

## **ORDINANCE NO. 772**

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON,  
RELATING TO TELECOMMUNICATIONS AND CABLE TELEVISION;  
ESTABLISHING REQUIREMENTS FOR TELECOMMUNICATION  
CARRIERS' AND CABLE OPERATORS' USE OF THE PUBLIC  
RIGHTS-OF-WAY AND PUBLIC PROPERTY; DESCRIBING THE  
PROCEDURES FOR APPLICATION AND APPROVAL OF  
TELECOMMUNICATION BUSINESS LICENSES,  
TELECOMMUNICATIONS RIGHT-OF-WAY USE PERMITS,  
FRANCHISES AND CABLE TELEVISION FRANCHISES; DESCRIBING  
VIOLATIONS AND ESTABLISHING PENALTIES; AND ADDING A NEW  
CHAPTER 12.18 TO THE GIG HARBOR MUNICIPAL CODE.**

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WHEREAS, RCW 35A.11.020 grants code cities broad authority to regulate the use of the public rights-of way; and

WHEREAS, RCW 35A.47.040 grants code cities broad authority to grant non-exclusive franchise agreements; and

WHEREAS, Congress has adopted the Telecommunications Act of 1996 (hereinafter the "Act") in order to encourage the development of high-technology communications systems through increased competition among communications companies; and

WHEREAS, the Act provides for the removal of regulatory barriers, rate deregulation and relaxation of certain anti-trust provisions in an attempt to achieve this goal; and

WHEREAS, the Act is anticipated to have a significant effect on the manner in which communications services are delivered, and local telephone companies and cable television companies will all be able to provide telephone, data, video and other communications services; and

WHEREAS, the Act contains numerous provisions which directly affect local taxation, zoning, franchise authority and public rights-of-way management; and

WHEREAS, the Act will likely place additional demands on the use of the City's public rights-of-way and public property; and

WHEREAS, the City currently has regulations which do not adequately address the use of public rights-of-way for telecommunication purposes; now therefore,

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

Section 1. A new chapter 12.18 is hereby added to the Gig Harbor Municipal Code, to read as follows:

## **CHAPTER 12.18 TELECOMMUNICATIONS**

### **ARTICLE I. GENERAL PROVISIONS**

<b>Sections</b>	<b>12.18.010</b>	<b>Purpose.</b>
	<b>12.18.020</b>	<b>Definitions.</b>
	<b>12.18.030</b>	<b>Business License Required.</b>
	<b>12.18.040</b>	<b>Telecommunications Right-of-Way Permit Required.</b>
	<b>12.18.050</b>	<b>Telecommunications Franchise Required.</b>
	<b>12.18.060</b>	<b>Cable Television Franchise Required.</b>
	<b>12.18.070</b>	<b>Facilities Lease Required.</b>
	<b>12.18.080</b>	<b>Construction Permit Required.</b>
	<b>12.18.090</b>	<b>Application to Existing Franchise Ordinances, Agreements, Leases, and Permits -- Effect of Other Laws.</b>
	<b>12.18.0100</b>	<b>General Penalties.</b>
	<b>12.18.0110</b>	<b>Other Remedies.</b>

**Section 12.18.1: Purpose.** The purpose and intent of this Chapter is to:

- establish a local policy concerning telecommunications providers and service;
- establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services;
- promote competition in telecommunications;
- minimize unnecessary local regulation of telecommunications providers and services;
- encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;
- permit and manage reasonable access to the public ways of the City for telecommunications purposes on a competitively neutral basis;
- conserve the limited physical capacity of the public ways held in public trust by the City;

- 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;
- secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the public ways;
- assure that all telecommunications carriers providing facilities or services within the City comply with the ordinances, rules and regulations of the City;
- assure that the City can continue to fairly and responsibly protect the public health, safety and welfare;
- enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

**Section 12.18.2): 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:

**"Access channels"** means channels set aside by a franchisee exclusively for noncommercial public, educational, or governmental use (commonly referred to as "PEG" channels).

**"Addressability"** means the ability of a system allowing a franchisee to authorize specific equipment to receive, change or to cancel any or all specified programming.

**"Affiliate"** means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

**"Applicant"** means any person or entity that applies for any permit or franchise pursuant to this Chapter.

**"Basic cable service"** means the lowest level of service regularly provided to all Subscribers that includes the retransmission of local broadcast signals.

**"Cable Act"** shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. §532, *et seq.*, as now and hereafter amended.

**"Cable facilities"** means equipment and wiring used to transmit audio and video signals to subscribers.

**"Cable operator"** means a telecommunications carrier providing or offering to provide "cable service" within the City as that term is defined in the Cable Act.

**"Cable service"** for the purpose of this Chapter shall have the same meaning provided by the Cable Act.

**"Cable system"** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and other service to subscribers.

**"Cablecast"** means the distribution of programming which originates within the facilities of the cable television system.

**"Channel"** or **"cable channel"** means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television signal as defined by the Federal Communications Commission.

**"Character generator"** means a device used to generate alpha numerical programming to be cablecast on a cable channel.

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

**"City property"** means and includes all real property owned by the City, other than public streets and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right-of-way licensing and franchising as provided in this Chapter.

**"Council"** means the City Council of the City of Gig Harbor, Washington acting in its official capacity.

**"Data communication"** means (1) the transmission of encoded information or (2) the transmission of data from one point to another.

**"Dwelling units"** means residential living facilities as distinguished from temporary lodging facilities such as hospitals, hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes, extended care facilities and other multiple family residential units.

**"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.

**"Excess capacity"** means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

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

**"Fiber Optics"** means the technology of guiding and projecting light for use as a communications medium.

***"Franchise"*** shall mean the initial authorization, or renewal thereof, issued by the city, whether such authorization is designated as a franchise, permit, Ordinance, resolution, contract, certificate or otherwise, which authorizes construction and operation of the cable system for the purpose of offering cable service or other service to subscribers.

***"Franchisee"*** means the person, firm or corporation to whom or which a franchise, as herein above defined, is granted by the Council 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.

***"Gross revenues"*** means any and all revenues (as that term is defined by generally accepted accounting principles) received directly or indirectly from all sources which arise out of or are derived from the operation of a franchisee's cable system in the City. When the revenue of the franchisee includes gross revenues from sources outside of the City, a franchisee shall prorate the gross revenues among its sources by multiplying such gross revenues by a fraction, the numerator of which is the number of franchisee's subscribers in the City and the denominator of which is the total number of all a franchisee's subscribers. "Gross revenues" shall not include the following:

1. Fees and payments from subscribers who do not live in the City;
2. Taxes on services furnished by a franchisee, which are imposed on any subscriber or used by any governmental unit, agency or instrumentality and which are collected by a franchisee for such entity;
3. Bad debt write-offs;
4. Revenue from the sale of equipment or other assets of the cable system to persons not purchasing services from the cable system;
5. Revenue from transactions involving real property owned or leased by the franchisee;
6. Amounts collected from subscribers as a franchise fee to be paid to City.

***"Headend"*** means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

***"Installation"*** means the connection of the cable system from feeder cable to subscribers' receivers.

***"Institutional networks (I-Nets)"*** means that portion of a cable system which is designated principally for the provision of non-entertainment services to public schools, or public agencies such as public libraries separate and distinct from the subscriber network, or on secured channels of the subscriber network.

***"Interactive services"*** means services provided to subscribers where the subscriber (i) receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; and (ii) has the ability to transmit signals to any other location for any purpose.

***"Office"*** means the person or entity designated by the City as being responsible for the administration of a franchise for the City.

***"Operator"*** means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of this Chapter.

***"Other ways"*** means the highways, streets, alleys, utility easements or other rights-of-way within the City, but under the jurisdiction and control of a governmental entity other than the City.

***"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.

***"Premium services"*** means video programming offered on a pay-per-channel or pay-per-program basis.

***"Property of franchisee"*** means all property owned, installed or used by a Franchisee in the conduct of its business in the City under the authority of a franchise granted pursuant to this Chapter.

***"Proposal"*** means the response, by an individual or organization, to a request by the City regarding the provision of cable services; or an unsolicited plan submitted by an individual or organization seeking to provide cable services in the City.

***"Public street"*** means any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

***"Public way"*** means and includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for telecommunications facilities.

***"State"*** means the State of Washington.

***"Subscriber"*** means a person or entity or user of the cable system who lawfully receives cable services or other service therefrom with franchisee's express permission.

***"Surplus space"*** means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the federal or state orders and regulations, to allow its use by a telecommunications carrier for a pole attachment.

***"Telecommunications carrier"*** means and includes every person that directly or indirectly owns, controls, operates or manages plan, equipment or property within the City, used or to be used for the purpose of offering telecommunications service.

***"Telecommunications facilities"*** means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

***"Telecommunications provider"*** means and includes every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities.

***"Telecommunications service"*** means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

***"Telecommunications system"*** See *"Telecommunications facilities"*.

***"Underground facilities"*** means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

***"Usable space"*** means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in any federal or state orders and regulations.

