

ORDINANCE NO. 1053

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, REPEALING AND REENACTING A NEW
CHAPTER 12.18 RIGHT--OF-WAY USE - MASTER USE
PERMITS AND UTILITY RELOCATION, AND FIXING A
TIME WHEN THE SAME SHALL BECOME EFFECTIVE.**

WHEREAS, the State Legislature has adopted Chapter 35.99 RCW governing local governments regulation of the public rights-of-way as it relates to telecommunications and cable service; and

WHEREAS, Chapter 35.99 specifically provides that its provisions “shall not preempt specific provisions in existing franchises or contracts between cities... and service providers”; and

WHEREAS, the City Council deems it to be in the public interest to adopt new provisions which comply with the provisions of Chapter 35.99 for application to new franchises by amending existing Chapter 12.18 as it relates to existing franchises and contracts; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The Gig Harbor Municipal Code is hereby amended by the repeal of the existing Chapter 12.18 and the enactment of a new Chapter 12.18 Right-of-Way Use - Master Use Permits and Utility Relocation to read as follows:

CHAPTER 12.18
Right-of-Way Use -
Master Use Permits and Utility Relocation

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12.18.010 Purpose.

The purpose and intent of this chapter is to:

- A. Provide for the orderly use of public right-of-way by establishing clear guidelines, standards and timeframes for the exercise of local authority with respect to the regulation of right-of-

way use by telecommunications and cable television providers and services.

B. Implement regulations that are consistent with the requirements of State law, to wit, Chapter 35.99 RCW as the same exists or is hereafter amended.

C. Conserve the limited physical capacity of the public ways held in public trust by the City.

D. Assure that the City's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs to be incurred by the City, to the full extent permitted by State and federal law.

E. Secure fair and reasonable compensation of the City and the residents of the City for permitting the private use of public rights-of-way while assuring that the City can continue to fairly and reasonably protect the public health, safety and welfare.

F. Enable the City to discharge its public trust consistent with the rapidly evolving State and federal regulatory policies, industry competition and technological development.

12.18.020 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 use it shall indicate otherwise. These definitions and all provisions of this Chapter shall be interpreted in a manner consistent with the provisions of State and federal law, including but not limited to Chapter 35.99 RCW.

A. "Applicant" means any person or entity that applies for any permit pursuant to this chapter.

B. "Cable television service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

C. "City" means the City of Gig Harbor, Washington.

D. “City property” means and includes all real property owned by the City, other than right-of-way as that term is defined herein; and all property held in proprietary capacity by the City. Such City property is not subject to the right-of-way Master Use Permits as provided for by this chapter.

E. “Construction standard” means a construction standard applicable to the right-of-way or utility easement and adopted by the owner of the easement. The term shall typically refer to construction standards adopted by the City. Rights-of-way in the jurisdiction under the control of the State pursuant to RCW 47.24.020 shall be subject to State-adopted construction standards if such standards are more restrictive or intensive than those of the City.

F. “Council” means the City Council of the City of Gig Harbor, Washington acting in its official capacity.

G. “Encroachment permit” means a permit issued pursuant to Chapter 12.02 of the Gig Harbor Municipal Code.

H. “Facilities” means all of the plant, equipment, fixtures, pertinences, antennae and other facilities necessary to furnish and deliver telecommunication services and cable television services, including but not limited to poles with cross-arms, poles without cross-arms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services.

I. “Franchise” means the initial authorization or a renewal thereof issued by the City, whether such authorization is designated as a franchise, permit, ordinance, resolution, contract, certificate, right-of-way use authorization, or otherwise which authorizes construction and operation of facilities with the City’s rights-of-way for the purpose of offering, cable service, utility or other service to subscribers or patrons.

J. “Franchisee” means the person to whom or which a franchise is granted by the Council and the lawful successor, transferee or assignee of said person subject to such conditions as may be defined in the franchise or by the ordinances of the City, including but not limited to the provisions of this chapter.

K. “Master Use Permit” means the agreement in whatever form whereby the city may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating facilities. This definition is not intended to limit, alter or change the extent of the existing authority of the City to require franchise nor does it 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 definition, a franchise, except for a cable television franchise, is a Master Use Permit. A Master Use Permit does not include cable television franchises.

L. “Other ways” means the highways, streets, alleys, utility easements or other rights-of-way within the City which are under the jurisdiction and control of a governmental entity or private party other than the City.

M. “Overhead facilities” means utility poles, utility facilities and cable and television facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

N. “Person” means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals including their lessors, trustees and receivers.

