

Title 19

COMMUNICATIONS SYSTEMS AND RIGHT-OF-WAY USE

Chapters:

19.02 General

**19.04 Special Rules Applicable to Telecommunications Facilities
and Telecommunications Service Providers**

19.06 Private Communications Facilities

19.08 *Repealed*

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Chapter 19.02

GENERAL

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19.02.010 Purpose.

The purposes of this title are to:

A. Establish a local policy concerning telecommunications systems, and private communications systems for use of the public rights-of-way;

B. Establish a policy that promotes availability of high-quality and diverse telecommunications services to city residents, businesses, the city, and other public institutions; promotes the availability of diverse, multimedia information resources to the community; provides for the development of a communications infrastructure that provides opportunities for more open government, enhancing educational opportunities throughout the community, providing public access to the communications infrastructure, and building a stronger community; while ensuring that the city has the authority to act to protect the public, safety, and welfare in the face of a rapidly-changing industry that is placing increasing demand on public resources;

C. Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of the use of public rights-of-way by telecommunications operators, private communications operators, and resellers, and their respective facilities and licenses;

D. Promote competition in communications;

E. Minimize unnecessary local regulation of providers and services;

F. Encourage the provision of advanced and competitive telecommunications, on the widest possible basis to the businesses, institutions and residents of the city;

G. Permit and manage reasonable access to the public rights-of-way of the city for communications purposes on a competitively neutral basis, to the extent required by law;

H. Conserve the limited physical capacity of the public rights-of-way held in public trust by the city;

I. Assure that the city's current and ongoing costs of granting and regulating private access to and use of the public rights-of-way are fully paid by the persons seeking such access and causing such costs;

J. Secure fair and reasonable compensation to the city and the residents of the city, in a nondiscriminatory manner, for permitting private use of the public rights-of-way;

K. Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above ground facilities;

L. Assure that all persons providing telecommunications services within the city comply with the ordinances, rules and regulations of the city;

M. Ensure the ability of the city to obtain sufficient information from persons subject to its jurisdiction to enable effective decisions regarding their access to city rights-of-way and effective management of activity in the rights-of-way;

N. Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare;

O. Enable the city to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development; and

P. Reserve to the city and provide for the fullest exercise possible of the authority and discretion of the city to require that:

1. Facilities are installed and maintained within the public rights-of-way in such manner and at such points so as not to inconvenience the public use of the public rights-of-way or to adversely affect the public, safety and welfare;

2. All noncity users of the rights-of-way shall be required to reimburse and hold harmless the city for the actual costs incurred by the city by reason of the construction or presence in the public rights-of-way of the facilities of such other users. (Ord. 2002-36 § 1, 2002)

19.02.020 Policy guidelines.

The administration of this title shall be governed by the following telecommunications policy guidelines:

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

B. The following policy guidelines express the commitment of the city to support telecommunications services and to manage its rights-of-way proactively while balancing the interests and needs of the community:

1. The city will manage access to the public rights-of-way for telecommunications purposes in a nondiscriminatory, competitively neutral and nonexclusive way to the extent required under applicable law and, to the extent allowed under applicable law, to receive fair compensation. The public interest will be protected by collecting associated fees, taxes, administrative costs, and construction costs for use of the rights-of-way.

2. Telecommunications master permits will be managed to preserve the integrity of the city's infrastructure, ensure efficient use of city property and ensure compliance with city ordinances, rules and regulations.

3. In order to effectively manage and regulate the use of public rights-of-way by private entities in the best interests of the city and its citizens it is necessary for the city to reserve and exercise all legislative, administrative and discretionary authority it may have to the full

extent allowed or not prohibited by law and nothing in this title shall be construed to diminish or in any way to limit the discretionary, administrative or legislative authority of the city and its officials as respects the management and use of the city's public rights-of-way or in respect to the granting, delaying, or denying any master permit, right-of-way permit or license. (Ord. 2002-36 § 1, 2002)

19.02.030 Definitions.

For the purposes of this title, the following terms, phrases, words, and their derivations shall have the meaning given in this section. Unless otherwise expressly stated, words not defined in this title shall be construed consistent with Title 47 of the United States Code. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereafter enacted or amended.

A. "Administrator" means the master permit administrator or designee.

B. "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.

C. "Application fee" means the charge specified in BIMC 19.04.020 and designed to recover the city's actual costs in processing applications for master permits, use permits or licenses, including applications for transfer thereof.

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

E. *Repealed by Ord. 2003-22.*

F. "Communications facility" means a device which alone or as part of an aggregation

of devices is capable of transmitting signals from place to place.

G. "Communications system" refers to a telecommunications system.

H. "Construction, operation or repair" and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready and excavation.

I. "Grantee" refers to a person holding a master permit.

J. "Gross revenues" means any and all revenue, of any kind, nature or form.

K. "License" refers to the legal authorization, terminable at will, to use a particular, discrete, and limited portion of the public right-of-way to construct, operate, or repair a communications facility or a private communications system. The term license shall not mean or include:

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

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

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

4. The right to place devices in the right-of-way, such as pay telephones, for end user use in originating and terminating transmissions.

L. "Master permit" refers to the authorization granted by the city to an operator of a telecommunications system, under this title, giving the operator the nonexclusive right to occupy the space, or use facilities upon, across, beneath, or over any public right-of-way in the

city, to provide a specified service within a master permit area. Such master permit shall not include or be a substitute for:

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

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

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

4. The right to place devices in the right-of-way, such as pay telephones, for end user use in terminating or originating transmissions.

By way of example, and without limiting the foregoing, this title shall not be read to diminish or in any way affect the authority of the city to control the use of the city's real estate, fixtures or personal property. Therefore, any person who desires to use such property must obtain additional approvals, or agreements for that purpose, as may be required by the city.

