City approval, to offer or provide fiber capacity or bandwidth to other carriers, resellers, customers, or subscribers consistent with such Master Permit; provided, however, that the Grantee shall remain responsible for compliance with this Chapter and such Master Permit, and provided the colocator or other user must obtain any necessary permit from the City if Telecommunications facilities are made available to the colocator or other user.

12.14.620 Insurance.

Each Grantee shall secure and maintain the following liability insurance policies insuring both the grantee and the City as an additional insured against claims for injuries to Persons, death or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the Grantee:

(A) Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

(1) \$2,000,000.00 for bodily injury or death to each Person;

(2) \$2,000,000.00 for property damage resulting from any one accident;

(3) \$2,000,000.00 for all other types of liability; and

(4) \$5,000,000 in the aggregate for bodily injury and property damage.

(B) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of \$2,000,000.00 for each accident;

(C) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00; and

(D) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$5,000,000.00;

(E) *Repealed by Ord. 2925.*

(F) *Repealed by Ord. 2925.*

(G) Excess umbrella liability policy with limits of no less than \$5,000,000 per occurrence and in the aggregate.

(H) Insurance shall be placed with insurers with a rating of A.M.Best & Company's Key rating Guide of A-Overall and a Financial Size Category of "VIIX". The liability insurance policies required by this section shall be maintained by the Grantee throughout the term of the Master Permit, Right-of-Way Use Permit, Small Cell Permit, or Facilities Lease, and such other period of time during which the Grantee is operating without a Master Permit, Right-of-Way Use Permit, Small Cell Permit, or Facilities Lease hereunder, or is engaged in the removal of its Telecommunications facilities. Failure to maintain such insurance shall be grounds for cancellation. The Grantee shall provide an insurance certificate, together with an endorsement including the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any Telecommunications facilities pursuant to said Master Permit, Right-of-Way Use Permit, Small Cell Permit, or Facilities Lease. Payment of deductibles and self-insured retentions shall be the sole responsibility of

the Grantee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Grantee's insurance shall be primary and non-contributory insurance as respects the City, its elected and appointed officers, officials, employees, agents, representatives, engineers, consultants, and volunteers. Any insurance maintained by the City, its elected and appointed officers, officials, employees, consultants, agents, representatives, engineers and volunteers shall be in excess of the Grantee's insurance and shall not contribute with it.

Maintenance of insurance shall not be construed to limit the liability of Grantee to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity.

(I) In addition to the coverage requirements set forth in this section, the Grantee must notify the City of any cancellation or reduction in said coverage. Within 30 days after receipt by the City of

said notice, and in no event later than 15 days prior to said cancellation or intent not to renew, the Grantee shall obtain and furnish to the City a replacement insurance certificate meeting the requirements of this Section.

(J) Upon approval by the Director and based on conditions set by the City in the Master Permit, the Grantee may self-insure under the same terms as required by this section. Further, the Director may modify these insurance requirements as he/she deems necessary to comply with the City's risk management policies or as otherwise approved by the City's Risk Manager, provided that any such changes provide adequate protection for the City.

12.14.630 General Indemnification.

As consideration for the issuance of the Master Permit, the Master Permit shall include an indemnity clause substantially conforming to the following:

(A) Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers and representatives from any and all

claims, costs, judgments, awards or liability to any Person arising from injury, sickness, or death of any Person or damage to property:

(1) For which the negligent acts or omissions of Grantee, its agents, servants, officers or employees in performing the activities authorized are the proximate cause;

(2) By virtue of Grantee's exercise of the rights granted herein;

(3) By virtue of the City's permitting Grantee's use of the public ways or other City property;

(4) Based upon the City's inspection or lack of inspection of work performed by Grantee, its agents and servants, officers or employees in connection with work authorized on a Telecommunications Facility, public ways or other City property over which the City has control pursuant to any Master Permit, Right-of-Way Use Permit, Small Cell Permit, or Facilities Lease issued;

(5) Arising as a result of the negligent acts or omissions of Grantee, its agents, servants, officers or employees in barricading, instituting

trench safety systems or providing other adequate warnings of any excavation, construction, or work upon a Telecommunications Facility, in any public ways, other ways or other City property in performance of work or services;

(6) Based upon radio frequency emissions or radiation emitted from Grantee's equipment located upon a Telecommunications Facility, regardless of whether Grantee's equipment complies with applicable federal statutes and/or FCC regulations related thereto.

(B) Grantee's indemnification obligations pursuant to Subsection A of this section shall include assuming potential liability for actions brought against the City by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this assumption of potential liability for actions brought against the City by the aforementioned employees is with respect to claims against the City arising by virtue of Grantee's

exercise of its rights. In addition to the indemnification obligations throughout this Section, the obligations of Grantee under this Subsection B shall be mutually negotiated between the parties. Grantee shall acknowledge that the City would not enter into an agreement without Grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Grantee will waive its immunity under Title 51 RCW as provided in RCW 4.24.115.

(C) Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Grantee has been given prompt written notice by the City of any such claim, said indemnification obligations shall also extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

(D) In the event that Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties agree to decide the matter), to have been a wrongful refusal on the part of Grantee, then Grantee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees, reasonable attorneys' fees, the reasonable costs of the City, and reasonable attorneys' fees of recovering under this Subsection.

(E) The obligations of Grantee under the indemnification provisions of this section shall apply regardless of whether liability for damages arising out of bodily injury to Persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this section, however, are not to be construed to require the Grantee to hold harmless, defend or indemnify the City as to any claim, demand, suit or action which arises out of the sole negligence or willful

misconduct of the City. In the event that a court of competent jurisdiction determines that a Master Permit is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to provide that the Grantee's obligation to indemnify the City hereunder shall extend only to the extent of Grantee's negligence.