***"Utility easement"*** means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

***"Utility facilities"*** means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the City and used or to be used for the purpose of providing utility or telecommunications services.

**Section 12.18.3): Business License Required.** Except as otherwise provided herein, all cable operators, telecommunications carriers, and telecommunications providers engaged in the

business of transmitting, supplying or furnishing of cable service or telecommunications originating or terminating in the City shall apply for and obtain a business license with the City pursuant to Article II. of this Chapter.

**Section 12.18.4): Telecommunications Right-of-Way Use Permit Required.** Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any public way of the City for the sole purpose of providing telecommunications service to persons and areas outside the City shall first obtain a telecommunications right-of-way use permit granting the use of such public ways from the City pursuant to Article III. of this Chapter.

**Section 12.18.5): Telecommunications Franchise Required.** Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in, under, over or across any public way of the City, and to also provide telecommunications service to persons or areas in the City, shall first obtain franchise granting the use of such public ways from the City pursuant to Article IV. of this Chapter.

**Section 12.18.6): Cable Television Franchise Required.** Except as otherwise provided herein, any telecommunications carrier or other person who desires to construct, install, operate, maintain or locate cable or telecommunications facilities in any public way in the City for the purpose of providing cable service to persons in the City shall first obtain a cable franchise from the City pursuant to Article V. of this Chapter.

**Section 12.18.7): Facilities Lease Required.** No telecommunications carrier or other entity who desires to locate telecommunications or other equipment on City property shall locate such facilities or equipment on City property unless granted a Facilities Lease from the City. The City Council reserves unto itself the sole discretion to lease City property for telecommunications and other facilities, and no vested or other right shall be created by this Section or any provision of this Chapter applicable to such Facilities Leases.

**Section 12.18.8): Construction Permits Required.** Except as otherwise provided herein, the holder of a permit or franchise granted pursuant this Chapter shall, in addition to said permit or franchise, be required to obtain a Construction Permit from the City pursuant to Article VII. of this Chapter. No work, construction, development, excavation, or installation of any equipment or facilities shall take place within the public ways until such time as the Construction Permit is issued.

**Section 12.18.9): Application to Existing Franchise Ordinances, Agreements, Leases, and Permits -- Effect of other Laws.**

**A.** This Chapter shall have no effect on any existing franchise ordinance, franchise agreement, lease, or permit to use or occupy a public way in the City until:

- 1.** the expiration of said franchise ordinance, agreement, lease, or permit; or

2. the amendment to an unexpired franchise ordinance, franchise agreement, lease, or permit, 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 a permit, license, or franchise by federal, state, or other law.

**Section 12.18.10): General Penalties.**

**A. Penalty.**

1. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the provisions of this Chapter shall be subject to a cumulative penalty in the amount of five hundred Dollars (\$500) per day for each violation from the date set for compliance until compliance with this Chapter is achieved.

2. In addition to any penalty which may be imposed by the City, any person violating or failing to comply with any of the provisions of this Chapter shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

3. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The City Administrator shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the City Administrator, take appropriate action to collect the penalty.

4. The violator may show as full or partial mitigation of liability:

a. That the violation giving rise to the action was caused by the wilful act, or neglect, or abuse of another; or

b. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the violator.

**B. Criminal Penalties.**

1. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the applicable provisions of this Chapter and who has had a judgment entered against him or her pursuant to Section 12.18.100(A)(3) or its predecessors within the past five (5) years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding Five Thousand Dollars (\$5,000.00) or be imprisoned for a term not

exceeding one (1) year or be both fined and imprisoned. Each day of noncompliance with any of the applicable provisions of the Chapter shall constitute a separate offense.

2. The above criminal penalty may also be imposed:
  - a. For any other violation of this Chapter for which corrective action is not possible;
  - b. For any wilful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this Chapter; and
  - c. For any violation of a stop work or other order issued pursuant to this Chapter.

3. In addition to any criminal penalty which may be imposed by the City, a violator may also be liable for damages and costs of restoration described in subsection 12.18.100(A), above.

**C. Additional Relief.** The City may request that the City Attorney 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 when civil or criminal penalties are inadequate to effect compliance.

**Section 12.18.11): Other Remedies.** Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

## **ARTICLE II.** **BUSINESS LICENSING OF TELECOMMUNICATIONS** **CARRIERS AND PROVIDERS**

<b>Section</b>	<b>12.18.0120</b>	<b>Purpose of Business License Registration.</b>
	<b>12.18.0130</b>	<b>Business License Required.</b>
	<b>12.18.0140</b>	<b>Business License Fees.</b>

**Section 12.18.12): Purpose of Business License Registration.** The purpose of telecommunications business licensing is to:

- A. provide the City with accurate and current information concerning the cable operators and telecommunications carriers and providers who offer or provide services within the City, or that own or operate facilities within the City;
- B. assist the City in enforcement of this Chapter;
- C. assist the City in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the City;

**D.** assist the City in monitoring compliance with local, State and Federal laws.

**Section 12.18.13): Business License Required.** All cable operators, telecommunications carriers, and telecommunications providers that offer or provide any cable service or telecommunications service for a fee directly to the public, either within the City, or outside the corporate limits from cable or telecommunications facilities within the City, shall apply for and obtain a business license with the City pursuant to this Chapter, and the requirements of Chapter 5.01 of the Gig Harbor Municipal Code, on forms to be provided by the City Administrator, which shall include the following:

**A.** The identity and legal status of the applicant, including any affiliates.

**B.** The name, address, telephone number, and title of the officer, agent or employee responsible for the accuracy of the business license application statement.

**C.** A description of applicant's existing or proposed facilities within the City.

**D.** A description of the service that the applicant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.

**E.** Information sufficient to determine whether the applicant is subject to the public way permitting and/or franchising requirements imposed by this Chapter.

**F.** Information sufficient to determine whether the transmission, origination or receipt of the services provided or to be provided by the applicant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility tax or other occupation tax imposed by the City.

**G.** Information sufficient to determine that the applicant has applied for and received any certificate of authority required by any federal or state agency to provide telecommunications services or facilities within the City.

**H.** Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide services or construct facilities within the City.

**Section 12.18.14): Business License Fees.** Each application for a business license as a cable operator or telecommunications carrier or provider shall be accompanied by an application fee which shall be set by the City Council by resolution.

### **ARTICLE III. TELECOMMUNICATIONS RIGHT-OF-WAY USE PERMITS**

<b>Sections</b>	<b>12.18.0150</b>	<b>Telecommunications Right-of-Way Use Permit.</b>
	<b>12.18.0160</b>	<b>Telecommunications Right-of-Way Use Permit Application.</b>

<b>12.18.0170</b>	<b>Issuance/Denial of Telecommunications Right-of-Way Use Permit.</b>
<b>12.18.0180</b>	<b>Agreement.</b>
<b>12.18.0190</b>	<b>Nonexclusive Grant.</b>
<b>12.18.0200</b>	<b>Rights Granted.</b>
<b>12.18.0210</b>	<b>Terms of Telecommunications Right-of-Way Use Permit.</b>
<b>12.18.0220</b>	<b>Telecommunications Right-of-Way Use Permit Route.</b>
<b>12.18.0230</b>	<b>Service to City Users.</b>
<b>12.18.0240</b>	<b>Compensation to the City.</b>
<b>12.18.0250</b>	<b>Amendment of Permit.</b>
<b>12.18.0260</b>	<b>Renewal of Telecommunications Right-of-Way Use Permit.</b>
<b>12.18.0270</b>	<b>Standards for Renewal of Permits.</b>
<b>12.18.0280</b>	<b>Obligation to Cure as a Condition of Renewal.</b>

**Section 12.18.15): Telecommunications Right-of-Way Use Permit.** A telecommunications right-of-way permit shall be required of any telecommunications carrier who desires to occupy specific public ways of the City for the sole purpose of providing telecommunications services to persons or areas outside the City.

**Section 12.18.16): Telecommunications Right-of-Way Use Permit Application.** Any person that desires a telecommunications right-of-way 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 telecommunications services that are or will be offered or provided by the applicant over its telecommunications facilities.
- C.** A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services.
- D.** Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:
  - (1)** the location and route requested for applicant's proposed telecommunications 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;
  - (3)** the location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers;

(4) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

**E.** If applicant is proposing to install overhead facilities, evidence 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 ducts or conduits within the public ways, information in sufficient detail to identify:

(1) the excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;

(2) the excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

**G.** If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

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

(2) the excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

**H.** A preliminary construction schedule and completion date.

**I.** A preliminary traffic control plan in accordance with the City's adopted street 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 telecommunications 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.** All deposits or charges required pursuant to this Chapter.

**N.** An application fee which shall be set by the City Council by resolution.

**Section 12.18.17): Issuance/Denial of Telecommunications Right-of-Way Use Permit.**

Within 120 days after receiving a complete application under Section 12.18.0160 hereof, the City shall issue a written determination granting or denying the permit in whole or in part. Prior to granting or denying a permit under this Article, the City Council shall conduct a public hearing and make a decision based upon the following standards. If the permit is denied, the written determination shall include the reason(s) for denial.