M. "Master permit area" means the area of the city that a grantee is authorized to serve by the terms of its master permit or by operation of law.

N. "Operator," when used with reference to a system, refers to a person (1) who provides service over a communications system and directly or through one or more affiliates owns a significant interest in such facility; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility. A person that operates under agreement a telecommunications system or a specific portion of a telecommunications system to provide telecommunications services shall be treated as an operator for purposes of this title.

O. "Overhead facilities" refers to communications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

P. *Repealed by Ord. 2003-22.*

Q. "Private communications system" means a facility placed in whole or in part in the public rights-of-way for the provision of communications in connection with a person's business, but not encompassing in any respect the provision of telecommunications services.

R. "Private communications system owner" means a person that owns or leases a private communications system.

S. "Public rights-of-way" mean land acquired or dedicated for public roads and streets which under applicable law the city has authority to grant master permits, right-of-way permits or licenses for use thereof or has regulatory authority thereover. The public rights-of-way may be more specifically defined in the master permit, right-of-way permit or license granting the right to use the public rights-of-way. For purposes of this title, the term does not include:

1. State highways;
2. Land dedicated for roads, streets and highways not opened and not improved for motor vehicle use by the public;
3. Structures such as, but not limited to, poles and conduits located in the right-of-way;
4. Parks and open space;
5. Publicly owned shorelines or harbor areas; and
6. Utility easements.

T. "Reseller" refers to any person who resells a telecommunications service, for which he makes a separate charge, provided over a telecommunications system, where that person does not own or lease the underlying telecommunications system used for the transmission.

U. "Telecommunications service" means the transmission for hire of information in electronic or optical form, including, but not limited to, voice, video, or data, whether or not the transmission medium is owned by the provider itself. Telecommunications service includes telephone service but does not

include cable television service or over-the-air broadcasts to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto.

V. "Telecommunications system" means a tangible facility that is used to provide one or more telecommunications services, any portion of which occupies public rights-of-way. The term telecommunications system by way of example, and not limitation, includes wires, equipment cabinets, guys, conduits, radio transmitting towers, poles, other supporting structures, and associated and appurtenant facilities used to transmit telecommunications signals. The term telecommunications system includes all devices mounted on light poles in the public rights-of-way through which telecommunications services are originated or terminated.

W. "Underground facilities" refers to all utilities and communications and cable facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

X. "Use permit" means the authorization in whatever form whereby a city or town may grant permission to a service provider to enter and use the specified right-of-way for the purpose of installing, maintaining, repairing, or removing identified facilities.

Y. "Wireless communications services facilities" means those facilities that the city has authorized to be placed in the public rights-of-way and which are necessary for the provision of personal wireless services. "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined by federal law and regulations. (Ord. 2003-24 § 22, 2003; Ord. 2003-22 § 27, 2003; Ord. 2002-36 § 1, 2002)

19.02.040 Master permit required.

A. Master Permit Requirement. An operator of a telecommunications facility must obtain a master permit prior to constructing a telecommunications facility or providing telecommunications services. The fact that a particular master permitted communications facility may be used for multiple purposes

does not obviate the need to obtain a master permit for other purposes unless applicable federal or state law prohibits the city from requiring such additional master permit. No master permit shall become effective without the grantee signing an acceptance of the master permit.

B. Exceptions. Subject to the requirements of applicable law, a master permit requirement may be waived in whole or in part for a telecommunications system where the city determines the use of the public rights-of-way is de minimus (i.e., uses only a short distance of street or occupies only a small isolated area of a specific street). For such facilities, the city may issue a license. In addition, every private communications system owner must obtain a license. Every license shall include or be read to include, as if stated therein, a reservation of rights by the city to require the licensee to obtain a master permit if the city determines that the licensee's use of the public rights-of-way has increased substantially and is no longer de minimus use.

C. Additional Exceptions. Any operator providing telecommunications service over an existing telecommunications system in the city's public rights-of-way without having a master permit from the city authorizing such use at the time this title becomes effective shall apply for a master permit from the city for such use of the public rights-of-way; provided, that if the operator has obtained a franchise, permit, license, or other authorization from the city allowing such use of the public right-of-way, the operator may continue its use of the public right-of-way pursuant to such franchise, permit, license or other authorization until the expiration or termination of such authority, at which time the operator shall apply for and obtain a master permit under this title; and further provided, that if an operator submits evidence satisfactory to the city that it has an existing state-wide grant to occupy the public right-of-way then the requirement for obtaining a master permit will be suspended until there is a final judicial decision resolving the issue or the city council determines that the best interests of the city will be served by not requiring the operator to obtain a master per-

mit. The suspension of any master permit requirement under this section shall not constitute a waiver of any right of the city to require the operator to obtain in the future a master permit or to remove any or all of its facilities in the public right-of-way at any time upon its failure to obtain a master permit. If an operator fails to obtain a master permit and the master permit requirement is suspended as provided in this subsection, then the operator shall apply for and obtain a city right-of-way permit prior to constructing or placing any wireline telecommunications facility in the public right-of-way.

D. Nature of Grant. Neither a master permit nor a license shall convey equitable or legal title to the public rights-of-way. The right granted is only the right to occupy those portions of the public rights-of-way to which the city has the right to grant access, for the purposes and the time period stated in the master permit or license, and, subject to the limitations in this title, the right may not be subdivided or subleased. A master permit, right-of-way permit or license shall not grant a vested right for any facility to be located or to remain at any specific location in the public right-of-way and any right, permission or consent to occupy any location in the public right-of-way shall be revocable and terminable at the discretion of the city and the facility therein removed at the cost of the operator in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public or municipal interest as determined by the city. Every master permit shall be:

1. Deemed to include all of the provisions that are required to be in a master permit under this title, as if fully set forth in the master permit:

2. Deemed to provide for forfeiture under the circumstances set forth in the provisions of this title and any master permit thereunder; and

3. Construed to exclude the grant of any rights in any easement granted for or in favor of any city or public utility facilities or operations, unless the master permit or license shall expressly state otherwise.