O. “Personal wireless service” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

P. “Right-of-way” means land or an easement acquired or dedicated for public roads and streets, but does not include:

1. State highways and other ways;
2. Land dedicated for roads, streets and highways not opened and not improved for motor vehicle use by the public;
3. Structures, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the State parks and recreation commission; or

6. Federally granted railroad rights-of-way acquired under 43. U.S.C. §912 and related provisions of federal law that are not open for motor vehicle use.

Q. “Service provider” means 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 or cable television service for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city or town.

R. “State” means the State of Washington.

S. “Subscriber” means any person, entity or user of a cable system who lawfully receives cable services or other service therefrom with the franchisee’s express permission.

T. “Telecommunication service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

U. “Transportation Improvement Plan” or “TIP” means the six-year element of the City’s Comprehensive Plan as amended annually by adoption by the Council.

V. “Use permit” means the authorization in whatever form whereby a city or town may grant permission to a service provider to enter and use the specified right-of-way for the purpose of installing, maintaining, repairing, or removing identified facilities. As used herein, the term shall be synonymous with the term “encroachment permit” as utilized in Chapter 12.02 of the Gig Harbor Municipal Code.

12.18.030 Applicability of Chapter.

A. This Chapter shall be applicable to all franchises, whether approved on or after the effective date of this Chapter, and other persons seeking to utilize the right-of-way on or after the effective date of this Chapter.

12.18.040 Master Use Permit authorization; use of right-of-way for transmission only.

All providers of cable television service and telecommunications service who desire to construct, install, operate, maintain or otherwise locate facilities in, under, over or across any public way of the City for the sole purpose of providing telecommunications or cable television service to persons and areas outside of the City shall first obtain a Master Use Permit pursuant to the provisions of this Chapter.

12.18.050 Requirements for the provisions of services within the City.

Except as expressly provided herein, all providers of cable televisions service and telecommunications service to citizens of the City through facilities located in the right-of-way shall, prior to commencing operations:

- A. Obtain and maintain a franchise from the City unless expressly exempted by the provisions of State or Federal law;
- B. Obtain and maintain a business license as provided by Chapter 5.01 GHMC; and
- C. Either:
 - 1. Obtain and maintain an encroachment permit for specific construction activities. Encroachment permits for telecommunications or cable television service shall be processed within thirty (30) days unless the applicant consents to a longer processing period; or
 - 2. Obtain a Master Use Permit for all desired activities.

12.18.060 Master Use Permit; additional purposes.

Master Use Permits may be requested in the following situations:

- A. By a franchisee who seeks authorization to construct continuing, extensive construction activities over a period estimated to be in excess of six (6) months may apply for a Master Use Permit as an alternative to individual encroachment permits for individual segments of the construction activities. Such applications shall include all information required by Chapter 12.02.

B. Holders of state-wide franchises, which may not be required to obtain a Master Use Permit, are requested to do so in accordance with RCW 35.99.030(1).

12.18.070 Facilities lease required.

No provider of cable television or telecommunications services or any other entity who desires to locate equipment on City property shall locate such facilities or equipment on City property until a facilities lease is approved by the Council. The Council reserves unto itself the sole discretion in its legislative capacity to lease City property for telecommunications, cable television or other facilities, and no vested or other right shall be created by this section nor any other provision of this Chapter with respect to such facilities leases.

12.18.080 Exempt activities.

Persons who have a franchise and/or have obtained a Master Use Permit are authorized to conduct the normal day-to-day activities of providing the services for which they have obtained a business license, if required, including but not limited to customer service activities, hookups or corrections and utilization of the public right-of-way for parking that does not block the public right-of-way or violate any traffic or parking ordinance of the City. No activity which interferes with the free flow of pedestrian or vehicular traffic, involves the cutting or penetration of any street or sidewalk surface, the impairment, relocation, or interruption of the provision of any utility service, public or private, shall be undertaken without first obtaining an Encroachment Permit or Master Use Permit and any other required permits or approvals.