- A.** The financial and technical ability of the applicant.
- B.** The legal ability of the applicant.
- C.** The capacity of the public ways to accommodate the applicant's proposed facilities.
- D.** The capacity of the public ways to accommodate additional utility, cable, and telecommunications facilities if the permit is granted.
- E.** The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the permit is granted.
- F.** The public interest in minimizing the cost and disruption of construction within the public ways.
- G.** The service that applicant will provide to the community and region.
- H.** The effect, if any, on public health, safety and welfare if the license is granted.
- I.** The availability of alternate routes and/or locations for the proposed facilities.
- J.** Applicable federal and state telecommunications laws, regulations and policies.
- K.** Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

**Section 12.18.18): Agreement.** No permit shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the permittee has been granted to right to occupy and use public ways of the City.

**Section 12.18.19): Nonexclusive Grant.** No permit granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.

**Section 12.18.20): Rights Granted.** No permit granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed a permit only to use and occupy the public ways for the limited purposes and term stated in the permit. Further, no permit shall be construed as any warranty of title.

**Section 12.18.21): Terms of Telecommunications Right-of-Way Use Permit.** Unless otherwise specified in a permit, a telecommunications permit granted hereunder shall be in effect for a term of one (1) year, which shall be revokable upon thirty (30) days notice by the City to the permittee.

**Section 12.18.22): Telecommunications Right-of-Way Permit Route.** A telecommunications permit granted under this Article shall be limited to a grant of specific public ways and defined portions thereof.

**Section 12.18.23): Service to City Users.** A permittee shall be permitted to offer or provide telecommunications services to persons or areas within the City upon approval of an application for a telecommunications franchise pursuant to Article IV. of this Chapter.

**Section 12.18.24): Compensation to the City.** Each 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.

**Section 12.18.25): Amendment of Permit.** A new permit application shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public ways of the City which are not included in a permit previously granted under this Chapter. If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted license, the City shall grant a permit amendment without further application.

**Section 12.18.26): Renewal of Telecommunications Right-of-Way Use Permit.** A permittee that desires to renew its permit under this Article shall, not more than 180 days nor less than 90 days before expiration of the current permit, file an application with the City for renewal of its permit which shall include the following:

- A. The information required pursuant to Section 12.18.0160 of this Chapter.
- B. Any information required pursuant to the permit agreement between the City and the permittee.
- C. All deposits or charges required pursuant to this Chapter.
- D. An application fee which shall be set by the City Council by resolution.

**Section 12.18.27): Standards for Renewal of Permits.** Within 90 days after receiving a complete application for 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 conduct a public hearing and 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 public ways to accommodate the applicant's existing facilities.
- C.** The applicant's compliance with the requirements of this Chapter and the permit.
- D.** Applicable federal, state and local telecommunications laws, rules and policies.
- E.** Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

**Section 12.18.28): Obligation to Cure as a Condition of Renewal.** No permit shall be renewed until any ongoing violations or defaults in the permittee's performance of the 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.

## **ARTICLE IV.** **TELECOMMUNICATIONS FRANCHISE**

<b>Sections</b>	<b>12.18.290</b>	<b>Telecommunications Franchise.</b>
	<b>12.18.300</b>	<b>Franchise Application.</b>
	<b>12.18.310</b>	<b>Determination by the City.</b>
	<b>12.18.320</b>	<b>Agreement.</b>
	<b>12.18.330</b>	<b>Nonexclusive Grant.</b>
	<b>12.18.340</b>	<b>Terms of Franchise Grant.</b>
	<b>12.18.350</b>	<b>Rights Granted.</b>
	<b>12.18.360</b>	<b>Franchise Territory.</b>
	<b>12.18.370</b>	<b>Compensation to the City.</b>
	<b>12.18.380</b>	<b>Nondiscrimination.</b>
	<b>12.18.390</b>	<b>Amendment of Franchise Grant.</b>
	<b>12.18.400</b>	<b>Renewal Application.</b>
	<b>12.18.410</b>	<b>Renewal Determination.</b>
	<b>12.18.420</b>	<b>Obligation to Cure as Condition of Renewal.</b>

**Section 12.18.29): Telecommunications Franchise.** A telecommunications franchise shall be required of any telecommunications carrier or other person who desires to occupy public ways of the City and to provide telecommunications services to any person or area in the City.

**Section 12.18.30): Franchise Application.** Any person that desires a telecommunications franchise pursuant to this Chapter shall file an application with the City which shall include the following:

- 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 existing or proposed facilities.
- C.** A description of the transmission medium that will be used by the franchisee to offer or provide such services.
- D.** Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:
  - (1)** the location and 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.
  - (3)** the location(s), if any, for interconnection with the facilities of other telecommunications carriers and cable operators.
  - (4)** the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
- E.** If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its facilities on existing utility poles along the proposed route.
- F.** If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:
  - (1)** the excess capacity currently available in such ducts or conduits before installation of applicant's facilities;
  - (2)** the excess capacity, if any, that will exist in such 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 public ways:
  - (1)** the location proposed for the new ducts or conduits;

(2) the excess capacity that will exist in such ducts or conduits after installation of applicant's facilities.

**H.** A preliminary construction schedule and completion dates.

**I.** A preliminary traffic control plan in accordance with the City's adopted street 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 or other services.

**M.** Whether the applicant intends to provide cable service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising.

**N.** An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

**O.** A description of the services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions.

**P.** A description of applicant's access and line extension policies.

**Q.** The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire franchise area.

**R.** All fees, deposits or charges required pursuant to Article VI. of this Chapter.

**S.** Such other and further information as may be requested by the City Administrator.

**T.** An application fee which shall be set by the City Council by resolution.

**Section 12.18.31): Determination by the City.** Within 120 days after receiving a complete application under Section 12.18.0300 hereof, the City shall issue a written determination granting or denying the application in whole or in part. Prior to granting or denying a franchise under this Article, the City Council shall conduct a public hearing and make a decision based upon the

following standards. If the application is denied, the written determination shall include the reason for denial.

- A.** The financial and technical ability of the applicant.
- B.** The legal ability of the applicant.
- C.** The capacity of the public ways to accommodate the applicant's proposed facilities.
- D.** The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted.
- E.** The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.
- F.** The public interest in minimizing the cost and disruption of construction within the public ways.
- G.** The service that applicant will provide to the community and region.
- H.** The effect, if any, on public health, safety and welfare if the franchise requested is granted.
- I.** The availability of alternate routes and/or locations for the proposed facilities.
- J.** Applicable federal and state telecommunications laws, regulations and policies.
- K.** Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.
- L.** That the requirements of RCW 35A.47.040 have been complied with.

**Section 12.18.32): Agreement.** No franchise shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchisee has been granted the right to occupy and use public ways of the City.

**Section 12.18.33): Nonexclusive Grant.** No franchise granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.

**Section 12.18.34): Terms of Franchise Grant.** Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of ten (10) years.

**Section 12.18.35): Rights Granted.** No franchise granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

**Section 12.18.36): Franchise Territory.** A telecommunications franchise granted under this Article shall be limited to the specific geographic area of the City to be served by the franchisee, and the specific public ways necessary to serve such areas.

**Section 12.18.37): Compensation to the City.** Each franchise granted under 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 franchise rights granted to the franchisee; provided, nothing in this Chapter shall prohibit the City and a franchisee from agreeing to the compensation to be paid.

**Section 12.18.38): Nondiscrimination.** A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for the franchisee's services; provided, however, that nothing in this Chapter shall prohibit a franchisee from making any reasonable classifications among differently situated customers.

**Section 12.18.39): Amendment of Franchise Grant.** A new franchise application and grant shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in public ways of the City which are not included in a franchise previously granted under this Article. If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted franchise, the City shall grant a franchise amendment without further application.

**Section 12.18.40): Renewal Application.** A franchisee that desires to renew its franchise under this Chapter shall, not more than 180 days nor less than 120 days before expiration of the current franchise, file an application with the City for renewal of its franchise which shall include the following:

- A. The information required pursuant to Section 12.18.0300 of this Chapter.
- B. Any information required pursuant to the franchise agreement between the City and the grantee.
- C. All deposits or charges required pursuant to this Chapter.
- D. An application fee which shall be set by the City Council by resolution.

**Section 12.18.41): Renewal Determination.** Within 120 days after receiving a complete application for renewal under Section 12.18.0400 hereof, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying renewal of a franchise under this Article, the City Council shall conduct a public hearing and 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 legal ability of the applicant.
- C.** The continuing capacity of the public ways to accommodate the applicant's existing facilities.
- D.** The applicant's compliance with the requirements of this Chapter and the franchise agreement.
- E.** Applicable federal, state and local telecommunications laws, rules and policies.
- F.** Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

**Section 12.18.42): Obligation to Cure as a Condition of Renewal.** No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the City.