(F) Notwithstanding any other provisions of this section, Grantee assumes the risk of damage to its Telecommunications facilities located in the public ways, other ways and upon City property from activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from any sole negligence **or willful misconduct** ~~[, WILLFUL OR MALICIOUS ACTION]~~ on the part of the City, its officers, agents, employees or contractors. **In no event shall the city be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform.**

Grantee releases and waives any and all such claims against the City, its officers, agents, employees and contractors. Grantee further agrees to indemnify, hold harmless and defend the City against any third party claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Grantee's Telecommunications facilities as the result of any interruption of service due to damage or destruction of Grantee's Telecommunications facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors~~[-~~
~~EXCEPT TO THE EXTENT ANY SUCH DAMAGE OR DESTRUCTION IS CAUSED BY OR ARISES FROM THE SOLE NEGLIGENCE OR ANY WILLFUL OR MALICIOUS ACTIONS ON THE PART OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS]~~.

(G) These indemnification requirements shall survive the expiration, revocation, or termination of a Master Permit or a Right-of-Way Use Permit or Small Cell Permit issued thereunder.

12.14.640 Security Fund.

(A) Prior to issuance of a Master Permit pursuant to this Chapter, each Grantee shall establish a

permanent security fund with the City by depositing the amount of \$50,000, or such higher amount as deemed necessary by the Public Works Director, with the City in cash, bond or an unconditional letter of credit, based upon both operating history in public ways, other ways and City property and the cost of removal of the Grantee's facilities; which fund shall be maintained at the sole expense of the Grantee so long as any of the Grantee's Telecommunications facilities are located within the public ways, other ways or upon City property.

(B) The fund shall serve as security for the full and complete performance of this Chapter and the Master Permit including any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to the Grantee to comply with the codes, ordinances, rules, regulations, or permits of the City applicable to the construction, maintenance, repair or removal of Telecommunications facilities in the public ways, other ways or upon City property.

The City and the Grantee shall agree upon and specify in the Master Permit certain amounts which

represent both parties' best estimate of the damages for failure to comply with the Master Permit or the Small Cell Permit or Right-of-Way Use Permit issued thereunder. The liquidated damages provided in the Master Permit shall be the exclusive monetary remedy for the named breaches. Neither the right to liquidated damages nor the payment of liquidated damages shall bar or otherwise limit the right of the City in a proper case to:

(1) Obtain judicial enforcement of a Grantee's obligations by means of specific performance, injunctive relief, mandamus or other remedies at law or in equity;

(2) Consider any substantial violation or breach as grounds for forfeiture and termination of a Master Permit or Right-of-Way Use Permit or Small Cell Permit issued thereunder; and

(3) Consider any violation or breach as grounds for nonrenewal or nonextension of a Master Permit or issuance of a new Master Permit.

(C) Before any sums are withdrawn from the security fund, the City shall give written notice to the Grantee:

(1) Describing the act, default or failure to be remedied, or the damages, costs or expenses which the City has incurred by reason of Grantee's act or default regarding the installation, maintenance, repair or removal of Telecommunications facilities in the public ways, other ways or upon City property or in connection with restoration of the foregoing;

(2) Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure regarding the installation, maintenance, repair or removal of Telecommunications facilities in the public ways, other ways, or upon City property or in connection with the restoration of the foregoing, if applicable;

(3) Providing a reasonable opportunity for Grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and

(4) That the Grantee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

(D) Grantees shall replenish the security fund within 14 days after written notice from the City that there is a deficiency in the amount of the fund.

(E) Upon termination or expiration of the Master Permit all funds remaining in the Security Fund shall be returned to the Grantee within 30 days after removal of Grantee's Telecommunications facilities within the public ways, unless such Telecommunications facilities are permitted to remain pursuant to Section 12.14.590.

12.14.650 Restoration/Performance/Warranty Bond.

(A) Grantees performing work in the public ways or City property must provide a performance bond written by a corporate surety acceptable to the City equal to at least 150% of the estimated cost of completing or removing the Grantee's Telecommunications facilities and restoring the public ways or City property to its pre-construction condition. The Public Works Director may, at his/her discretion, waive the bonding requirement for specific projects. This bond may be placed for the entirety of the Grantee's projects provided that Grantee is able to quantify the full estimated cost of its deployment

of Telecommunications facilities. If Grantee provides a bond on a per project basis, Grantee is permitted to increase the bond for future projects, or if a project is complete, Grantee may apply the bond to other projects in the public ways. The purpose of this bond is to guarantee completion or removal of partially completed or nonconforming Telecommunications facilities and to fully restore the public ways, other ways and City property to their pre-construction condition.

(B) If required by the City, Grantee shall furnish a one (1) year warranty bond, or other surety acceptable to the City, upon the completion of Grantee's construction work, including any restoration work, within the public ways. The warranty bond amount will be equal to ten percent (10%) of the documented final cost of the construction and restoration work.

12.14.660 Coordination of Construction Activities.

(A) All Master Permit and Facilities Lease Grantees are required to cooperate with the City and with each other in coordination of construction activities and monthly meetings and joint trenching activities. Upon request by the City, Grantees shall

provide the City with a schedule of their proposed construction activities, if known, in, around, or that may affect public ways. Each Grantee shall also meet with the City and other Grantees and users of the public ways monthly, quarterly, or as determined by the City to schedule and coordinate construction activities within the public ways. The Public Works Director shall coordinate all construction locations, activities, and schedules to minimize public inconvenience, disruption, or damage to the public ways.