No reference herein, or in any master permit, right-of-way permit or license, to a public right-of-way shall be deemed to be a representation or guarantee by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a master permit shall be deemed to grant no more than those rights which the city may have the undisputed right and power to give. (Ord. 2002-36 § 1, 2002)

19.02.050 General conditions upon use of public rights-of-way.

A. Responsibility for Costs. Except as expressly provided otherwise, any act that a communications system operator, its contractors or subcontractors are required to perform under this section shall be performed at their cost. If a communications system operator fails to perform work that it is required to perform within the time provided for performance, the city may perform the work and bill the communications system operator therefor. The communications system operator shall pay the amounts billed within 30 days.

B. Construction Procedures and Placement of Facilities – Obligation to Minimize Interference with Use of Public Rights-of-Way.

1. The construction, operation, and repair of communications facilities are subject to the supervision of all of the authorities of the city that have jurisdiction in such matters and shall be performed in compliance with all laws, ordinances, departmental rules and regulations and practices affecting such system. By way of example, and not limitation, this includes zoning codes and safety codes and current city standards, including the most current version of the Standard Specifications for Road, Bridge and Municipal Construction, as prepared by the Washington State Department of Transportation (WSDOT) and the Washington State Chapter of American Public Works Association (APWA); the most current version of the APWA Amendments to Division One, and the most current version of the city of Bainbridge Island amendments thereto. In addition, the construction, operation, and repair shall be performed in a manner consis-

tent with high industry standards. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

2. Construction, operation, or repair of a communications system shall not commence until all required permits have been properly filed for and obtained from the proper city officials and all required permits and associated fees paid and bonds or other performance security provided. In any permit so issued, the city may impose as a condition of the granting of the permit such conditions and regulations as may be necessary to the management of the rights-of-way, including, by way of example and not limitation, for the purpose of protecting any structures in the public rights-of-way, for the proper restoration of such public rights-of-way and structures, and for the protection of the city and the public and the continuity of pedestrian and vehicular traffic. A master permit, license or right-of-way permit or other applicable provision of the Bainbridge Island Municipal Code may provide for the conditions under which certain emergency work may be undertaken prior to obtaining certain permits where such work is necessary to immediately remedy an emergency situation involving an imminent danger to health, safety

or property or to temporarily restore communications system services which have been disrupted by storms, earthquakes, riots or other unexpected accidents or phenomenon; provided, however, that the communications system operator undertaking such emergency work shall be required (a) to give notice to the city of the commencement of the emergency work as quickly as practical, (b) to apply for the permits which would otherwise be required for such work by the next business day from the commencement of such work; and (c) to conform any work performed prior to the approval of the required permit and to carry out any other work in the area involved in accordance with the requirements of the permit. Subcontractors are prohibited from lien-ing public property or any facilities placed in the public right-of-way.

3. Operators of communications systems must follow city-established requirements for placement of facilities in public rights-of-way, including the specific location of facilities in the public rights-of-way, and must in any event install facilities in a manner that minimizes interference with the use of the public rights-of-way by others, including others that may be installing communications facilities. The city may require that facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular right-of-way; may deny access if an operator is not willing to comply with the city's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the city, or which is installed without prior city approval of the time, place, or manner of installation and charge the operator of the facility for all the costs associated with removal; and may require a person using the rights-of-way to cooperate with others to minimize adverse impacts on the rights-of-way through joint trenching, joint use of facilities and other arrangements.

4. Upon order of the administrator, all work which does not comply with the permit, the approved plans or specifications for the

work, or the requirements of this title or other applicable law shall be removed.

5. Unless otherwise agreed or provided in a master permit, license or right-of-way permit, a communications systems operator shall be required to reimburse and hold harmless the city for any cost or expense reasonably incurred by the city in the planning, construction, installing, altering, or implementing any public work as a result of the construction or the presence in the public right-of-way of the facility of such communications system operator.

6. No new poles or extenders on poles to increase capacity shall be allowed in the public rights-of-way and all new overhead facilities of any nature are prohibited unless specifically allowed under this chapter or other applicable provisions of the Bainbridge Island Municipal Code or applicable city policies, procedures and current standards.

7. The specific location within the right-of-way and the method of installing facilities underground or overhead will be subject to approval by the public works director/city engineer. Cutting of pavement in the public right-of-way shall be prohibited where the public works director/city engineer approves locating underground facilities in the unimproved portions of the right-of-way or in the sidewalk areas or requires alternative methods for undergrounding not requiring trenching or the cutting of pavement.

8. Cutting of pavement shall be prohibited in any event in a newly constructed or reconstructed street for a period of five years from the paving of such street or in a street where a trench was previously available for a period of three years from the date the trench was available. The city may require as a condition to the occupancy of the rights-of-way that communications facilities be located in existing underground ducts or conduits wherever the capacity exists; provided, however, the public works director/city engineer may in his or her discretion permit pot-holing (subject to conditions to alleviate the harmful effects) where conduit is to be placed underground by means of directional boring and the person seeking permission has provided evidence sat-

isfactory to the public works director/city engineer that:

- a. Such pot-holing is necessary to avoid interference with existing utilities;
- b. Such pot-holing is the only reasonable alternative available to locate existing utilities; and
- c. Such pot-holing will result in little or no visual or other detrimental impact to the street.