## **ARTICLE V. CABLE TELEVISION FRANCHISE**

<b>Sections</b>	<b>12.18.430</b>	<b>Cable Television Franchise.</b>
	<b>12.18.440</b>	<b>Franchise Application.</b>
	<b>12.18.450</b>	<b>Determination by City.</b>
	<b>12.18.460</b>	<b>Agreement.</b>
	<b>12.18.470</b>	<b>Nonexclusive Grant.</b>
	<b>12.18.480</b>	<b>Terms of Franchise Grant.</b>
	<b>12.18.490</b>	<b>Rights Granted.</b>
	<b>12.18.500</b>	<b>Franchise Territory.</b>
	<b>12.18.510</b>	<b>Nondiscrimination.</b>
	<b>12.18.520</b>	<b>Amendment of Franchise Grant.</b>
	<b>12.18.530</b>	<b>Renewal Application.</b>
	<b>12.18.540</b>	<b>Renewal Determination.</b>
	<b>12.18.550</b>	<b>Obligation to Cure as Condition of Renewal.</b>
	<b>12.18.560</b>	<b>Rates.</b>
	<b>12.18.570</b>	<b>Franchise Fee.</b>
	<b>12.18.580</b>	<b>Periodic Meetings.</b>
	<b>12.18.590</b>	<b>Cable System Evaluation.</b>
	<b>12.18.600</b>	<b>Public, Educational and Governmental Access.</b>

<b>12.18.610</b>	<b>City-wide Public, Educational and Governmental Access Interconnection.</b>
<b>12.18.620</b>	<b>Institutional Networks (I-Nets).</b>
<b>12.18.630</b>	<b>City-wide Institutional Networks Interconnection.</b>
<b>12.18.640</b>	<b>Access and Institutional Network Equipment.</b>
<b>12.18.650</b>	<b>External Franchising Costs.</b>
<b>12.18.660</b>	<b>Continuity of Service.</b>
<b>12.18.670</b>	<b>Equalization of Civic Contributions.</b>
<b>12.18.680</b>	<b>Subscriber Rate Complaint Process.</b>
<b>12.18.690</b>	<b>Parental Control Devices.</b>
<b>12.18.700</b>	<b>Discounts.</b>
<b>12.18.710</b>	<b>Customer Service.</b>
<b>12.18.720</b>	<b>Telephone Response.</b>
<b>12.18.730</b>	<b>Failure to Improve Customer Service.</b>
<b>12.18.740</b>	<b>Reports.</b>
<b>12.18.750</b>	<b>Programming.</b>
<b>12.18.760</b>	<b>Inconsistency.</b>

**Section 12.18.43): Cable Television Franchise.** A cable television franchise shall be required of any telecommunications carrier, cable operator, or other person who desires to occupy the public ways of the City and to provide cable service to any person or area in the City.

**Section 12.18.44): Franchise Application.** Any person that desires a cable television franchise pursuant to this Article shall file an application with the City which, in addition to the materials required by Section 12.18.290, shall include information whether the applicant intends to provide telecommunications service, and sufficient information to determine whether such service is subject to telecommunications franchising pursuant to this Chapter.

**Section 12.18.45): Determination by the City.** Within 120 days after receiving a complete application under Section 12.18.0440, the City shall issue a written determination granting or denying the application in whole or in part. Prior to granting or denying a franchise under this Article, the City Council shall conduct a public hearing and make a decision based upon the standards set forth in Section 12.18.310. If the application is denied, the written determination shall include the reason(s) for denial.

**Section 12.18.46): Agreement.** No franchise shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchisee has been granted the right to occupy and use public ways of the City and to provide cable service to persons or areas within the City.

**Section 12.18.47): Nonexclusive Grant.** No franchise granted under this Article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the City for delivery of cable services or any other purposes.

**Section 12.18.48): Terms of Franchise Grant.** Unless otherwise specified in a franchise agreement, a cable franchise granted hereunder shall be valid for a term of ten (10) years.

**Section 12.18.49): Rights Granted.** A cable television franchise granted pursuant to this Article shall authorize a franchisee:

A. To engage in the business of operating and providing cable service and services and the distribution and sale of such services to subscribers within the City; and

B. To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public way, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appropriate to the cable system.

Provided, however, that no privilege or exemption shall be granted or conferred upon a franchisee by any franchise except as specifically prescribed therein, and any use of any public way shall be consistent with any prior lawful occupancy of the public way or any subsequent improvement or installation therein. Provided further, that no franchise granted pursuant to this Article shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. No franchise shall be construed as any warranty of title.

**Section 12.18.50): Franchise Territory.** A cable television franchise granted under this Article shall be limited to the specific geographic area of the City to be served by the franchisee, and the specific public ways necessary to serve such areas.

**Section 12.18.51): Nondiscrimination.** A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this Chapter shall prohibit a franchisee from making any reasonable classifications among differently situated customers. Provided further, that nothing in this Ordinance shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and that connection and/or service charges may be waived or modified during promotional campaigns of a franchisee. A franchisee will not deny access to cable service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides.

**Section 12.18.52): Amendment of Franchise Grant.** Except as otherwise provided by 47 U.S.C. § 545, a new franchise application and grant shall be required of any cable operator that desires to extend its franchise territory, to locate its cable facilities in public ways of the City which are not included in a franchise previously granted under this Article, or to otherwise modify its franchise or franchise agreement. If ordered by the City to locate or relocate its cable facilities in public ways not included in a previously granted franchise, the City shall grant a franchise amendment without further application.

**Section 12.18.53): Renewal Application.** A franchisee that desires to renew its franchise under this Chapter shall, not more than 180 days nor less than 120 days before expiration of the

current franchise, file an application with the City for renewal of its franchise which shall include the following:

- A.** The information required pursuant to Section 12.18.0440 of this Chapter.
- B.** Any information required pursuant to the franchise agreement between the City and the grantee.
- C.** Any information required pursuant to the Cable Act.
- D.** All deposits or charges required pursuant to this Chapter.
- E.** An application fee which shall be set by the City Council by resolution.

**Section 12.18.54): Renewal Determination.** Within 120 days after receiving a complete application under Section 12.18.530, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying renewal of a franchise under this Article, the City Council shall conduct a public hearing and make a decision based upon the standards set forth in the Cable Act, its implementing regulations, and the standards set forth in Section 12.18.410. If the renewal application is denied, the written determination shall include the reason(s) for non-renewal.

**Section 12.18.55): Obligation to Cure as a Condition of Renewal.** No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the City.

**Section 12.18.56): Rates.** Within thirty (30) days after the grant of franchise pursuant to this Article, a franchisee shall file with the City a complete schedule of all present rates charged to all subscribers. Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, a franchisee shall provide the City and all subscribers a minimum of thirty (30) days prior written notice of such change. Subject to 47 U.S.C. § 543 and applicable FCC regulations, the City may regulate the rates or charges for providing cable service and other equipment and may establish rate regulation review procedures as delegated by Federal law.

**Section 12.18.57): Franchise Fee.** As permitted by 47 U.S.C. § 542, a franchisee shall pay the City a franchise fee equal to five percent (5%) or greater of its gross revenues as defined in this Chapter. The franchise fee shall be paid quarterly, on or before the thirtieth (30th) day of each January, April, July, and October. Such remittances shall be accompanied by forms furnished by the City to report reasonably detailed information as to the sources of such revenues.

**Section 12.18.58): Periodic Meetings.** Upon request, but not more than once during any calendar year, a franchisee shall meet with designated City officials and/or designated representative(s) of the City to review the performance of a franchisee for the preceding period. The franchisee shall be given not less than thirty (30) days' prior written notice of any such meeting. The

subjects may include, but are not limited to, those items covered in the periodic reports and performance tests.

**Section 12.18.59): Cable System Evaluation.** In addition to periodic meetings, and with written notice of not less than five (5) business days so that a franchisee can arrange to have necessary personnel present, the City may require reasonable evaluation sessions at any time during the term of a franchise. It is intended that such evaluations cover areas such as customer service, response to the community's cable-related needs, and a franchisee's performance under and compliance with the terms of a franchise.

**Section 12.18.60): Public, Educational and Governmental Access.** As permitted by 47 U.S.C. § 531, the City may require, as a condition of a franchise granted pursuant to this Article, provisions for Public, Educational and Government (PEG) Access.

**Section 12.18.61): City-wide Public, Educational and Government Access Interconnection.** As permitted by 47 U.S.C. § 531, the City may request a franchisee to begin negotiations to interconnect PEG access channels of a cable television system with any and all other contiguous and compatible cable systems. Interconnection of system may be accomplished by direct cable connection, microwave link, or other technically feasible method. Upon receiving request of the City to interconnect, if a franchisee has not already done so, a franchisee shall initiate negotiations with other affected system(s), and shall report to the City the results of such negotiations no later than sixty (60) days after such initiation. Any costs of interconnection may be passed through to subscribers by a franchisee.