(B) In order to facilitate coordination of construction activities within the public ways, the City shall provide reasonable advance notice to Grantees of public street improvements. In the event that a Grantee or other party desiring to place Telecommunications facilities within the public ways fails to coordinate installation of its Telecommunications facilities within the area of the public improvement project, the Public Works Director may deny Master Permits, Small Cell Permits, Facilities Leases, and Right-of-Way Use Permit applications for a period of up to five (5) years for

those portions of a project which seek to disrupt the surface of said public ways, as reasonably determined by the Public Works Director for the purpose of protecting the City's investment and said public improvement projects. In the alternative, the Public Works Director may, at his/her discretion, allow such Persons to disrupt the surface of said public ways, provided that such Persons are required to fully restore the surface and sub-surface areas of such public ways to the condition they were in (to the satisfaction of the Public Works Director) immediately after completion of the public improvement project.

12.14.670 Assignments or Transfers of Grant.

Ownership or control of a Master Permit granted hereunder may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of a Grantee, by operation of law or otherwise unless notice is given by the transferee or assignee to the City in writing within sixty (60) days of the closing of the transaction.

12.14.680 Transactions Affecting Control of Grant.

Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control (for example, management of Grantee or its Telecommunications facilities) of the Grantee or of the ownership or working control of the Grantee's Telecommunications facilities within the City, or of the ownership or working control having ownership or working control of the Grantee or of the Grantee's Telecommunications facilities within the City, or of control of the capacity or bandwidth of the Grantee's Telecommunications facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Chapter. Such transactions between affiliated entities are not exempt from notice requirements. A Grantee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Grantee within sixty (60) days following the closing of the transaction. Notice shall not be required for mortgaging purposes.

12.14.690 Revocation or Termination of Grant.

A Master Permit granted by the City to use or occupy public ways, other ways or City property may be revoked for the following reasons:

(A) Construction or operation in the public ways, other ways or upon City property without a Right-of-Way Use Permit, Master Permit, Small Cell Permit, or Facilities Lease, as applicable;

(B) Construction or operation at an unauthorized location;

(C) Misrepresentation or lack of candor by or on behalf of a Grantee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any Master Permit, Right-of-Way Use Permit, Small Cell Permit, or Facilities Lease, pursuant to this Chapter;

(D) Unauthorized abandonment of Telecommunications facilities in the public ways, other ways or upon City property;

(E) Failure to relocate or remove Telecommunications facilities as required in this Chapter;

(F) Failure to pay undisputed compensation, fees or costs in accordance with RCW 35.21.860 when and as due the City;

(G) Violation of any bonding, insurance, indemnification and restoration provisions of this Chapter.

12.14.700 Notice and Duty to Cure.

In the event that the City believes that grounds exist for revocation of a Master Permit or Right-of-Way Use Permit or Small Cell Permit issued thereunder, the Grantee shall be given written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Grantee a reasonable period of time, not exceeding 45 calendar days, to furnish evidence:

(A) That corrective action has been or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

(B) That rebuts the alleged violation or noncompliance; and

(C) That it would be in the public interest to impose some penalty or sanction less than revocation.

12.14.710 Hearing.

~~{(A)}~~ In the event that a Grantee fails to provide evidence reasonably satisfactory to the City as provided in section 12.14.700 hereof, the apparent violation or noncompliance (except for those dealing with Right-of-Way Use Permits and Small Cell Permits) shall be referred to the Hearing Examiner. The Hearing Examiner shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

Unless substantial relevant information is presented which was not considered by the Public Works Director, the decision of the Public Works Director shall be accorded substantial weight, but may be reversed or modified by the Hearing Examiner if, after considering all of the evidence in light of the applicable goals, policies, and provisions of this Chapter, the Hearing Examiner determines that a mistake has been made. Where substantial new relevant information which was not considered in the making of the decision appealed from has been presented, the Hearing Examiner shall make its decision only upon the basis of the facts presented at the hearing of the

appeal, or may elect to remand the matter for reconsideration by the Public Works Director in light of the additional information.

For all appeals decided pursuant to this section, the City shall provide a record that shall consist of written findings and conclusions and a taped or written transcript.

Unless otherwise provided by state statute or other law, all actions seeking review of a final action of the City, whether in the form of an appeal, declaratory judgment action, petition for writ of review or other extraordinary writ, or in any other form shall be filed with a court having jurisdiction over such action within thirty (30) calendar days of the decision, or the expiration of the reconsideration period, whichever is later, and otherwise shall be barred.

12.14.720 Standards for Revocation or Lesser Sanctions.

If the Hearing Examiner determines that a Grantee willfully violated or failed to comply with any of the provisions of this Chapter or a Master Permit, or through willful misconduct or gross negligence failed

to heed or comply with any notice given the Grantee by the City under the provisions of this Chapter, then the Grantee shall, at the election of the Hearing Examiner, forfeit all rights conferred hereunder and the Master Permit may be revoked or annulled by the Hearing Examiner. The Hearing Examiner may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including but not limited to, denying pending permit applications or obtaining an order from the Superior Court having jurisdiction compelling the Grantee to comply with the provisions of this Chapter and any Master Permit or Right-of-Way Use Permit or Small Cell Permit issued thereunder, and to recover damages and costs incurred by the City by reason of the Grantee's failure to comply. The Hearing Examiner shall consider the following factors in analyzing the nature, circumstances, extent, and gravity of the violation and in making its determination under this section:

- (A) Whether the misconduct was egregious;
- (B) Whether substantial harm resulted;
- (C) Whether the violation was intentional;

(D) Whether there is a history of prior violations of the same or other requirements;

(E) Whether there is a history of overall compliance; and

(F) Whether the violation was voluntarily disclosed, admitted or cured.