9. Any and all public rights-of-way, public property, or private property that is disturbed or damaged during the construction, operation, repair or removal of a communications facility shall be promptly repaired by the communications system operator that disturbed or damaged the public rights-of-way, public property or private property. Public property and public right-of-way must be restored to the satisfaction of the city and to a condition as good or better than before the disturbance or damage occurred. A communications system operator shall continue to maintain the restored street area, which may consist of curb, gutter, sidewalk, pavement, or other restored appurtenances, in a condition as good as or better than the condition of the adjacent undisturbed area of the street for the life of the street (to the extent such maintenance or restoration is required (a) as a result of the restored street area being defective or otherwise inferior to the adjacent undisturbed area of the street, or (b) as a result of the presence of the facilities of the communications system operator) until the restored area is repaved or reconstructed by a different party, except when such repaving or reconstruction is a result of enforcement action by the city for the lack of such maintenance activity; unless (a) the assessment of the impact assessment under this title provides for an exemption; or (b) a master permit, license or permit specifically exempts the communications system operator from such obligation.

10. No tree trimming shall be performed without the permission of the city and other affected authorities, and tree trimming must be performed in strict accordance with the city code.

11. Within 48 hours after notice from the city, a communications system operator shall remove any graffiti on any part of its communications system in the public rights-of-way (including, by way of example and not limitation, equipment cabinets). If the operator fails to do so, the city may remove the graffiti and bill the operator for the cost thereof.

C. Relocation and Abandonment of Facilities.

1. A communications system operator shall, by a time specified by the city, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the city by reason of traffic conditions; public safety; public right-of-way construction; public right-of-way repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work, public facility or improvement, or any government-owned utility; public right-of-way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the communications facility. Collectively, such matters are referred to below as the "public work."

a. Except in the case of emergencies, the city shall provide written notice describing where the public work is to be performed as soon as practical but at least 30 days prior to the deadline by which a communications system operator must protect, support, temporarily disconnect, relocate or remove its facilities. A communications system operator may seek an extension of the time to perform such tasks where they cannot be performed in 30 days or by the completion time specified even with the exercise of its best efforts, and such request for an extension shall not be unreasonably refused.

b. In the event of an emergency, or where a communications facility creates or is contributing to an imminent danger to health, safety, or property, the city may protect, support, temporarily disconnect, remove, or relocate any or all parts of the communications facility without prior notice, and charge the

communications system operator for costs incurred.

c. If a communications system operator does not comply with the requirements of this title and the applicable master permit, license or right-of-way permit does not provide otherwise, and if not prohibited by applicable law, the city shall have the right to revoke any right of a communications system operator to have its facilities remain at a specific location in the public right-of-way at any time the city determines that the facilities of such communications system operator must be removed from their present location or from the street in order to facilitate a public work in the public right-of-way and upon revocation of the master permit, license or right-of-way permit of the communications system operator as to the affected designated facilities the communications system operator shall remove the same and restore the street at its cost.

2. If any person that is authorized to place facilities in the rights-of-way requests another communications system operator receiving the request to protect, support, temporarily disconnect, remove, or relocate its facilities to accommodate the construction, operation, or repair of the facilities of such other person, the communications system operator shall, after 30 days' advance written notice, take action to effect the necessary changes requested. Unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the communications facility that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the city, even if the city makes the request for such action.

3. A communications system operator shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same. A communications system operator shall be given not less

than seven days' advance notice to arrange for such temporary wire changes.

4. Grantee may abandon and surrender its master permit to the city on six months' written notice to the administrator, with copies served on the mayor and city attorney. Abandonment shall be subject to acceptance by the city, by a resolution of acceptance adopted by the city council. Upon abandonment, non-renewal, revocation or expiration of this master permit, and if no extension is granted, grantee may, at the discretion of the administrator, be required, in part or entirely, to remove all its fiber, wire, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the master permit. Alternatively, the administrator may direct, limit or condition grantee's removal, sale or continued use or abandonment of grantee's facilities and equipment, either by agreement or through means of any other lawful municipal power or right. The city may continue to invoke any provision of this master permit against grantee or any successor entity enjoying de facto master permit privileges after revocation or expiration. The city may take all other actions deemed necessary and proper by the city to accommodate the transition to any successor as may be in the best interests of the city and its residents.

D. Facility Subject to Inspection – Operator Must Provide Information. Every communications facility shall be subject to the right of periodic inspection by the city to determine compliance with the provisions of this title, a master permit or license agreement, or other applicable law. The city shall have the right, upon request, to be notified and present when the communications system is inspected by the operator to determine compliance with the provisions of this title; a master permit, license or right-of-way permit; or applicable law where the city has enforcement authority. Each operator must respond to requests for information regarding its system and plans for the system as the city may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired to the extent

such plant is or will be in the public right-of-way or has been or will be provided under any master permit, license or right-of-way permit granted by or requested from the city.

E. **Underground Services Alert.** Each operator of a communications system that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for the city at no charge. Each operator shall reasonably cooperate with city initiatives to coordinate underground fixture locations and installations. Each operator shall be familiar with Chapter 19.122 RCW, Washington State's "Underground Utilities" statute. Each operator shall certify that it understands local procedures, custom and practice relating to facilities locating, and shall ensure that its contractors or others working in the right-of-way on grantee's behalf are similarly well informed.

F. **Undergrounding of Lines.** Each operator shall recognize the city's right to preserve and control of the public right-of-way, particularly with respect to policies regarding the undergrounding of overhead lines for aesthetic reasons. Consistent with any general municipal undergrounding policy or program now or hereafter developed, the city reserves the right to require each operator's participation in municipally imposed undergrounding or related requirements as may now or hereafter arise, as a condition of the operator's new installation or major maintenance or restoration construction activities of overhead facilities under this franchise. Each operator shall coordinate its underground installation and planning activities with the city's underground plan and policies; provided, in no event shall any third party beneficiary rights be implied or created. Nothing in this section shall be permitted in conflict with RCW 35.99.060, and the provisions of this section shall be applied in conformity thereto.