**Section 12.18.62): Institutional Networks (I-Nets).** A franchisee's cable system shall have the capability of serving designated educational and public buildings with uni- or bi-directional video/audio signals. The linkage may be by cable, microwave or other means deemed appropriate by a franchisee. If required, suitable encoding and decoding devices shall be made available by a franchisee to assure transmission security. A public entity desiring the activation of such service shall make application thereof to a franchisee. Activation of such services to a public entity shall not be unduly denied. As provided by the Cable Act, a public entity in the City denied such service may request a public hearing to evaluate such denial. Both the requestor and the franchisee shall be provided the opportunity to present the reasons for the request and the reasons for the denial. Upon a finding by the City Council that these services are reasonably required to meet community needs, taking into account the cost of meeting such needs, the City Council may require the activation of such services for the public entity in a reasonable time and on the same basis that other public entities in the City receive the same service.

**Section 12.18.63): City-wide Institutional Networks Interconnection.** A franchise agreement may require a franchisee to make such interconnections as necessary to connect certain designated institutions on a City-wide basis. The same conditions as enumerated in Section 12.18.0620 shall apply to such interconnections.

**Section 12.18.64): Access and Institutional Network Equipment.** A franchise agreement may require a franchisee to contribute either specified goods and services and/or a specified sum of

money for the purpose of providing facilities and equipment for PEG access programming and the Institutional Networks.

**Section 12.18.65): External Franchising Costs.** Prior to expenditure of capital for any franchise related requirements that would be treated as an external cost passed through to customers, the franchisee shall notify the City of its intent to exercise its right and the amount to be passed through to customers. The City may waive the franchise related requirement if, in the City's opinion, the increase in rates would be a burden on City rate payers.

**Section 12.18.66): Continuity of Service.** It shall be the right of all subscribers to continue receiving service so long as their financial and other obligations to a franchisee are fulfilled. In this regard a franchisee shall act so far as it is reasonably within its control to provide all subscribers with continuous uninterrupted service during the term of the franchise, subject to applicable law. In the event a franchisee fails to operate a system for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the City Council or without just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond a franchisee's control, the City may, after notice and an opportunity for a franchisee to commence operations at its option, operate the emergency alert system or designate someone to operate the emergency alert system until such time as a franchisee restores service or a replacement franchisee is selected. If the City is required to fulfill this obligation for a franchisee, a franchisee shall reimburse the City for all reasonable costs or damages that are the result of a franchisee's failure to perform.

**Section 12.18.67): Equalization of Civic Contributions.** In the event of one or more new franchises being granted, the City may require that such subsequent franchisees pay to the City an amount proportionally equal to franchising costs contributed by the initial franchisee. These costs may include but are not limited to such features as access and institutional network costs, bi-directional or equivalent cable installed to municipal buildings and similar expenses. Additional franchisees shall provide all PEG access channel(s) currently available to the subscribers of existing franchisees. In order to provide these access channels, additional franchisees shall interconnect, at their cost, with existing franchisees, subject to any reasonable terms and conditions that the existing franchisee providing the interconnection may require. These interconnection agreements shall be made directly between the franchisees. The City Council, in such cases of dispute of award, may be called upon to arbitrate regarding these arrangements. Additional franchisees shall contribute towards costs of PEG access paid by a prior franchisee by paying to the prior franchisee on each anniversary of the grant of the subsequent franchise an amount equal to a proportionate share of the amount contributed by the prior franchisee for PEG access costs in constant dollars. This proportionate share shall be based upon the number of subscribers in the City held by each franchise and shall be contributed until such time as equal contributions towards the cost of PEG access have been made.

**Section 12.18.68): Subscriber Rate Complaint Process.** As provided by 47 U.S.C. § 543, any subscriber aggrieved by a cable rate increase shall file its cable rate complaint with the City within ninety (90) days of the effective date of such an increase. Such complaints shall be submitted upon a form prescribed by the City Administrator. If the City receives cable rate complaints from

cable subscribers, it may, in its sole discretion, file a cable rate complaint with the FCC, seeking review of any such rate increase.

**Section 12.18.69): Parental Control Devices.** A franchisee shall make available at its cost, including applicable handling fees, a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

**Section 12.18.70): Discounts.** A franchisee shall offer a discount of thirty percent (30%) from the normal charge for basic services and installation to those individuals age sixty-two (62) or older or disabled who are the legal owner or lessee/tenant of their residence provided that their combined disposal income from all sources does not exceed the median income level Housing and Urban Development (HUD) standards for the Seattle-Everett area for the preceding calendar year. The City or its designee shall be responsible for certifying to a franchisee that such applicants conform to the specified criteria.

**Section 12.18.71): Customer Service.**

**A.** A franchisee shall render repair service to restore the quality of the signal at approximately the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system. A log of all service interruptions shall be maintained for a period of at least one (1) year. The City, after two (2) working days' notice, may inspect such logs.

**B.** An employee of a franchisee shall answer and respond to all individual complaints received up until 5:00 p.m. weekdays. A franchisee may use an answering service to receive complaints after 5:00 p.m. weekdays and on weekends and holidays and shall respond to any system outage affecting more than five (5) subscribers regardless of day and hour. A copy of the instructions to the answering service by a franchisee shall be furnished to the City or its designee.

**C.** A technician shall be on call seven (7) days a week, twenty-four (24) hours a day. A franchisee shall respond immediately to service complaints in an efficient manner.

**D.** A franchisee shall maintain a sufficient repair force to respond to individual requests for repair service within two (2) working days after receipt of the complaint or request, except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven (7) days, to the extent reasonable. If a subscriber has notified a franchisee of an outage, no charge for the period of the outage shall be made to the subscriber if the subscriber was without service for a period exceeding twenty-four (24) hours.

**E.** A franchisee shall supply at the time of a new connection, and periodically at least once a year, the title, address and telephone number of the city official or his/her designee, to whom subscribers may direct their concerns.

**F.** In no case will a franchisee's service standards fall below the standards established below the National Cable Television Association (NCTA) which are attached hereto as Appendix A, and incorporated by this reference as though completely set forth herein.

**Section 12.18.72): Telephone Response.**

**A.** A franchisee shall maintain an adequate force of customer service representatives as well as incoming trunk lines so that telephone inquiries are met promptly and responsively. A franchisee shall have in place procedures for utilization of other manpower and/or recording devices for handling the flow of telephone calls at peak periods of large outages or other major causes of subscriber concern. A copy of such procedures and/or policies shall be made available to the City.

**B.** In order that the City may be informed of a franchisee's success in achieving satisfactory customer relations in its telephone answering functions, a franchisee shall, upon request by the City, and routinely each quarter, provide the City with a summary that provides the following:

- (1) Total number of calls received in recording periods;
- (2) Time taken to answer;
- (3) Average talk time;
- (4) Number of calls abandoned by the caller;
- (5) Average hold time;
- (6) Percentage of time all lines busy;
- (7) An explanation of any abnormalities.

**C.** This data will be compared to the minimum standards of the NCTA, or any amendment thereto increasing such standards, and shall be monitored by the City.

**D.** Calls for service generated during periods of system outages due to emergencies affecting more than twenty-five (25) customers may be excluded from the service response calculations. The City shall have the sole determination as to what constitutes a system failure due to emergency and which calls shall be excluded from the service level calculations.

**Section 12.18.73): Failure to Improve Customer Service.** The City or its designee shall review telephone response and customer service information with a franchisee. Improvements will be made by the franchisee in the appropriate categories which are found deficient from the last reporting period. Failure to do so may result in action being taken pursuant to Section 12.18.1050 of this Chapter.

**Section 12.18.74): Reports.** A franchisee shall furnish, upon request, a report of its activities as appropriate. Such report shall include:

- A.** A copy of the franchisee's most recent annual report;
- B.** A copy of the franchisee's 10-K Report, if required by the Securities and Exchange Commission;
- C.** The number of homes passed by the franchisee's cable system;
- D.** The number of subscribers with basic services;
- E.** The number of subscribers with premium services;
- F.** The number of hook-ups in the reporting period;
- G.** The number of disconnects in the reporting period;
- H.** The total number of miles of cable under the franchisee's control within the City;
- I.** A summary of complaints received by category, length of time taken to resolve each complaint, and action taken to provide resolution;
- J.** A copy of the franchisee's current billing practices, and a sample copy of the franchisee's current bill format;
- K.** A copy of the franchisee's current subscriber service agreement;
- L.** Any other such reports with respect to the franchisee's local operations, affairs, transactions, or property that the City may deem to be appropriate.

**Section 12.18.75): Programming.** For informational purposes, a franchisee shall file a listing of its programming and the tiers in which they are placed. A franchisee shall consider the City's suggestions of general programming categories as determined from time to time in residential questionnaire polls. The results of such surveys, when performed, shall be appended to the respective franchise agreements.

**Section 12.18.76): Inconsistency.** If any portion of this Article should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other Federal law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other Federal law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this Article shall not be effected thereby.