12.14.730 Incorporation by Reference.

The provisions of this Chapter shall be incorporated by reference into any Master Permit approved hereunder. However, in the event of any conflict between this Chapter, and the Master Permit, the Master Permit shall be the prevailing document.

12.14.740 Notice of Entry on Private Property.

If directed by the City, at least 48 hours prior to entering private property or public ways or utility easements adjacent to or on such private property to perform new construction or reconstruction, or otherwise entering or impacting access or services to the private property, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by the Grantee. A door hanger may be used to comply with the notice and posting

requirements of this section. A Grantee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations consistent with sound engineering practices; provided, however, that nothing in this Chapter shall permit a Grantee to unlawfully enter or construct improvements upon the property or premises of another.

12.14.750 Safety Requirements.

A Grantee in accordance with applicable federal, state, and local safety requirements shall, at all times, employ reasonable and ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the public ways, other ways, City property or places permitted by a Master Permit, Small Cell Permit, Facilities Lease or Right-of-Way Use Permit, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The City reserves the

general right to see that the system of a Grantee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with a Grantee, establish a reasonable time for a Grantee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a Grantee.

12.14.760 Exceptions.

Repealed by Ord. 2925.

12.14.770 Responsibilities of the Owner.

The owner of the Telecommunications facilities to be constructed and, if different, the permittee and Grantee are responsible for performance of and compliance with all provisions of this Chapter.

12.14.780 Additional Ducts or Conduits.

The City may require that a Telecommunications provider or cable operator that is constructing, relocating, or placing ducts or conduits in the public ways provide the City with additional ducts or conduits in related structures necessary to access the

same. The terms and conditions under which such additional ducts and/or conduits shall be provided shall be consistent with RCW 35.99.070.

Article VI. Construction Standards

12.14.800 General Construction Standards.

Notwithstanding any provision of Chapter 12.08 of the Redmond Municipal Code, no Person shall commence or continue with the construction, installation, maintenance, or repair of any Telecommunications facilities within public ways or upon City property, except as provided in this Chapter.

12.14.810 Right-of-Way Use Permit or Small Cell Permit Required.

(A) The holder of a Master Permit granted pursuant to this Chapter shall obtain Right-of-Way Use Permits or Small Cell Permits from the City prior to commencement of work, construction, development, excavation, or installation, maintenance, operation or repair or replacement of any Telecommunications facilities within the public ways or upon City property. The receipt of a Small Cell Permit pursuant to RMC 12.14.1050 shall suffice as the appropriate Right-of-Way Use Permit. However, nothing in this

Chapter shall prohibit the City and a Grantee from agreeing to alternative plan review and construction procedures for Telecommunications facilities to be built, installed, constructed, developed, excavated, maintained, operated, repaired or replaced pursuant to a Master Permit granted under this Chapter, provided such alternative procedures provide for substantially equivalent safeguards and responsible construction practices. Even if a Master Permit is not required under State law, a Right-of-Way Use Permit or Small Cell Permit shall still be required. No work, construction, development, excavation or installation, maintenance, operation, repair or replacement of any Telecommunications facilities shall take place within the public ways, other ways or upon City property until such time as the Right-of-Way Use Permit or Small Cell Permit is issued.

(B) A Telecommunications provider seeking to deploy a Macro Cell Facility in the public ways or other ways must obtain a Right-of-Way Use Permit and approval consistent with RZC 21.56.

12.14.820 Construction Codes.

Construction of Telecommunications facilities with respect to public ways, other ways and City property shall be developed, installed, excavated, maintained, repaired and replaced in accordance with all applicable federal, state and local codes, rules and regulations.

12.14.830 Applications.

(A) Applications for Right-of-Way Use Permits to install, maintain, repair and remove Telecommunications facilities shall be submitted to the Director upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the installation, maintenance, repair or removal of Telecommunications facilities will be in accordance with all applicable codes, rules and regulations;

(2) Preliminary engineering plans, specifications and a map showing where the Telecommunications facilities are to be located within the City, all in sufficient detail to identify:

(a) The location and route requested for the Applicant's proposed Telecommunications

facilities. Vertical location shall be provided for proposed crossings of all existing utilities that will be crossed;

(b) The location of Applicant's overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the public ways along the proposed route;

(c) The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

(3) If the Applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

(a) The location proposed for the new ducts or conduits;

(b) Evidence that there is sufficient capacity within the public ways for the proposed Telecommunications facilities;

(4) The construction methods to be employed for protection of existing structures, fixtures, and Telecommunications facilities within or adjacent to the public ways;

(5) *Repealed by Ord. 2925.*

(6) Proposed construction schedule and work hours which may be limited by the City (including the requirement of working at night for traffic flow and other public health, safety and welfare related issues);

(7) *Repealed by Ord. 2925.*

(8) *Repealed by Ord. 2925.*

(9) For the installation or modification of a Macro Cell Facility, evidence demonstrating that the Applicant has received all of the necessary zoning and land use permits and approvals from the City or evidence that complete applications for such permits and approvals have been submitted to the City and the proposed Telecommunications facility meets all applicable zoning and land use codes; and

(10) The location of all survey monuments which may be displaced or disturbed by the proposed [CONTRUCTIONS] constructions.