G. **Plans for and Publicizing Work.**

1. Work shall be publicized as the city may direct from time to time. The publication

of work may be used to notify the public and operators of other communications systems, of the impending work, in order to minimize inconvenience and disruption to the public and to allow joint use by others.

2. Each communications system operator shall provide the city a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the city that will be affected.

3. Each operator shall supply and maintain updated, at no cost, any information requested by the administrator to coordinate municipal functions with the operator's activities and fulfill any municipal obligations under state law. Said information may include an installation inventory, location of existing or planned facilities, maps, plans, and as-built drawings of the operator's installations in the city. Said information may be requested either in hard copy and/or electronic format compatible with the city's data base system, as now or hereafter existing. Each operator shall keep the administrator informed of its long-range plans for coordination with the city's long-range plans.

4. Each communications facility operator shall maintain accurate maps and improvements plans which show the location, size, and a general description of all facilities installed in the public rights-of-way and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. The operator of each communications facility shall provide a map (on 24-inch by 36-inch mylar) to the city showing the location of its facilities, in such detail and scale as may be directed by the city engineer. New system maps shall be promptly submitted to the city when the facility expands or is relocated. Copies of maps shall be provided on disk, in a commercially available electronic format specified by the city engineer or in such alternate form as approved by the city engineer.

5. The administrator may from time to time, when the city receives application for a permit to use a particular route, or on the

administrator's own initiative, designate by published order a route or proposed route for installation of communications facilities and may:

a. Require all persons who wish to place underground facilities along that route or any part thereof to install them during a specified period; and

b. Otherwise prohibit placement of such facilities along the route or any part thereof for 36 months or for such other, longer period as is necessary to protect the public. (Ord. 2002-36 § 1, 2002)

19.02.060 Taxes and fees.

A. To the extent permitted by law, a franchise fee may be charged to an operator for its operation of telecommunications facilities in the right-of-way, whether as a lessor of the facilities to third parties or as a direct provider of telecommunications services. Nothing in this title shall limit the city's power of taxation, as may now or hereafter exist.

B. Consistent with RCW 35.21.860(1)(b), nothing in this master permit shall prohibit the city from charging a fee to recover the actual administrative expenses it incurs that are directly related to receiving and approving a master permit, license, and right-of-way permit, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. On request of an operator, the city will submit proof of any charges or expenses incurred. For any project or time frame, an operator can also request a written estimate from the administrator, in advance of costs planned to be expended by the city, and the operator may object to any costs as provided hereafter in the case of a challenged cost billed by the city. Except as otherwise provided, said fees must be paid within 30 days of receipt of the city's billing. The operator shall pay all other taxes applicable to its operations or activities in the city, all such obligations also being a condition of this master permit.

C. An operator shall make any required payments in the form, intervals and manner requested by the city administrator, and furnish him/her any information related to his/her

revenue collection functions reasonably requested. In case of audit, the administrator may require the operator to furnish a verified statement of compliance with its obligations or in response to any questions, verified by an officer of the operator. All audits will take place on the operator's premises or offices furnished by the operator, which shall be at a location in the city. The operator agrees, upon request of the city auditor, to provide copies of all documents filed with any federal, state, or local regulatory agency, to be mailed to the city auditor on the same day as filed, postage prepaid, affecting any of the operator's facilities or business operations in the state of Washington. (Ord. 2002-36 § 1, 2002)

19.02.070 Protection of the city and residents.

A. Indemnification. No master permit or other authorization to use the rights-of-way issued to a communications system operator or a private communications system owner shall be valid or effective until and unless the city obtains an adequate indemnity from such operator. Unless otherwise agreed, in writing, adequate indemnity must at least include the following:

1. Release the city from and against any and all liability and responsibility in or arising out of the construction, operation or maintenance of the communications facility in the public right-of-way by the communications facility operator. Each communications facility operator must further agree not to sue or seek any money or damages from city in connection with the above-mentioned matters;

2. Indemnify and hold harmless the city, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the city or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the communications system operator, or its agents, independent contractors or employees related to or in any way arising out

of the construction, operation or repair of the facility in the public rights-of-way;

3. Provide that the covenants and representations relating to the indemnification provision shall survive the term of any master permit or other authorization and continue in full force and effect as to the party's responsibility to indemnify.

B. Insurance. No master permit or other authorization to use the rights-of-way issued to a communications system operator or a private communications system owner shall be valid or effective until and unless the city obtains assurance that the operator (and those acting on its behalf) have adequate insurance. Unless otherwise agreed, in writing, adequate insurance must at least meet the following requirements:

1. A communications system operator shall not commence construction or operation of the facility without obtaining all insurance required under this section and approval of such insurance by the city, nor shall a communications system operator allow any contractor or subcontractor to commence work on its contract or subcontract until all such similar insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the communications system operator has facilities in the rights-of-way, and for a period thereafter as specified in the minimum coverages described below. If the operator, its contractors, or subcontractors do not have the required insurance, the city may order such entities to stop operations until the insurance is obtained and approved.

2. Certificates of insurance, reflecting evidence of the required insurance and naming the city as an additional insured, shall be filed with the city's risk manager. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage.

3. These certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least 30 days' prior written notice has been given to the city. Policies shall be issued by companies

authorized to do business under the laws of the state of Washington. Financial ratings must be no less than "A" in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide.

4. If the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the master permit or license, then the communications system operator shall furnish, at least 30 days prior to the expiration date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the master permit or license under which the communications system operates.