## **ARTICLE VI.** **CONDITIONS OF PERMITS AND FRANCHISES**

<b>Sections</b>	<b>12.18.770</b>	<b>Purpose.</b>
	<b>12.18.780</b>	<b>Acceptance.</b>
	<b>12.18.790</b>	<b>Police Power.</b>
	<b>12.18.800</b>	<b>Rules and Regulations by City.</b>
	<b>12.18.810</b>	<b>Location of Facilities.</b>
	<b>12.18.820</b>	<b>Compliance with One Call Locator Service.</b>
	<b>12.18.830</b>	<b>Construction Permits.</b>
	<b>12.18.840</b>	<b>Interference with the Public Ways.</b>
	<b>12.18.850</b>	<b>Damage to Property.</b>
	<b>12.18.860</b>	<b>Notice of Work.</b>
	<b>12.18.870</b>	<b>Repair and Emergency Work.</b>
	<b>12.18.880</b>	<b>Maintenance of Facilities.</b>
	<b>12.18.890</b>	<b>Relocation or Removal of Facilities.</b>
	<b>12.18.900</b>	<b>Building Moving.</b>
	<b>12.18.910</b>	<b>Removal of Unauthorized Facilities.</b>
	<b>12.18.920</b>	<b>Emergency Removal or Relocation of Facilities.</b>
	<b>12.18.930</b>	<b>Damage to Facilities.</b>
	<b>12.18.940</b>	<b>Restoration of Public Ways, Other Ways and City Property.</b>
	<b>12.18.950</b>	<b>Facilities Maps.</b>
	<b>12.18.960</b>	<b>Duty to Provide Information.</b>
	<b>12.18.970</b>	<b>Leased Capacity.</b>
	<b>12.18.980</b>	<b>Insurance.</b>
	<b>12.18.990</b>	<b>General Indemnification.</b>
	<b>12.18.1000</b>	<b>Performance and Construction Surety.</b>
	<b>12.18.1010</b>	<b>Security Fund.</b>
	<b>12.18.1020</b>	<b>Construction and Completion Bond.</b>
	<b>12.18.1030</b>	<b>Coordination of Construction Activities.</b>
	<b>12.18.1040</b>	<b>Assignments or Transfers of Grant.</b>
	<b>12.18.1050</b>	<b>Transactions Affecting Control of Grant.</b>
	<b>12.18.1060</b>	<b>Revocation or Termination of Grant.</b>
	<b>12.18.1070</b>	<b>Notice and Duty to Cure.</b>
	<b>12.18.1080</b>	<b>Hearing.</b>
	<b>12.18.1090</b>	<b>Standards for Revocation or Lesser Sanctions.</b>
	<b>12.18.1100</b>	<b>Incorporation by Reference.</b>
	<b>12.18.1110</b>	<b>Notice of Entry on Private Property.</b>
	<b>12.18.1120</b>	<b>Safety Requirements.</b>

**Section 12.18.77): Purpose.** The purpose of this Article is to set forth certain terms and conditions which are common to all Telecommunications Right-of-Way Use Permits, Telecommunications Franchises, and Cable Television Franchises. Except as otherwise provided in this Chapter or in such a permit or franchise, the provisions of this Article apply to all such permits and franchises approved or granted by the City Council.

**Section 12.18.78): Acceptance.** No permit or franchise granted pursuant to the provisions of this Chapter shall become effective unless and until the ordinance granting the same has become

effective. Within thirty (30) days after the effective date of the Ordinance granting a permit or awarding a franchise, or within such extended period of time as the Council in its discretion may authorize, a franchisee shall file with the City Administrator its written acceptance of the permit or franchise, in a form satisfactory to the City Attorney, together with the bonds, insurance policies, and security fund required by this Article.

**Section 12.18.79): Police Power.** In accepting any permit or franchise, the permittee or franchisee acknowledges that its rights hereunder 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 and it agrees to comply with all applicable general laws enacted by the City pursuant to such power.

**Section 12.18.80): Rules and Regulations by the City.** In addition to the inherent powers of the City to regulate and control any permit or franchise it issues, the authority granted to it by the Cable Act and the Telecommunications Act of 1996, and those powers expressly reserved by the City, or agreed to and provided for in any permit or franchise, the right and power is hereby reserved by the City to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers giving due regard to the rights of permittee and franchisee's. Except as provided in this Chapter, the foregoing does not allow for amendment by the City of material terms of any permit or franchise it issues without the consent of the permittee or franchisee. The City Council reserves the right to delegate its authority for permit and franchise administration to a designated agent.

**Section 12.18.81): Location of Facilities.** All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a permit or franchise agreement.

**A.** A permittee or franchisee shall install its cable or telecommunications facilities within an existing underground duct, chaseway, or conduit whenever excess capacity exists within such utility facility.

**B.** A permittee or franchisee with permission to install overhead facilities shall install its cable or telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

**C.** Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public way of the City, a permittee or franchisee with permission to occupy the same public way must also locate its cable or telecommunications facilities underground.

**D.** Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public way of the City, a permittee or franchisee that currently occupies the same public way shall relocate its facilities underground. Absent extraordinary circumstances or undue hardship as determined by the City Public Works Director, such relocation shall be made concurrently to minimize the disruption of the

public ways. No extension granted by the Director of Public Works under this Subsection shall exceed a period of twelve (12) months.

**E.** Whenever new cable or telecommunications facilities will exhaust the capacity of a public street or utility easement to reasonably accommodate future cable or telecommunications carriers or facilities, the permittee or franchisee and all other occupants of the public way shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future operators and carriers.

**Section 12.18.82): Compliance with One Call Locator Service.** All permittees and franchisees shall, before commencing any construction in the public ways, comply with all regulations of Chapter 19.122 RCW, the One Call Locator Service.

**Section 12.18.83): Construction Permits.** All permittees and franchisees are required to obtain construction permits for cable and telecommunications facilities as required in Article VII. of this Chapter. However, nothing in this Chapter shall prohibit the City and a permittee or franchisee from agreeing to alternative plan review, permit, and construction procedures for a permit or franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

**Section 12.18.84): Interference with the Public Ways.** No permittee or franchisee may locate or maintain its cable or telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the permittee or franchisee, at the permittee or franchisee's cost, temporarily or permanently, as determined by the City Public Works Director.

**Section 12.18.85): Damage to Property.** No permittee or franchisee nor any person acting on a permittee or franchisee's behalf shall take any action or permit any action to be done which may impair or damage any City property, public ways of the City, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto.

**Section 12.18.86): Notice of Work.** Unless otherwise provided in a permit or franchise agreement, no permittee or franchisee, nor any person acting on the permittee's or franchisee's behalf, shall commence any non-emergency work in or about the public ways of the City or other ways without twenty (20) working days' advance notice to the City.

**Section 12.18.87): Repair and Emergency Work.** In the event of an unexpected repair or emergency, a permittee or franchisee may commence such repair and emergency response work as required under the circumstances, provided the permittee or franchisee 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.

**Section 12.18.88): Maintenance of Facilities.** Each permittee or franchisee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

**Section 12.18.89): Relocation or Removal of Facilities.** Within thirty (30) days following written notice from the City, a permittee or franchisee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any cable or telecommunications facilities within the public ways whenever the City Public Works Director shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

**A.** The construction, repair, maintenance or installation of any City or other public improvement in or upon the public ways.

**B.** The operations of the City or other governmental entity in or upon the public ways.

**Section 12.18.90): Building Moving.** Whenever any person shall have obtained permission from the City to use any street or public way for the purpose of moving any building, a permittee or franchisee, 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 permittee or franchisee's 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.

**Section 12.18.91): Removal of Unauthorized Facilities.** Within thirty (30) days following written notice from the City, any permittee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized cable or telecommunications system, facility or related appurtenances within the public ways of the City shall, at its own expense, remove such facilities or appurtenances from the public ways of the City. A cable or telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

**A.** Upon expiration or termination of the permittee or franchisee's permit or franchise.

**B.** Upon abandonment of a facility within the public ways of the City. Any property of a permittee or franchisee shall be deemed abandoned if left in place ninety (90) days after expiration or termination of a permit or franchise.

**C.** If the system or facility was constructed or installed without the prior grant of a permit or franchise.

**D.** If the system or facility was constructed or installed without the prior issuance of a required construction permit.

**E.** If the system or facility was constructed or installed at a location not permitted by the permittee or franchisee's permit or franchise.

Provided, however, that the City may, in its sole discretion, allow a permittee, franchisee, or other such persons who may own, control, or maintain cable or telecommunications facilities within the public ways of the City to abandon such facilities in place. No facilities of any type may be

abandoned in place without the express written consent of the City. Any plan for abandonment or removal of a permittee or franchisee's 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 such persons in place, the property shall become that of the City, and such persons shall submit to the City Administrator 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 permit or franchise granted under this Chapter.

**Section 12.18.92): Emergency Removal or Relocation of Facilities.** The City retains the right and privilege to cut or move any cable or telecommunications facilities located within the public ways of the City, 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 cable operator, telecommunications carrier, or any other party 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.

**Section 12.18.93): Damage to Facilities.** Unless directly and proximately caused by the willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any cable or telecommunications facility upon City property or within the public ways of the City 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.

**Section 12.18.94): Restoration of Public Ways, Other Ways and City Property.**

**A.** When a permittee or franchisee, or any person acting on its behalf, 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 ways or property to as good a 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 permittee or franchisee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the permittee or franchisee's sole expense and the permittee or franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

**C.** A permittee, franchisee or other person acting in its behalf shall use suitable barricades, flags, flagmen, 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 ways or property.