(B) All applications for Right-of-Way Use Permits shall be submitted at least thirty (30) days prior to the need for the Right-of-Way Use Permit. Applicants with ~~[APPLICATIONS FOR]~~ complex projects are encouraged to submit their applications ~~[SHOULD BE SUBMITTED]~~ at least one hundred twenty (120) days prior to the planned need for the Right-of-Way Use Permit. If unforeseen conditions or circumstances require expedited processing time, the City will reasonably attempt to cooperate where practicable, but additional fees to cover additional costs to the City shall be charged.

(C) RMC 12.14.830 shall not apply to Small Cell Permits.

12.14.840 Engineer's Certification.

Where required by the Public Works Director and if in accordance with State law, Right-of-Way Use Permit and Small Cell Permit applications shall be accompanied by drawings, plans and specifications bearing the certification of a registered professional engineer.

12.14.850 Traffic Control Plan.

All Right-of-Way Use Permit applications and Small Cell Permit applications which involve work on, in, under, across, or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

12.14.860 Issuance of Permit.

(A) Subject to 12.14.830B above, applications for Right-of-Way Use Permits shall be approved or denied within a reasonable time after submission of a complete application therefor, generally not to exceed thirty (30) days, unless otherwise provided by State law or unless the Applicant consents to a longer period of time or the Applicant has not obtained a Master Permit or Facilities Lease as required by this Chapter. In the event that processing a Right-of-Way Use Permit takes longer than the time periods specified herein, the City shall notify the Applicant in writing of the amount of time required to process the Right-of-Way Use Permit and the reasons therefor.

(B) After submission of all plans and documents required of the Applicant and payment of the Right-of-Way Use Permit fees required by this Chapter, and when the Public Works Director is satisfied that the applications, plans and documents comply with all requirements of this Article, and to the extent applicable, the criteria set forth in RMC 12.14.110, he or she shall issue the Right-of-Way Use Permit subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he or she may deem reasonably necessary or appropriate. In the event that a Right-of-Way Use Permit is denied, the Public Works Director shall set forth the reasons therefor in writing.

(C) RMC 12.14.860 shall not apply to Small Cell Permits.

12.14.870 Appeal of Director's Decision.

An Applicant aggrieved by the denial or conditioning of a Right-of-Way Use Permit or Small Cell Permit pursuant to this Article shall have the right to appeal to the City Council pursuant to the procedures set forth in RMC 12.14.120.

12.14.880 Compliance with Right-of-Way Use Permit or Small Cell Permit.

All construction practices and activities shall be in accordance with the Right-of-Way Use Permit or Small Cell Permit and approved final plans and specifications for the Telecommunications facilities. The Public Works Director and his or her representatives shall be provided access to the work and such further information regarding construction activities in the public ways, other ways and City property as he or she may require to ensure compliance with such requirements.

12.14.890 Display of Right-of-Way Use Permit or Small Cell Permit.

The permittee shall maintain a copy of the Right-of-Way Use Permit or Small Cell Permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Public Works Director at all times when construction work is occurring.

12.14.900 Survey of Underground Telecommunications Facilities.

If the approved plans, Right-of-Way Use Permit, or Small Cell Permit specifies the location of Telecommunications facilities by depth, line, grade, proximity to other Telecommunications facilities or other standard and if requested by the City, the permittee, at its cost, shall cause the location of such Telecommunications facilities to be verified by record drawings, pre-construction locates, a state-registered land surveyor or by other means of locating as agreed upon by the City and permittee. The permittee may be required to relocate any Telecommunications facilities which are not located in compliance with the approved plans, Right-of-Way Use Permit, or Small Cell Permit requirements.

12.14.910 Noncomplying work.

Repealed by Ord. 2925.

12.14.915 Noncomplying Work.

(A) Whenever the Public Works Director determines that any condition on any public ways or other ways is in violation of, or public ways or other ways are being used contrary to, any provision of this Chapter, Master Permit, Right-of-Way Use Permit, or Small Cell Permit, the Public Works Director may order the

correction or discontinuance of such condition or any activity causing such condition.

(B) The Public Works Director is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions or activities as it determines appropriate:

(1) Serving of oral or written directives to the Grantee or other responsible person requesting immediate correction or discontinuance of the specified condition;

(2) Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within ten (10) days of notice, or such other reasonable period as the Public Works Director may determine;

(3) Revocation of previously granted permits where the Grantee or other responsible person has failed or refused to comply with requirements imposed by the City related to such permits;

(4) Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work;

(5) Refusal to grant additional permits to Grantee until the correction or discontinuance of such unsafe, nonconforming or unauthorized use is resolved; or

(6) Service of summons and complaint certified by the City Attorney, or a citation and notice to appear by an arresting peace officer upon the Grantee or other responsible person who is in violation of this Chapter, Master Permit, Right-of-Way Use Permit or Small Cell Permit, or other City ordinances.

(C) Any object or thing which shall occupy any public ways or other ways without a permit is declared a nuisance. The City may attach a notice to any such object or thing stating that if it is not removed from the public ways or other ways within twenty-four hours of the date and time stated on the notice, the object or thing may be taken into custody and stored at the owner's expense. The notice shall provide an address and phone number where additional information may be obtained. If the object or thing is a hazard to public safety, it may be removed summarily by the City. Notice of such removal shall be thereafter given to

the owner, if known. This section does not apply to motor vehicles.

(D) All expenses incurred by the City in abating the condition, or any portion thereof, shall constitute a civil debt owing the city, jointly and severally, by such persons who have been given notice or who own or placed the object or thing in the right-of-way, which debt shall be collectible in the same manner as any other civil debt.