5. A communications system owner or operator, and its contractors or subcontractors engaged in work on the operator's behalf in, on, under or over public rights-of-way, shall maintain the following minimum insurance. The city shall be named as an additional insured on the general liability and automotive policies.

a. Comprehensive General Liability Insurance to Cover Liability Bodily Injury and Property Damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

i. Bodily Injury.

Each occurrence: \$1,000,000.

Annual aggregate: \$3,000,000.

ii. Property Damage.

Each occurrence: \$1,000,000.

Annual aggregate: \$3,000,000.

iii. Personal Injury.

Annual aggregate: \$3,000,000.

iv. Completed operations and products liability shall be maintained for two years after the termination of the master permit or license (in the case of the communications system owner or operator) or completion of the work for the communications system owner or operator (in the case of a contractor or subcontractor).

v. Property damage liability insurance shall include coverage for the fol-

lowing hazards: X – Explosion, C – Collapse, U – Underground.

b. Workers' compensation insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and in the case any work is sublet, each communications system operator shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each communications system operator. Each communications system operator and its contractors and subcontractors shall maintain during the life of this policy employers liability insurance. The following minimum limits must be maintained:

i. Workers' compensation:

Statutory.

ii. Employer's liability:

\$500,000 per occurrence.

c. Comprehensive Auto Liability.

i. Bodily Injury.

Each occurrence: \$1,000,000.

Annual aggregate: \$3,000,000.

ii. Property Damage.

Each occurrence: \$1,000,000.

Annual aggregate: \$3,000,000.

Coverage shall include owned, hired, and non-owned vehicles.

6. Each communications system operator shall hold the city, its agents, and employees harmless on account of claims for damages to persons, property or premises arising out of its construction, operation or repair of its communications system and name the city as an additional insured.

7. In every master permit or license agreement, the city shall reserve the right to require any other insurance coverage it deems necessary depending upon the exposures.

C. Performance/Payment Bonds. Every operator of a communications facility may be required to obtain performance bonds and, if necessary, payment bonds to ensure the faithful performance of its responsibilities under this title and any master permit, right-of-way permit or license, including a sufficient amount to cover removal of facilities and/or restoration of city facilities within rights-of-

way. The amount of the performance and payment bonds shall be set by the administrator or may be set in a master permit in light of the nature of the work to be performed and is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the city attorney. The city may from time to time increase or decrease the amount of the required performance bond to reflect changes in risks to the city and to the public. (Ord. 2002-36 § 1, 2002)

19.02.080 Enforcement and remedies.

A. Administrator Responsible for Administration. The administrator is responsible for enforcing and administering this title, and the administrator is authorized to give any notice required by law or under any master permit, including by way of example and not limitation, a notice required under 47 U.S.C. Section 546. The administrator is also authorized to seek information from any communications system operator, and to take all other actions necessary or appropriate to the administration of this title or any master permit. Master permits may only be denied, issued or revoked by action of the city council.

B. Minimum Contents of Every Master Permit or License. In addition to satisfying the other applicable requirements of this chapter, every master permit or license for a communications system shall contain the following provisions:

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

2. The master permit or license shall only authorize occupancy of the right-of-way to provide the services and for the purposes described in the master permit or license.

3. A master permit or license shall be a privilege that is held in the public trust and personal to the original grantee. The master permit or license shall ensure that no transfer

of the master permit or license may occur, directly or indirectly, without the prior consent of the city.

4. The master permit or license shall contain appropriate provisions for enforcement, and protection of the public, consistent with the other provisions of this title.

5. The master permit or license shall be for a specified term, set forth in the master permit or license. No master permit issued under this title shall be for a term of longer than 10 years, unless the council determines that a longer period would be in the city's interest. No license issued under this title shall be for a term of longer than five years.

C. Penalties. Any person found to have occupied or carried out activities in the public rights-of-way without first having obtained or having in effect a valid master permit, license, or right-of-way permit as required by this title shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding 90 days or by both such fine and imprisonment. Each day that any such occupancy or activity shall continue in violation of this title shall constitute a separate offense.

D. Revocation, Reduction of Term, or Forfeiture of Master Permit or License.

1. Licenses shall be revocable at will.

2. This master permit may be revoked for violation of any terms and conditions of the master permit or other city ordinances, resolutions or policy including but not limited to the following:

a. Construction or operation in the public rights-of-way of the city or on city property in a manner in violation of this master permit;

b. Construction or operation at an unauthorized location in the public rights-of-way of the city or on city property;

c. Misrepresentation by or on behalf of the operator in any material respect in any application or written statements or documents to the city on which the city relies in making the decision to grant, review, or amend the master permit;

d. Abandonment of telecommunications facilities in the public rights-of-way or on city property;

e. Failure to relocate or remove facilities as required by this title or master permit;

f. Failure to pay taxes, compensation, fees, or costs when and as due the city under this title;

g. Insolvency or bankruptcy of the operator; or

h. Violation of any material provision of this title or master permit, which is not timely cured on notice to the operator by the city.

3. If the city believes that grounds exist for revocation of the master permit, the operator shall be given written notice of the apparent violation or noncompliance, which notice shall provide the operator a reasonable period of time not exceeding 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; or

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

4. If the operator fails to provide evidence reasonably satisfactory to the administrator, the administrator shall refer the apparent violation or noncompliance to the city council or hearing examiner. The city council or hearing examiner shall provide the operator with reasonable notice and a reasonable opportunity to be heard concerning the matter.

5. General administration of the master permit for the city is through the office of the administrator. However, the administrator may delegate his/her authority and responsibility to other agents of the city. All questions of application, interpretation, conflict or ambiguity arising out of or in connection with this master permit may be determined through communications with the administrator, except where otherwise specifically stated.