12.18.090 Use of right-of-way prohibited - when:

Except as provided below, no person shall break, cut or otherwise compromise the surface and/or integrity of any street or sidewalk within the first two (2) years after its construction and installation. For the period commencing with the third year through the seventh year, any person proposing to cut, penetrate or compromise the integrity of the surface of any street or sidewalk shall conduct its operations only in accordance with a Master Use Permit or Encroachment Permit and shall provide a "city performance" bond sufficient to replace the street or sidewalk surface to its original condition. Such bond shall be provided in accordance with the city provisions of any Franchise, Master Use Permit or Encroachment Permit when in the discretion of the City Engineer a particular project poses any significant risk of the impairment of the

normal useful life of the street surface. Insurance and indemnity shall be provided in accord with the requirements of GHMC 12.02.030 (D) and (E). The City, at its sole discretion, may permit installation of facilities underneath a street or sidewalk during the initial two years after construction and acceptance by the City by a permittee:

A. When the facilities are installed, boring or other construction method which does not penetrate the street surface when a full city maintenance and restoration bond is provided to ensure that no surface subsidence occurs, or

B. When the permittee fully replaces the City street or sidewalk in accordance with City standards and provides a city performance and maintenance bond for the work.

12.18.100 Master Use Permit application.

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

A. The identity of the applicant, including all affiliates of the applicant.

B. A description of the services that are or will be offered or provided by the applicant over its facilities.

C. A description of the transmission medium that will be used by the applicant to offer or provide such services.

D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, depicted on a 22 x 34 inch sheet format in sufficient detail to identify:

1. The horizontal and vertical location and proposed route requested for applicant's proposed facilities;

2. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route; and

3. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

4. Depiction of existing utilities and other public and/or private facilities including but not limited to cross streets, permanent land marks or other points of reference;
5. Existing right-of-way boundaries;
6. Cross section(s) of existing roadway(s) with proposed facilities, including offsets and depth;
7. Proposed construction note stating compaction and testing requirements;
8. Restoration details conforming to adopted city standard;
9. All maps, including a required area map shall have centerline stations and a north arrow orienting the map; and
10. Temporary erosion and sedimentary control plan utilizing best management practices (T.E.S.C.).

E. If applicant is proposing to install overhead facilities, evidence that it has obtained the permission of the owner of existing poles or, in the alternative, that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing public ducts or conduits, within the right-of-way, information in sufficient detail to identify:

1. The excess capacity currently available in such public ducts or conduits before installation of applicant's facilities; and
2. The excess capacity, if any, that will exist in such public ducts or conduits after installation of applicant's facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the right-of-way:

1. The location proposed for the new ducts or conduits; and
2. The excess capacity that will exist in such public ducts or conduits after installation of applicant's telecommunications facilities.

3. Provision to be made for the installation of public conduit pursuant to GHMC 12.18.290.

H. A preliminary construction schedule and completion date.

I. A preliminary traffic control plan in accordance with the City's adopted street standards and the Manual of Uniform Traffic Control Devices (MUTCD) and current City and state standards.

J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the facilities and services described in the application.

L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the telecommunications services.

M. An application fee which shall be set by the City Council by resolution and any deposits or charges established by ordinance, resolution or franchise.

N. Requirements J through L may be satisfied pursuant to the relevant requirements of a valid franchise issued to the applicant by the City.

12.18.110 Issuance/denial of Master Use Permit.

The City Council shall hold a public hearing and receive testimony and other evidence regarding the issuance of the Master Use Permit. The City Council's decision shall be confirmed in writing, shall be based upon the record of the proceeding and shall consider and apply the factors set forth below:

A. The financial and technical ability of the applicant;

B. The legal ability of the applicant;

C. The capacity of the right-of-way to accommodate the applicant's proposed facilities;

- D. The capacity of the right-of-way to accommodate additional utility, cable, and telecommunications facilities if the Master Use Permit is granted;
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the Master Use Permit is granted;
- F. The public interest in minimizing the cost of the disruption of construction within the right-of-way;
- G. The effect, if any, on public health, safety and welfare if the Master Use Permit is granted;
- H. The availability of alternate routes and/or locations for the proposed facilities;
- I. Applicable federal and state laws, regulations and policies; and
- J. Such other factors as may demonstrate that the grant to use the right-of-way will serve the community interest.

12.18.120 Written Master Use Permit required.

No Master Use Permit shall be deemed to have been granted hereunder until the City has issued a written permit setting forth the particular terms and provisions under which the permittee has been granted the right to occupy and use right-of-way of the City and all preconditions thereto, such as bonding, have been satisfied.

12.18.130 Nonexclusive grant.

No Master Use Permit granted under this article shall confer any exclusive right, privilege, license or franchise to occupy or use the right-of-way of the City for delivery of telecommunications, cable television services, or any other services or purposes.

12.18.140 Rights granted.

No Master Use Permit granted under this article shall convey any right, title or interest in the right-of-way, but shall be deemed a permit only to use and occupy the right-of-way for the limited purposes and terms stated in the permit. Further, no Master Use Permit shall be construed as any warranty of title.