(E) The City shall also have all powers and remedies which may be available under law, this Chapter and procedures adopted hereunder for securing the correction or discontinuance of any conditions specified by the City.

12.14.920 Completion of Construction.

The Grantee shall promptly complete all construction activities so as to minimize disruption of the public ways and other ways, City property and other private property. All construction work authorized by a Right-of-Way Use Permit or Small Cell Permit within public ways, other ways and City property, including restoration, must be completed within six (6) months of the date of issuance unless

an extension of an additional six (6) months is granted by the Director, the applicant may request up to two extensions.

12.14.930 Record Drawings.

Within 60 days after completion of construction, the Grantee shall furnish the City with complete sets of plans, drawn to scale and certified to the City as accurately as reasonably possible and depicting the horizontal and vertical location and configuration of all Telecommunications facilities constructed pursuant to the Right-of-Way Use Permit or Small Cell Permit.

For above ground Telecommunications facilities, such plans shall include site photographs.

The Public Works Director shall have the discretion to prescribe the number of copies and format of said record drawings, consistent with City codes and policies, and to require submission of such record drawings in a digital format.

12.14.940 Restoration After Construction, Installation, Maintenance, Repair or Replacement.

Upon completion of any construction, maintenance, repair or replacement work, the permittee shall promptly repair any and all public and private

property improvements, fixtures, structures, and Telecommunications facilities in the public ways, other ways or City property or otherwise damaged during the course of construction, installation, maintenance, repair or replacement, restoring the same as nearly as practicable to its condition before the start of construction, installation, maintenance, repair or replacement. All survey monuments disturbed or displaced shall be referenced and replaced as required by WAC 332-120 and the Redmond Benchmark System second order, first class specifications. The referencing and replacement of survey monuments shall be performed by a licensed land surveyor. The Public Works Director shall have final approval of the completeness of all restoration work and all Grantees shall warrant said restoration work for a period of at least one (1) year.

12.14.950 Landscape Restoration.

(A) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair, or replacement of Telecommunications facilities, whether such work is done pursuant to a Master Permit, Right-of-Way Use

Permit, Small Cell Permit, or Facilities Lease, shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

(B) All landscape restoration work within the public ways shall be done in accordance with landscape plans approved by the Public Works Director.

12.14.960 Construction Surety.

Prior to issuance of a Right-of-Way Use Permit or Small Cell Permit, the permittee shall either provide a new performance bond or provide evidence that it has already provided a performance bond consistent with the requirements of RMC 12.14.650.

12.14.970 Above-Ground Telecommunications Facilities.

Installation in the public ways, other ways and City property of numerous above-ground Telecommunications facilities by Grantees may create safety hazards and adverse visual impacts. Consequently, the Public Works Director is authorized to impose reasonable conditions in order to mitigate those potential adverse impacts that may result, whether on an individual or a cumulative basis, from permitted above-ground Telecommunications facilities.

Those conditions may include or relate to, without limitation, the following:

(A) Prior to issuance of the requisite Right-of-Way Use Permits or Small Cell Permits, all above-ground Telecommunications facilities proposed to be installed by a Grantee in the public ways, other ways or City property must be clearly delineated on the plans when they are submitted for the City's review.

(B) The subsequent design and installation by qualified professionals of landscaping and barriers to minimize public view per City development guidelines of those above-ground Telecommunications facilities (while maintaining necessary sight lines for motorists and pedestrians).

(C) The maintenance of all above-ground Telecommunications facilities in good condition, including compliance with the City's requirements or ordinances regarding graffiti removal. In this regard, a Grantee shall be required to affix to its above-ground Telecommunications facilities a coded label or marker that identifies the specific facility and sets forth a telephone number that may be called to report

any damage, destruction, or graffiti vandalism involving that Telecommunications facility.

(D) The placement of above-ground Telecommunications facilities, such as overhead drops, as close as possible to other utility drops, consistent with all applicable electrical codes.

(E) Reasonable limitations upon the number of above-ground Telecommunications facilities that may be installed within a designated geographical area so as not to inconvenience the public use of the right-of-way or adversely affect the public health, safety, and welfare, and provided that such conditions neither prohibit nor have the effect of prohibiting the provision of personal wireless services.

(F) Reasonable limitations upon the dimensions or volumes, or both, of above-ground Telecommunications facilities, provided that if Grantee proposes such above-ground Telecommunications facilities for personal wireless services such dimensions are consistent with the Redmond Zoning Code Chapter 21.56.

(G) The specification of colors of above-ground Telecommunications facilities reasonably requested by the City to ensure that these Telecommunications

facilities blend with the surrounding environment to the maximum extent possible and taking into account the manufacturer's available color selection.

(H) Such additional conditions regulating the time, place, and manner of installations of above-ground Telecommunications facilities as will reasonably mitigate potential safety hazards and adverse visual impacts attributable to these Telecommunications facilities.

(I) Compliance with RZC Chapter 21.56 to the extent the Telecommunications facilities are for personal wireless services.

12.14.980 Severability.

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

Article VII. Small Cell Permits

12.14.990 Master Permit Required.

(A) Issuance of a Small Cell Permit to install a Small Cell facility or network in the public ways shall be contingent upon approval of a Master Permit or the possession of a valid Master Permit. An Applicant may apply for a Small Cell Permit at the same time as the Applicant applies for a Master Permit; however, no Small Cell Permit will be granted until such Master Permit is approved by the Director, which may occur at the same time.

(B) Small Cell facilities may not be located in utility easements or public easements that are not adjacent to the public ways, unless specifically approved by the Director.