6. The operator may appeal any decision of the administrator to the hearing examiner by filing a written notice of appeal within 30 days of the date of issuance of the administrator's decision, with copies also sent to the mayor, administrator and city attorney. The notice of appeal must include a copy of the administrator's decision and a complete record originally submitted to the administrator by the operator. The administrator shall submit any additional response to the hearing examiner within 10 days of receipt of the notice of appeal. The hearing examiner shall schedule a hearing within a reasonable period of time but not to exceed 60 days from filing of the notice of appeal and decide the question submitted. No opportunity to cure is allowed for fraud, which shall be deemed incurable.

7. Notwithstanding the foregoing, the city may declare a master permit forfeited without opportunity to cure or the notice required by subsection (D)(3) of this section where the operator fails to begin to exercise its rights under the master permit within a period specified in the master permit. However, an operator shall have the right to receive 30 days' prior notice of intent to declare a master permit forfeited, and shall have the opportunity to show cause why the master permit should not be forfeited.

8. Notwithstanding the foregoing, a master permit or license will automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the operator, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the master permit or license may be reinstated within that 120-day period, if (a) such assignment, receivership or trusteeship has been vacated; or (b) such assignee, receiver or trustee has fully complied with the terms and conditions of this title and the master permit or license and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this title and the master permit or license. However, in the event of foreclosure or other judicial sale

of any of the facilities, equipment or property of an operator, the city may revoke the master permit or license, following a public hearing before the city council, by serving notice on the operator and the successful bidder at the sale, in which event the master permit or license and all rights and privileges of the master permit or license will be revoked and will terminate 30 calendar days after serving such notice, unless: (a) the city has approved the transfer of the master permit or license to the successful bidder; and (b) the successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the master permit or license and this title.

E. Sale, Lease, Assignment.

1. This master permit or license shall not be sold, leased, assigned, or otherwise alienated without the express consent of the city, and no rule of estoppel shall be invoked against the city in case the city shall assert the invalidity of any attempted transfer in violation of this section. The city agrees not to withhold consent where the operator demonstrates that the requested assignment is in the nature of a change of name or a change in the nature of a reorganization or merger of or with an entity controlled by, controlling, or under the common control of the operator, there being no other change in the resulting entity's ability to meet its master permit or license obligations.

2. The city reserves the right to invoke any or all provisions of this master permit or license upon the operator's successors or assigns, judgment creditors, or distributees of facilities or property used in enjoyment of privileges conferred herein, whether or not stated elsewhere, all without waiver of the right to withhold consent not expressly given of any such transfer and/or require a new master permit or license.

3. The operator shall not permit installations by others in the permitted areas, without written approval from the administrator. Such approval shall not be in lieu of a master permit or license or other requirements of the city. Whether or not permitted, the operator shall remain responsible for all third party users permitted or allowed by the operator for compliance with the master permit or license.

The intent of this provision is so third parties who might otherwise desire to use the operator's facilities are also required to comply with city requirements regarding master permit or license, as may apply.

F. Effect of Termination or Forfeiture. Upon termination or forfeiture of a license or master permit, whether by action of the city as provided above, or by passage of time, the operator shall be obligated to cease using the communications system for the purposes authorized by the master permit. The city may either take possession of some or all of the operator's facilities in the public rights-of-way or require the operator or its bonding company to remove some or all of the operator's facilities from the public rights-of-way and restore the public rights-of-way to its same, or better, condition. If the operator neglects, refuses, or fails to remove such facility, the city may remove the facility at the expense of the operator. The operator's obligation to remove shall survive the termination of the master permit of license for a period of two years; provided, that this provision does not permit the city to take possession of, or require the operator to remove, any facilities that are used to provide another service for which the operator holds a valid master permit or license issued by the city.

G. Remedies Cumulative. All remedies under this title and any master permit or license are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a communications system operator of its obligations to comply with its master permit or license. Remedies may be used singly or in combination; in addition, the city may exercise any rights it has at law or equity. Recovery by the city of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise, does not limit a communications system operator's duty to indemnify the city in any way; nor shall such recovery relieve a communications system operator of its obligations under a master permit, right-of-way permit or license, limit the amounts owed to the

city, or in any respect prevent the city from exercising any other right or remedy it may have.

H. Compliance with Laws. Each operator shall comply with all applicable laws heretofore and hereafter adopted or established during the entire term of its master permit, right-of-way permit or license.

I. Reservation of Authority. The city may do all things that are necessary and convenient in the exercise of its jurisdiction under this title.

J. No Waiver – Performance or Compliance. The failure of the city to insist on timely performance or compliance by any person holding a license, right-of-way permit or master permit shall not constitute a waiver of the city's right to later insist on timely performance or compliance by that person or any other person holding such a license, right-of-way permit or master permit.

K. Title Not a Contract. The city expressly reserves the right to amend this title and any master permit, right-of-way permit or license hereunder from time to time in the exercise of its lawful powers. The provisions of this title shall not be construed to create or to be a contract.