12.18.150 Terms of Master Use Permit.

A Master Use Permit granted under this article shall be limited to a grant of specific right-of-way and defined portions thereof for the period specified therein.

12.18.160 Service to City users - franchise required.

A person shall be allowed to offer or provide cable television or telecommunications services to persons or areas within the City upon approval of a franchise. Where State or federal law prohibits the City from requiring a franchise, only a business license and Master Use Permit are required.

12.18.170 Compensation to the City.

Each Master Use Permit granted pursuant to this article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the right to occupy and use the public ways of the City granted under such permits; provided, nothing in this Chapter shall prohibit the City and a permittee from agreeing to the compensation to be paid. State and federal prohibitions or preemptions may apply, and this provision shall be interpreted to conform to such state or federal restrictions.

12.18.180 Amendment of Master Use Permit.

A new Master Use Permit application shall be required of any service provider that desires to extend or locate its facilities in rights-of-way of the City which are not included in a use permit previously granted under this Chapter or in its franchise. If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted use permit, the City shall grant a Master Use or Encroachment Permit amendment without further application.

12.18.190 Renewal of Master Use Permit.

A permittee that desires to renew its Master Use Permit under this article shall, not more than 180 days or less than 90 days before expiration of the current permit, file an application with the city for renewal of its Master Use Permit which shall include the following:

- A. The information required pursuant to GHMC 12.18.100.

B. Any information required pursuant to the prior master use agreement between the City and the permittee. (This requirement may be satisfied through information previously required of a franchisee;)

C. All deposits or charges required pursuant to this Chapter; and

D. An application fee which shall be set by the City Council by resolution and any deposits or charges established by ordinance, resolution or franchise.

12.18.200 Standards for renewal of Master Use Permits.

Within 90 days after receiving a complete application for Master Use Permit renewal, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying the renewal of a permit under this article, the City Council shall make a decision based upon the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal:

A. The financial and technical ability of the applicant;

B. The continuing capacity of the rights-of-way to accommodate the applicant's existing facilities;

C. The applicant's compliance with the requirements of this Chapter and the expired Master Use Permit;

D. Applicable federal, state and local telecommunications laws, rules and policies; and

E. Such other factors as may demonstrate that the continued grant to use the right-of-way will serve the community interest.

12.18.210 Obligation to cure as a condition of renewal.

No Master Use Permit shall be renewed until any ongoing violations or defaults in the permittee's performance of the Master Use Permit, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the permittee has been approved by the City.

12.18.220 Notification - Transportation Improvement Plan Element Comprehensive Plan.

The City maintains a Transportation Improvement Plan element as a part of its comprehensive plan addressing a six year planning horizon. All franchisees and applicants for Master Use Permits are notified that the plan contains a list of City street improvements, sidewalk and other utility projects in the rights-of-way. Franchisees and holders of Master Use Permits as well as any service provider who files notice with the City Clerk of their intent to place facilities in the City are hereby notified and placed on inquiry notice with respect to the existence of the Transportation Improvement Plan (TIP).

A. Annually, the City Clerk shall provide notice regarding the hearing on the Transportation Improvement Plan to telecommunications and cable television service providers as well as all service providers who have provided written notice of intent to the Clerk within the past twelve (12) months of their intent to place facilities within the City.

B. Cable televisions and telecommunications service providers and those wishing to place facilities within the City's rights-of-way shall then be on notice of the City's intent and may participate in any public hearing regarding the City's Transportation Improvement Plan. Upon publication of notice of the adoption of an ordinance regarding the Transportation Improvement Plan, cable television and telecommunications service providers and others desiring to establish facilities within the City's rights-of-way shall commence the process of consultation with the City regarding the placement of their facilities within their public right-of-way.

C. Upon adoption of the Transportation Improvement Plan, the City through its City Engineer or his designee, shall notify service providers as soon as practicable thereafter of the need for relocation of service providers' facilities, specifying the date by which relocation shall be completed. The City shall consult with the affected service providers regarding the date the relocation must be

completed. When a project is listed on the City's TIP, such notice is secondary. Service providers are placed on inquiry and record notice through the adoption of the City's annual update to the six-year TIP regarding the nature and extent of facilities to be constructed by the City. The service provider shall, at its earliest convenience, provide information to the City in appropriate written format, outlining the extent of facilities to be relocated, the service requirements and the construction sequence for the relocation. The City shall utilize this information through a consulting process to establish the City's overall construction sequence and constraints, and the construction sequence shall be designed to safely complete the relocation. After the consultation, the City Engineer shall establish a final relocation date.