12.14.1000 Small Cell Permit application contents.

(A) The application shall provide specific locational information including GIS coordinates of all Small Cell facilities, and specify where the Small Cell facilities will utilize existing, replacement or new poles, towers, existing buildings and/or other structures. Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified regardless of whether the

additional facilities are to be constructed by the Applicant or leased from a third party. Detailed schematics and visual renderings of the Small Cell facilities shall be provided by the Applicant. The application shall have sufficient detail to identify:

(1) The location of overhead and underground public utility, telecommunication, cable, water, adjacent lighting, sewer drainage and other lines and equipment ~~[IN THE PUBLIC WAYS ALONG THE PROPOSED ROUTE;]~~ within 50 feet of the proposed project area (which the project area shall include the location of the fiber source and power source). Further, the Applicant shall include all existing and proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 50 feet from the proposed project area.

(2) The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be

disturbed during construction.

(3) The construction drawings shall also include the Applicant's plan for electric and fiber utilities, all conduits, cables, wires, handholes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small cell facility, to the extent to which the Applicant is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements. Where another party is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements, applicant's construction drawings will include such utilities to the extent known at the time of application, but at a minimum applicant must indicate how it expects to obtain fiber and electric service to the small cell facility.

(4) If the site location includes a replacement or new light pole that is placed more than five feet away from the existing location, then the Applicant must submit a photometric analysis of the roadway and sidewalk 150 feet upstream and downstream of the existing light.

(5) Compliance with the aesthetic requirements of RZC 21.56.

(B) The Applicant must show written approval from the owner of any pole or structure for the installation of its Small Cell facilities on such pole or structure. Such written approval shall include approval of the specific pole, engineering and design standards from the pole owner, unless the pole owner is the City. Submission of the lease agreement between the owner and the Applicant is not required. For city-owned poles or structures, the Applicant must obtain a Facilities Lease from the City prior to or concurrent with the Small Cell Permit application. The Applicant can batch multiple Small Cell facility sites in one application. The Applicant is encouraged to batch the Small Cell facility sites within an application in a contiguous service area.

(C) ~~[UP TO FIFTEEN (15) SITES MAY BE SPECIFIED IN ONE SMALL CELL PERMIT APPLICATION FOR PROCESSING, PROVIDED ALL SMALL CELL FACILITIES ARE IN A CONTIGUOUS SERVICE AREA. THE DIRECTOR MAY ALLOW UP TO FIVE (5) ADDITIONAL SITES IN ONE APPLICATION IN ORDER TO~~

~~CONSIDER SMALL CELL FACILITY SITES WITHIN ONE
CONTIGUOUS SERVICE AREA IN ONE APPLICATION.]~~

~~[(D) If more than one application for a Small
Cell Permit is submitted by an Applicant, they shall
be considered in the order received. If multiple
applications are submitted on the same date, the
Applicant shall indicate which application should be
considered first.]~~

(E) The Director may approve, deny or
conditionally approve all or any portion of the sites
proposed in the Small Cell Permit application. The
denial of one or more Small Cell facility locations
within a submission described in subsection (C) above
shall not be the sole basis for a denial of the entire
application for Small Cell facilities.

(F) Any application for a Small Cell Permit which
contains an element which is not exempt from SEPA
review shall simultaneously apply under Chapter 43.21C
RCW and Chapter 21.70 RZC.

(G) The Applicant shall submit a sworn affidavit
signed by an RF Engineer with knowledge of the
proposed project affirming that the Small Cell
facilities will be compliant with all FCC and other

governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the Small Cell facility will operate. If facilities which generate RF radiation necessary to the Small Cell facility are to be provided by a third party, then the Small Cell Permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation. The Applicant may provide one emissions report for the entire Small Cell deployment if the Applicant is using the same Small Cell facility configuration for all installations within that batch, or may submit one emissions report for each subgroup installation identified in the batch.

(H) The Applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

(I) A professional engineer licensed by the State of Washington shall certify in writing, over his or her seal, that both construction plans and final construction of the Small Cell facilities and the antenna support structure or pole and foundation are

designed to reasonably withstand wind and seismic loads ~~[as established by the International Building Code]~~.

(J) A traffic control plan as required by RMC 12.14.850.

(K) Such other information as the Director, in his/her discretion, shall deem appropriate **to effectively evaluate the application based on technical, engineering and aesthetic considerations.**

12.14.1010 Small Cell Permit application completeness review.

The Director or his/her designee shall review an application for completeness and notify the Applicant **consistent with requirements of federal and state law.**

~~[WITHIN THIRTY (30) DAYS OF SUBMISSION WHETHER THE APPLICATION IS COMPLETE, PROVIDED, HOWEVER, THAT AN APPLICANT MAY CONSENT TO A DIFFERENT COMPLETENESS REVIEW PERIOD.]~~ An Applicant may resubmit an incomplete application within sixty (60) days of notice by the ~~[D]~~ **(D)**irector. Failure to resubmit an application within the sixty (60) day period shall be deemed a withdrawal of that application. No

application shall be deemed complete without the appropriate fees or deposit set by the Director.