**Section 12.18.95): Facilities Maps.** Each permittee or franchisee shall provide the City with an accurate map or maps certifying the location of all telecommunications facilities within the public ways. Each permittee or franchisee shall provide the City with updated maps annually.

**Section 12.18.96): Duty to Provide Information.** Within ten (10) days of a written request from the City Administrator, each permittee or franchisee shall furnish the City with information sufficient to demonstrate:

**A.** That permittee or franchisee has complied with all requirements of this Chapter.

**B.** That all sales, utility and/or telecommunications taxes due the City in connection with the cable or telecommunications services and facilities provided by the permittee have been properly collected and paid by the permittee or franchisee.

**C.** All books, records, maps and other documents, maintained by the permittee or franchisee with respect to its facilities within the public ways 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 permittee or franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require a permittee or franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

**Section 12.18.97): Leased Capacity.** A permittee or franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with such permit or franchise; provided:

**A.** The permittee or franchisee shall furnish the City with a copy of any such lease or agreement between the permittee or franchisee and the customer or lessee; and

**B.** The customer or lessee complied, to the extent applicable, with the requirements of this Chapter.

**Section 12.18.98): Insurance.** Unless otherwise provided in a permit or franchise agreement, each permittee or franchisee shall, as a condition of the permit or grant, secure and maintain the following liability insurance policies insuring both the permittee or franchisee and the City, and its elected and appointed officers, officials, agents and employees as co-insureds:

**A.** Comprehensive general liability insurance with limits not less than

**(1)** Five Million Dollars (\$5,000,000) for bodily injury or death to each person;

**(2)** Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and

**(3)** Five Million Dollars (\$5,000,000) for all other types of liability.

**B.** Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.

**C.** Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).

**D.** Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).

**E.** The liability insurance policies required by this section shall be maintained by the permittee or franchisee throughout the term of the permit or franchise, and such other period of time during which the permittee or franchisee is operating without a franchise or permit hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Administrator of such intent to cancel or not to renew.

**F.** Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation or intent not to renew, the permittee or franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

**Section 12.18.99): General Indemnification.** No permit or franchise shall be deemed to be granted under this Chapter unless it includes an indemnity clause substantially conforming to the following:

The permittee or franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the permittee or franchisee's own employees to which the permittee or franchisee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the permittee or franchisee, its agents, servants, officers or employees in performing under this permit or franchise are the proximate cause. The permittee or franchisee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards or liability to any person including claims by the permittee or franchisee's own employees, including those claims to which the permittee or franchisee might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the permittee or franchisee's exercise of the rights granted herein, or by virtue of the City's permitting the permittee or franchisee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the permittee or franchisee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this permit or franchise or pursuant to any other permit or approval issued in connection with this permit or franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of the permittee or franchisee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this permit or franchise.

Inspection or acceptance by the City of any work performed by the permittee or franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall 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.

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

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the permittee or franchisee and the City, its officers, employees and agents, the permittee or franchisee's liability hereunder shall be only to the extent of the permittee or franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the permittee or franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this Section shall survive the expiration or termination of this franchise agreement.

Notwithstanding any other provisions of this Section, the permittee or franchisee assumes the risk of damage to its facilities located in the City's public ways, rights-of-way, and easements from activities conducted by the City, its officers, agents, employees and contractors. The permittee or franchisee releases and waives any and all claims against the City, its officers, agents, employees or contractors for damage to or destruction of the permittee or franchisee's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees and contractors, in the public ways, rights-of-way, and easements subject to this permit or franchise, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any wilful or malicious action on the part of the City, its officers, agents, employees or contractors. The permittee or franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the permittee or franchisee's facilities as the result of any interruption of service due to damage or destruction of the User's 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 wilful or malicious actions on the part of the City, its officers, agents, employees or contractors.

**Section 12.18.100): Performance and Construction Surety.** Before a permit or franchise granted pursuant to this Chapter is effective, and as necessary thereafter, the permittee or franchisee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the City as may be required by this Chapter or by an applicable permit or franchise agreement.

**Section 12.18.101): Security Fund.** Each permittee or franchisee shall establish a permanent security fund with the City by depositing the amount of \$50,000 with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund shall be maintained at the sole expense of the permittee or franchisee so long as any of the permittee or franchisee's cable or telecommunications facilities are located within the public ways of the City.

**A.** The fund shall serve as security for the full and complete performance of this Chapter, including any costs, expenses, damages or loss the City pays or incurs, including civil

penalties, because of any failure attributable to the permittee or franchisee to comply with the codes, ordinances, rule, regulations or permits of the City.

**B.** Before any sums are withdrawn from the security fund, the City shall give written notice to the permittee or franchisee:

- (1) describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of permittee or franchisee's act or default;
- (2) providing a reasonable opportunity for permittee or franchisee to first remedy the existing or ongoing default or failure, if applicable;
- (3) providing a reasonable opportunity for permittee or franchisee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable;
- (4) that the permittee or franchisee will be given an opportunity to review the act, default or failure described in the notice with the City Administrator or his or her designee.

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

**Section 12.18.102): Construction and Completion Bond.** Unless otherwise provided in a permit or franchise agreement, a performance bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of constructing the permittee or franchisee's cable or telecommunications facilities within the public ways of the City shall be deposited before construction is commenced.

**A.** The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the City Public Works Director, including restoration of public ways and other property affected by the construction.

**B.** The construction bond shall guarantee, to the satisfaction of the City:

- (1) timely completion of construction;
- (2) construction in compliance with applicable plans, permits, technical codes and standards;
- (3) proper location of the facilities as specified by the City;
- (4) restoration of the public ways and other property affected by the construction;

- (5) the submission of 'as-built' drawings after completion of the work as required by this Chapter.
- (6) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

**Section 12.18.103): Coordination of Construction Activities.** Section 12.18.090 notwithstanding, all permittees and franchisees are required to cooperate with the City and with each other.

**A.** By February 1 of each year, permittees and franchisees shall provide the City with a schedule of their proposed construction activities in, around, or that may affect the public ways.

**B.** Each permittee and franchisee shall meet with the City, other permittees and franchisees and users of the public ways annually or as determined by the City to schedule and coordinate construction in the public ways.

**C.** All construction locations, activities and schedules shall be coordinated, as ordered by the City Public Works Director, to minimize public inconvenience, disruption or damages.

**Section 12.18.104): Assignments or Transfers of Grant.** Ownership or control of a cable or telecommunications system, license, permit, or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

**A.** No permit, franchise, or other grant shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the permit or franchise, unless otherwise provided in the permit or franchise agreement.

**B.** Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.

**C.** The permittee or franchisee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of transfer:

- (1) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;

- (2) All information required of a permit or franchise applicant pursuant to Articles III., IV. and V. of this Chapter with respect to the proposed transferee or assignee;
- (3) Any other information reasonably required by the City.
- (4) An application fee which shall be set by the City Council by resolution.

**D.** No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the cable or telecommunications system pursuant to this Chapter.

**E.** Unless otherwise provided in a license or franchise agreement, the permittee or franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign a permit or franchise. No approval shall be deemed approved until all such costs and expenses have been paid.

**F.** Any transfer or assignment of a permit, franchise, system or integral part of a system without prior written approval of the City under this Section or pursuant to a permit or franchise agreement shall be void and is cause for revocation of the grant.

**Section 12.18.105): Transactions Affecting Control of Grant.** Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control of the permittee or franchisee, of the ownership or working control of a cable or telecommunications system, of the ownership or working control of affiliated entities having ownership or working control of the permittee or franchisee or of a telecommunications system, or of control of the capacity or bandwidth of the permittee or franchisee's cable or telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to Section 12.18.01040 hereof. Transactions between affiliated entities are not exempt from City approval. A franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of a franchisee's company. Every change, transfer, or acquisition of control of a franchisee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee.

**Section 12.18.106): Revocation or Termination of Grant.** A permit or franchise granted by the City to use or occupy public ways of the City may be revoked for the following reasons:

- A.** Construction or operation in the City or in the public ways of the City without a permit or franchise grant of authorization.
- B.** Construction or operation at an unauthorized location.

- C. Unauthorized substantial transfer of control of permittee or franchisee.
- D. Unauthorized assignment of a permit or franchise.
- E. Unauthorized sale, assignment or transfer of a permittee or franchisee's franchise, permit, assets, or a substantial interest therein.
- F. Misrepresentation or lack of candor by or on behalf of a permittee or franchisee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any permit or franchise pursuant to this Chapter.
- G. Abandonment of cable or telecommunications facilities in the public ways.
- H. Failure to relocate or remove facilities as required in this Chapter.
- I. Failure to pay taxes, compensation, fees or costs when and as due the City.
- J. Insolvency or bankruptcy of the permittee or franchisee.
- K. Violation of any material provision of this Chapter.
- L. Violation of the material terms of a permit or franchise agreement.

**Section 12.18.107): Notice and Duty to Cure.** In the event that the City Administrator believes that grounds exist for revocation of a permit or franchise, he or she shall give the permittee or franchisee 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 permittee or franchisee a reasonable period of time not exceeding thirty (30) 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.
- C. That it would be in the public interest to impose some penalty or sanction less than revocation.