D. Service providers shall complete the relocation by the date specified by the City Engineer unless a reviewing court establishes a later date for completion. The standard for review by the City Engineer and by any reviewing court shall be based upon a showing, by substantial and competent evidence by the service provider, that the relocation cannot be completed by the date specified using best efforts in meeting safety and service requirements.

12.18.230 Notice and liability.

The City is not liable for damages for failure to provide notice under the preceding section. Where the City has failed to provide notice of plans to open a right-of-way consistent with the previous section, the City may not deny a use permit to a service provider on the basis that the service provider failed to coordinate with another City project. No service provider may claim a lack of notice where a project has been included on the City's annually amended Transportation Improvement Plan and notice of the Transportation Improvement Plan element of the comprehensive plan has been published in accordance with the provisions of state statute.

12.18.240 Location within an open right-of-way.

In order to locate facilities within a right-of-way opened by a public or private construction project, a service provider shall:

A. Obtain either all use permits and city-required bonds, including but not limited to, an encroachment permit under Chapter 12.02 of the GHMC or Master Use Permit for the installation, maintenance, repair, or removal of facilities in the designated rights-of-way;

- B. Comply with applicable ordinances, construction codes, regulations and standards applicable to the installation of facilities and the restoration of the right-of-way, subject to verification by the City of compliance with such standards, regulations and ordinances;
- C. Cooperate with the City by complying with all traffic control measures and other requirements designed to ensure that facilities are installed, maintained, repaired, and removed within the right-of-way in such a manner and at such points as not to inconvenience the public use of the right-of-way or to adversely affect the public health, safety and welfare;
- D. Provide information and plans as reasonably necessary following notification of projects through publication of the City's Transportation Improvement Plan. The provision of advance planning information shall conform to requirements established by the City Engineer;
- E. Obtain the written approval of the facility or structure owner, if the service provider does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way;
- F. Construct, install, operate and maintain its facilities solely at its own expense; and
- G. Comply with applicable federal and state safety laws and standards.
- H. Nothing herein shall be deemed to create, expand or extend any liability of the City to a third-party user of the facilities or a third party beneficiary. The City Engineer shall require provision of an indemnity agreement and certifications of insurance as conditions of a service provider's right for a facility to occupy the City's right-of-way, provided, however, that these requirements shall be met by holders of franchises, an Encroachment Permit or Master Use Permit if they provide the indemnity and insurance required by such use permits or franchises.

12.18.250 Relocation of facilities; cost.

Service providers may not seek reimbursement for relocation expenses from the City following the City's request to relocate under Section 12.18.220, except in the following circumstances:

A. Where the service provider paid for the relocation costs of the same facilities at the request of the City within the past five (5) years. In this case, the service provider's share of the cost of relocation shall be paid by the City.

B. Where the aerial to underground relocation of authorized facilities is required by the City, service providers with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in an approved tariff if less, will be paid by the City.

C. Where the City requests relocation solely for aesthetic purposes, unless otherwise agreed to by the parties.

12.18.260 Relocation for private benefit.

Where the City has requested a service provider to relocate a project primarily for private benefit, the private party or parties shall reimburse the cost of relocation to the service provider or providers. Service providers shall not be precluded from recovering their costs associated with relocation, provided that the recovery is consistent with this chapter and other applicable laws and ordinances.

12.18.280 Emergency relocation.

The City may require relocation facilities at the service provider's expense in the event of an unforeseen emergency that creates an immediate threat to the public, safety, or welfare.

12.18.290 Additional ducts or conduits -- the City may require.

The City may require that a service provider that is constructing, relocating or placing ducts or conduits in public rights-of-way provide the City with additional duct or conduit and related structures necessary to access the conduit, provided that:

A. The City enters into a contract with the service provider consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental cost to the service provider. If the

City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated cost of the service provider. The service provider shall state both contract rates in the contract. The City or town shall inform the service provider of the use, and any change in use of the requested duct or conduit and related access structures in order to determine the applicable rate to be paid by the City.

- B. Except as otherwise agreed by the service provider and the City, the City agrees that the requested additional duct or conduit space and related access structures shall not be used by the City to provide telecommunications or cable television service for hire, sale or resale to the general public.
- C. The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of the service provider.
- D. The value of the additional duct or conduit requested by a city or town shall not be considered a public works construction contract.
- E. This section shall not affect the provision of an institutional network by a cable television service provider under federal law.

Section 2. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

APPROVED:

MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM;

W. SCOTT SNYDER

FILED WITH THE CITY CLERK: 07/05/06
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