12.14.1020 Review process.

(A) In any zone, upon application for a Small Cell Permit, the City will permit Small Cell deployment on existing or replacement poles conforming to the City's ~~[GENERALLY APPLICABLE]~~ design standard adopted pursuant to Chapter 21.56 RZC. The design approved in a permit for a small cell facility shall be considered concealment elements and such facilities may only be expanded upon an Eligible Facilities Request described in Chapter 21.56 RZC when the modification does not defeat the concealment elements of the small cell facility. ~~[THE DESIGN STANDARDS ADOPTED PURSUANT TO CHAPTER 21.56 RZC SHALL BE CONSIDERED CONCEALMENT STANDARDS AND THEREFORE ELIGIBLE FACILITIES REQUESTS SHALL NOT APPLY TO FACILITIES PERMITTED PURSUANT TO A SMALL CELL PERMIT IF THE MODIFICATION DEFEATS THE CONCEALMENT ELEMENTS OF THE SMALL CELL FACILITY.]~~

(B) When applicable, Small Cell Permits shall be reviewed concurrently with the land use process described in RZC 21.76.070.

(C) Vertical and horizontal clearance shall be reviewed by the Director to ensure that the Small Cell facilities will not pose a hazard to other users of the public ways, or unduly impact the maintenance and operation of a City-owned facility.

(D) Replacement poles, new poles and ground mounted equipment shall comply with the Americans with Disabilities Act (ADA), city construction standards, city ordinances, and state and federal statutes and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement pole or new pole must: be physically passible, cannot obstruct vehicular or pedestrian traffic or the clear zone, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety. ~~[AND STATE AND FEDERAL REGULATIONS IN ORDER TO PROVIDE A CLEAR AND SAFE PASSAGE WITHIN THE RIGHTS-OF-WAY].~~

(E) No equipment shall be operated so as to produce noise in violation of Chapter 6.36 RMC (Noise Standards).

(F) No equipment shall be placed so as to physically impact the illumination of a street light or photo cell. Technical interference with city network communications or photo cells shall be governed by applicable law. [~~OR AFFECT THE OPERATION OF A PHOTO CELL OR CITY NETWORK COMMUNICATION DEVICE ON A STREET LIGHT~~].

(G) Review of the site locations for Small Cell facilities proposed by the Applicant shall be governed by the provisions of 47 USC 253 and 47 USC 332 and applicable case law. Applicants for Small Cell Permits which implement the Master Permit shall be treated in a competitively neutral and non-discriminatory manner with other Telecommunications providers providing functionally equivalent services, that is, Telecommunications providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts. Small Cell Permit review under this Chapter shall neither prohibit nor have the effect of prohibiting the ability of an Applicant to provide Telecommunications services.

12.14.1030 Facilities Lease for Small Cell Facilities.

An Applicant for a Small Cell facility on City-owned property (including land, poles, structures and buildings) within the public ways must obtain a Facilities Lease that specifically allows the attachment of small cell facilities to city-owned property consistent with ~~[PURSUANT TO]~~ Article IV of this Chapter 12.14. Approval of a Small Cell Permit or a Master Permit does not authorize attachment to City-owned property within the public ways unless a Facilities Lease is executed between the Applicant and the City.

12.14.1040 Shorelines and Critical Areas.

Small cell facilities in Shoreline Management Zones or Critical Areas are subject to review as provided in Chapter 21.56 RZC, Chapter 21.68 RZC, Shoreline Master Program, Chapter 21.64 RZC, Critical Areas Regulations and Chapter 21.70 RZC, State Environmental Policy Act Procedures, as applicable.

12.14.1050 Consolidated Permit.

(A) The issuance of a Small Cell Permit grants authority to construct Small Cell facilities in the public ways in a consolidated manner to allow the Applicant in most situations to avoid the need to seek

duplicative approval by both the Public Works and the Planning and Community Development departments. As an exercise of police powers pursuant to RCW 35.99.040(2), the Small Cell Permit is not a Right-of-Way Use Permit, but is a consolidated Public Works and land use permit and the issuance of a Small Cell Permit shall be governed by the time limits established by federal law for wireless communications facilities.

(B) The Small Cell Permit shall include those elements that are typically contained in the Right-of-Way Use Permit to allow the Applicant to proceed with the build-out of the Small Cell deployment without a separate Right-of-Way Use Permit.

12.14.1060 Modifications to Small Cell Facilities.

(A) If an Applicant desires to make modifications to Small Cell facilities, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure, placing additional pole mounted or ground mounted equipment or modifying the concealment elements, then the Applicant shall apply for a Small Cell Permit.

(B) ~~[GENERAL MAINTENANCE OF THE SMALL CELL FACILITIES, WHICH MAY INCLUDE BUT IS NOT LIMITED TO A~~
Small Cell Permit shall not be required for routine maintenance and repair of a small cell facility within the public ways, or the replacement of an antenna or equipment of similar size, weight, and height, provided that such replacement does not defeat the concealment elements used in the original deployment of the small cell facility, does not impact the structural integrity of the pole, and does not require pole replacement. Further, a Small Cell Permit shall not be required for replacing equipment within the equipment enclosure~~[,]~~ or reconfiguration of fiber or power to the small cell facility~~y [IES]. OR SWAPPING ANTENNAS FOR AN ANTENNA THAT MEETS THE SAME OR SUBSTANTIALLY SIMILAR DIMENSIONS, SHALL NOT REQUIRE A SMALL CELL PERMIT.]~~ The Applicant must obtain a Right-of-Way Use Permit for this action.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity

or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective date. This ordinance shall become effective five days after its publication, or publication of a summary thereof, in the city's official newspaper, or as otherwise provided by law.

ADOPTED by the Redmond City Council this _____ day of _____, 2019.

CITY OF REDMOND

JOHN MARCHIONE, MAYOR

ATTEST:

MICHELLE M. HART, MMC, CITY CLERK

(SEAL)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

JAMES HANEY, CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
SIGNED BY THE MAYOR:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.