L. No Waiver – Enforcement. The failure of the city to enforce any provision of this title on any occasion shall not operate as a waiver or estoppel of this right to enforce any provision of this title on any other occasion, nor shall the failure to enforce any prior ordinance, law or contractual provision affecting communications facilities or communications system operators act as a waiver or estoppel against application of this title or any other provision of applicable law. (Ord. 2002-36 § 1, 2002)

Chapter 19.04

SPECIAL RULES APPLICABLE TO TELECOMMUNICATIONS FACILITIES AND TELECOMMUNICATIONS SERVICE PROVIDERS

Sections:

19.04.010 Application for a master permit.

19.04.020 Compensation.

19.04.010 Application for a master permit.

A. Contents of Application for Initial or Renewal Master Permit. In order to obtain an initial or renewal master permit, an operator of a telecommunications system must apply for a master permit. The application must contain the following information, and such information as the city may from time to time require:

1. Identity of the applicant and corporate structure.

2. A proposal for construction of a telecommunications facility that includes at least the following:

a. A description of the services that are to be provided using the facility.

b. The location of proposed facility and facility design, including a description of the miles of plant to be installed, and a description of the size of equipment cabinets, shielding and electronics that will be installed along the plant route, the power sources that will be used and a description of the noise, exhaust and pollutants, if any, that will be generated by the operation of the same; provided, however, that if some of the descriptive data is not available at the time of application, the master permit may be issued subject to conditions that the data be filed and approved by the city before construction begins and that the master permit will be deemed to be forfeited if the data is not supplied and approved; provided further, in the event that subsections (A)(2)(b) and (c) of this section require information that is a business or trade secret and/or proprietary information and the operator wishes to protect the information against disclosure, then operator shall provide said information to city in a separate envelope marked

“Proprietary Information: DO NOT DISCLOSE.” The city will exercise good faith efforts to protect the confidentiality of the business or trade secrets or proprietary information that is designated as such; provided further, that (i) if a public disclosure request is made for information marked as proprietary, and if the city attorney determines that said information may be subject to being disclosed, or (ii) the city determines that the information should be disclosed in connection with its enforcement of any provision of this title, or in the exercise of its police or regulatory powers, then the city shall notify the operator of the operator’s opportunity to seek a protective order from a court with appropriate jurisdiction. If a protective order is not obtained within the time limitation set forth in state law for the city’s disclosure of public records, then city may disclose said information. The operator is obligated to reimburse and indemnify city for all costs, damages and attorney fees that may be awarded or assessed by the court for any actions the city took at the request of operator.

c. A map of the general route the facility will follow; a designation of the portions of the system that will be placed above ground and the portions that will be placed underground, and the construction techniques that the operator proposes to use in installing the system above ground and underground; a schedule for construction of the facility describing when and where construction will begin, how it will proceed, and when it will be completed; and the expected effect on right-of-way usage, including information on the ability of the public rights-of-way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities; provided, however, that any proprietary information required under this subparagraph as well as the preceding subparagraph shall be subject to the nondisclosure procedure prescribed in the proviso of the preceding subparagraph.

d. A description, where appropriate, of how services will be converted from

existing facilities to new facilities, and what will be done with existing facilities.

e. Identification of the area of the city to be served by the proposed system, including a description of the proposed area's boundaries under the master permit.

f. An affidavit or declaration of the applicant or authorized officer thereof certifying the truth and accuracy of the information in the application, and certifying that the application meets all requirements of applicable law.

B. Applications for Transfer. An application for a transfer of a master permit must contain the same information required by subsection A of this section, except that, if the transferor submitted an application under subsection A of this section, to the extent information provided by the transferor under subsection (A)(2) of this section remains accurate, the transferee may simply cross-reference the earlier application.

C. City Review. The city may request such additional information as it finds necessary, and require such modifications to the system proposed as may be necessary in the exercise of the city's authority over the use of its public rights-of-way for telecommunications systems. Once the information required by the city has been provided, the application shall be subject to review by the city and any approval shall be subject to the city's determination that:

1. The applicant will accept the modifications required by the city to its proposed system. This section does not authorize the city to exercise authority it does not otherwise have under applicable law.

2. The applicant will accept a master permit satisfactory to the city and comply with any conditions precedent to its effectiveness.

3. In the case of a transfer, any approval will also be subject to a determination that:

a. There will be no adverse effect on the public interest, or the city's interest in the master permit;

b. Transferee will agree to be bound by all the conditions of the master permit and to assume all the obligations of its predecessor; and

c. Any outstanding compliance issues will be resolved or preserved to the satisfaction of the city.

D. An applicant shall not be issued a master permit if it files or has previously filed materially inaccurate or misleading information in a master permit application or intentionally withheld information that the applicant lawfully is required to provide. (Ord. 2002-36 § 1, 2002)

19.04.020 Compensation.

A. Rights-of-Way Fee. Subject only to the exceptions set out in BIMC 19.02.040(C), every operator of a telecommunications facility must compensate the city for its actual cost of administering its application and the public rights-of-way. To the extent permitted by law, every operator shall also pay to the city a fee in the amount established by resolution for the use of the public rights-of-way. (Ord. 2002-36 § 1, 2002)

Chapter 19.06

Chapter 19.08

**PRIVATE
COMMUNICATIONS FACILITIES**

MISCELLANEOUS

(Repealed by Ord. 2003-24)

Sections:

19.06.010 Application for license.

19.06.020 Conditions of license.

19.06.010 Application for license.

A person wishing to construct, install, place, operate, replace, reconstruct, or maintain a private communications system in a public rights-of-way must obtain a license therefor. The license shall only authorize placement of the system in a specific portion of the public rights-of-way for a limited and specific purpose in connection with the person's business but not encompassing in whole or in part the carriage of telecommunications for hire in the public rights-of-way, and for a limited period of time. Such application must be in the form provided for by regulation and must be accompanied by a filing fee, covering the cost of administration of this application. (Ord. 2002-36 § 1, 2002)

19.06.020 Conditions of license.

Any license shall be subject to such conditions as the city may from time to time establish, shall be expressly subordinate to the use of the public rights-of-way by operators of communications facilities, and shall otherwise conform to the requirements of this title. Subject to the foregoing, the provisions of BIMC 19.02.050 shall apply to a private communications system as if it were a communications facility. (Ord. 2002-36 § 1, 2002)