**Section 12.18.108): Hearing.** In the event that a permittee or franchisee fails to provide evidence reasonably satisfactory to the City Administrator as provided in Section 12.18.1070 hereof, the City Administrator shall refer the apparent violation or non-compliance to the City Council. The City Council shall provide the permittee or franchisee with notice and a reasonable opportunity to be heard concerning the matter.

**Section 12.18.109): Standards for Revocation or Lesser Sanctions.** If the City Council determines that a permittee or franchisee willfully violated or failed to comply with any of the

provisions of this Chapter or a permit or franchise granted under this Chapter, or through willful misconduct or gross negligence failed to heed or comply with any notice given the permittee or franchisee by the City under the provisions of this Chapter, then the permittee or franchisee shall, at the election of the City Council, forfeit all rights conferred hereunder and the permit or franchise may be revoked or annulled by the City Council. The City Council 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 obtaining an order from the superior court having jurisdiction compelling the permittee or franchisee to comply with the provisions of this Chapter and any permit or franchise granted hereunder, and to recover damages and costs incurred by the City by reason of the permittee or franchisee's failure to comply. The City Council shall utilize 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.
- F.** Whether the violation was voluntarily disclosed, admitted or cured.

**Section 12.18.110): Incorporation By Reference.** The provisions of this Chapter shall be incorporated by reference in any permit or franchise approved hereunder. The provisions of any proposal submitted and accepted by the City shall be incorporated by reference in the applicable permit or franchise. However, in the event of any conflict between the proposal, this Chapter, and the permit or franchise, the permit or franchise shall be the prevailing document.

**Section 12.18.111): Notice of Entry on Private Property.** At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property to perform new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property by the permittee or franchisee. A door hanger may be used to comply with the notice and posting requirements of this Section. A franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

**Section 12.18.112): Safety Requirements.** A permittee or franchisee, in accordance with applicable National, State, and Local safety requirements shall, at all times, employ 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. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks,

alleys, and public ways or places of a permit or franchise area, 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 permittee or franchisee 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 permittee or franchisee, establish a reasonable time for a franchisee 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 permittee or franchisee.

## **VII. CONSTRUCTION STANDARDS**

<b>Sections</b>	<b>12.18.1130</b>	<b>General Construction Standards.</b>
	<b>12.18.1140</b>	<b>Construction Codes.</b>
	<b>12.18.1150</b>	<b>Construction Permits.</b>
	<b>12.18.1160</b>	<b>Applications.</b>
	<b>12.18.1170</b>	<b>Engineer's Certification.</b>
	<b>12.18.1180</b>	<b>Traffic Control Plan.</b>
	<b>12.18.1190</b>	<b>Issuance of Permit.</b>
	<b>12.18.1200</b>	<b>Construction Schedule.</b>
	<b>12.18.1210</b>	<b>Compliance with Permit.</b>
	<b>12.18.1220</b>	<b>Display of Permit.</b>
	<b>12.18.1230</b>	<b>Survey of Underground Facilities.</b>
	<b>12.18.1240</b>	<b>Noncomplying Work.</b>
	<b>12.18.1250</b>	<b>Completion of Construction.</b>
	<b>12.18.1260</b>	<b>As-Built Drawings.</b>
	<b>12.18.1270</b>	<b>Restoration of Improvements.</b>
	<b>12.18.1280</b>	<b>Landscape Restoration.</b>
	<b>12.18.1290</b>	<b>Construction Surety.</b>
	<b>12.18.1300</b>	<b>Exceptions.</b>
	<b>12.18.1310</b>	<b>Responsibilities of the Owner.</b>

**Section 12.18.113): General Construction Standards.** No person shall commence or continue with the construction, installation or operation of cable or telecommunications facilities within the City except as provided in this Chapter.

**Section 12.18.114): Construction Codes.** Cable and telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations.

**Section 12.18.115): Construction Permits.** No person shall construct or install any cable or telecommunications facilities within the City without first obtaining a construction permit therefor, provided, however:

**A.** No permit shall be issued for the construction or installation of cable or telecommunications facilities within the City unless the cable operator or telecommunications carrier has filed an application for a business license with the City pursuant to Article II of this Chapter.

**B.** No permit shall be issued for the construction or installation of telecommunications facilities in the public ways unless the cable operator or telecommunications carrier has applied for and received a permit or franchise pursuant to this Chapter.

**C.** No permit shall be issued for the construction or installation of cable or telecommunications facilities without payment of the construction permit fee established by a resolution adopted by the City Council for this purpose.

**Section 12.18.116): Applications.** Applications for permits to construct cable or telecommunications facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

**A.** That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

**B.** The location and route of all facilities to be installed on existing utility poles.

**C.** The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways.

**D.** The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.

**E.** The location of all other facilities to be constructed within the City, but not within the public ways.

**F.** The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public ways.

**G.** The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

**Section 12.18.117): Engineer's Certification.** All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

**Section 12.18.118): Traffic Control Plan.** All 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 Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

**Section 12.18.119): Issuance of Permit.** Within forty-five (45) days after submission of all plans and documents required of the applicant and payment of the permit fees required by this Article, the City's Public Works Director, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he may deem necessary or appropriate.

**Section 12.18.120): Construction Schedule.** The permittee shall submit a written construction schedule to the City Public Works Director ten (10) working days before commencing any work in or about the public ways. The permittee shall further notify the City Public Works Director not less than two (2) working days in advance of any excavation or work in the public ways.

**Section 12.18.121): Compliance with Permit.** All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City Public Works Director and his or her representatives shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

**Section 12.18.122): Display of Permit.** The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Public Works Director or his or her representatives at all times when construction work is occurring.

**Section 12.18.123): Survey of Underground Facilities.** If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a state-registered land surveyor. The permittee shall relocate any facilities which are not located in compliance with permit requirements.

**Section 12.18.124): Noncomplying Work.** Upon order of the City Public Works Director, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed.

**Section 12.18.125): Completion of Construction.** The permittee shall promptly complete all construction activities so as to minimize disruption of the public and other ways and other public and private property. All construction work authorized by a permit within public and other ways, including restoration, must be completed within one hundred twenty (120) days of the date of issuance.

**Section 12.18.126): As-Built Drawings.** Within sixty (60) days after completion of construction, the permittee shall furnish the City with two (2) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all cable or telecommunications facilities constructed pursuant to the permit.

**Section 12.18.127): Restoration of Improvements.** Upon completion of any construction work, the permittee shall promptly repair any and all public and private property improvements,

fixtures, structures and facilities in the public or other ways or otherwise damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction.

**Section 12.18.128): Landscape Restoration.**

**A.** All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation maintenance, repair or replacement of cable or telecommunications facilities, whether such work is done pursuant to a franchise or permit shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

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

**Section 12.18.129): Construction Surety.** Prior to issuance of a construction permit, the permittee shall provide a performance bond, as provided in Section 12.18.1020 of this Chapter.

**Section 12.18.130): Exceptions.** Unless otherwise provided in a permit or franchise agreement, all cable operations and telecommunications carriers are subject to the requirements of this Article.

**Section 12.18.131): Responsibilities of the Owner.** The owner of the facilities to be constructed and, if different, the permittee or franchisee, are responsible for performance of and compliance with all provisions of this Article.

**Section 2. 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.

**Section 4. Effective date.** This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum. This ordinance shall take effect five (5) days after passage of publication of an approved summary thereof consisting of the title.

PASSED and ADOPTED by the Gig Harbor City Council this 10th day of October, 1997.

CITY OF GIG HARBOR

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GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
Molly Towslee, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By: \_\_\_\_\_  
Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 10/8/97  
PASSED BY THE CITY COUNCIL: 10/27/97  
PUBLISHED: 11/5/97  
EFFECTIVE DATE: 11/10/97  
ORDINANCE NO. 772

## **SUMMARY OF ORDINANCE NO. 772**

of the City of Gig Harbor, Washington

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On the 27th day of October, 1997, the City Council of the City of Gig Harbor, passed Ordinance No. 772. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO TELECOMMUNICATIONS AND CABLE TELEVISION; ESTABLISHING REQUIREMENTS FOR TELECOMMUNICATION CARRIERS' AND CABLE OPERATORS' USE OF THE PUBLIC RIGHTS-OF-WAY AND PUBLIC PROPERTY; DESCRIBING THE PROCEDURES FOR APPLICATION AND APPROVAL OF TELECOMMUNICATION BUSINESS LICENSES, TELECOMMUNICATIONS RIGHT-OF-WAY USE PERMITS, FRANCHISES AND CABLE TELEVISION FRANCHISES; DESCRIBING VIOLATIONS AND ESTABLISHING PENALTIES; AND ADDING A NEW CHAPTER 12.18 TO THE GIG HARBOR MUNICIPAL CODE.

The full text of this Ordinance will be mailed upon request.

DATED this 11th day of October, 1997.

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Molly Towslee, City Clerk