

**CITY OF MOUNTLAKE TERRACE**

**ORDINANCE NO. 2723**

**AN ORDINANCE OF THE CITY OF MOUNTLAKE TERRACE,  
WASHINGTON; AMENDING THE PROVISIONS OF CHAPTER 12.20  
TO PROVIDE FOR SMALL CELL DEPLOYMENTS IN THE PUBLIC  
RIGHTS-OF-WAY AND FEDERALLY REQUIRED REVIEW PERIODS;  
AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the use of data by smart phones and other wireless devices has grown exponentially; and

**WHEREAS**, utility poles within the public right-of-way have been identified by the FCC as a primary resource for the deployment of small cell facilities which are intended to increase the density and accessibility of radio frequency signals employed by such devices; and

**WHEREAS**, the City Council deems it to be in the public interest to revise its franchising requirements to specifically deal with wireless communications facilities to be located in the right-of-way in conjunction with the revision by interim zoning ordinance of its zoning code; and

**WHEREAS**, federal law and regulation has imposed certain “shot clocks” or time limitations on the consideration of permits for the installation of wireless communications facilities, and

**WHEREAS**, state law addresses such similar limitations on the consideration of master use and use permits for the installation of small cell facilities in the public rights-of-way, and

**WHEREAS**, the City Council deems it appropriate to incorporate these shot clocks in City ordinance while integrating the provisions of its franchising and zoning codes dealing with wireless communications facilities.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTLAKE TERRACE, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1.** Chapter 12.20 of the Mountlake Terrace Municipal Code is hereby amended to read as follows:

**Chapter 12.20  
COMMUNICATIONS – USE OF RIGHT-OF-WAY BY  
WIRELINE AND WIRELESS SERVICE PROVIDERS**

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**Article I. General**

**12.20.010 Purpose.**

The purposes of this chapter are to:

- A. Permit and manage reasonable access to the right-of-way of the City for communication purposes on a nondiscriminatory basis;
- B. Establish clear and nondiscriminatory local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of right-of-way use;
- C. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions, and residents of the City;
- D. Conserve the limited physical capacity of the public rights-of-way held in public trust by the City;
- E. Ensure that the City's current and ongoing costs of granting and regulating private accesses to and use of the public rights-of-way are fully paid by the persons seeking such access and causing such costs;
- F. Ensure that all service providers providing facilities or services within the City comply with the ordinances, rules, and regulations of the City;
- G. Ensure that the City can continue to fairly and responsibly protect the public health, safety, and welfare; and
- H. Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

**12.20.020 Definitions.**

For the purpose of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended or in Chapter 19.137 MTMC.; Words not defined therein shall have their common and ordinary meaning:

A. “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.

B. “Base Station”: A structure or equipment at a fixed location that enables FCC-licensed or authorized communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small cell networks).

3. Any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in subsections B (1) and (2) above that has been reviewed and approved under the applicable zoning or siting process or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

C. “Cable Acts” means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of the Telecommunications Act of 1996, as hereafter amended.

D. “Cable operator” means a service provider providing or offering to provide cable service within the City as that term is defined in the Cable Acts.

E. “Cable service” shall have the same meaning as defined in the Cable Acts.

F. “City” means the City of Mountlake Terrace, county of Snohomish, state of Washington.

G. “City property” means any real property owned by City, whether in fee or other ownership estate of interest.

H. “Co-location” means the location of WCF antenna(s) serving more than one wireless communication service provider on a single support structure or attachment support structure. When used in the context of an Eligible Facilities Request, collocation means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

I. “Eligible Facilities Request”: Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment; or
3. Replacement of transmission equipment.

J. “Eligible support structure”: Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.

K. “Existing”: A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for the purposes of this definition.

L. “Excess capacity” means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility with the right-of-way that is or will be available for use for additional telecommunications facilities.

M. “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.

N. “Franchise” or “franchise agreement” means a master permit granted for either a restricted or unrestricted franchise.

O. “Grantee” encompasses those franchisees granted certain rights and obligations as more fully described herein.

P. “Washington Utilities and Transportation Commission” or “WUTC” means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the state of Washington to the extent prescribed by law.

Q. “Overhead facilities” means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

R. “Master permit” means the agreement in whatever form whereby the City may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating facilities. This definition is not intended to limit, alter, or change the extent of the existing authority of the City to require a franchise nor does it change the status of a service provider asserting an existing state-wide grant based on a predecessor telephone or telegraph company’s existence at the time of the adoption of the Washington State Constitution to occupy the right-of-way. For the purposes of this chapter, a franchise, except for a cable television franchise, is a master permit. A master permit does not include cable television franchises.

S. “Person” includes corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities, and individuals.

T. “Public right-of-way” or “right-of-way” means land acquired or dedicated for public roads and streets but 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, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the state parks and recreation commission; or
6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

U. “Public ways” includes the surface of and space above and below any real property in City in which City has a regulatory interest, or interest as a trustee for the public, including but not limited to all public streets, highways, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area, or property under control of City, and any public or utility easements established, dedicated, or devoted for public utility purposes.

V. “Restricted franchise” or “restricted franchise agreement” means a master permit granted to a service provider who constructs, installs, operates, maintains, or otherwise locates telecommunications facilities in rights-of-way for the purpose of providing telecommunications service to persons and areas outside the City.

W. “Service provider”: Is defined in accord with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.

X. “Small cell facility” and “small cell network”: Are defined in accord with RCW 80.36.375.

Y. “Substantial change”: A modification substantially changes the physical dimensions of an

eligible support structure if it meets any of the following criteria:

1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

4. It entails any excavation or deployment outside the current site;

5. It would defeat the concealment elements of the eligible support structure; or

6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above.

Z. "State" means the state of Washington.

AA. "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 orders and regulations of the WUTC, the pole owner and applicable electrical codes to allow its use by a service provider for a pole attachment.

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

CC. "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

DD. "Tower": Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and the associated site.

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

FF. "Unrestricted franchise" or "unrestricted franchise agreement" means a master permit granted to a service provider who constructs, installs, operates, maintains, or otherwise locates

telecommunications facilities in rights-of-way for the purpose of providing telecommunications services to persons or areas in the City.

GG. "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 rights-of-way and used or to be used for the purpose of providing utility services or telecommunications services including telecommunications facilities.

HH. "Wireline" means communications using conducted electromagnetic or optical emissions by, over, or within a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

#### **12.20.030 Registration and fees.**

Except as otherwise provided herein, all service providers engaged in the business of the transmitting, supplying, or furnishing of telecommunications service originating, terminating, or existing with the City shall register with the City pursuant to this chapter and pay all the fees as provided herein or as may be set by resolution.

#### **12.20.040 Restricted and unrestricted franchises and fees.**

Except as otherwise provided herein, any service provider who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in rights-of-way for the purpose of providing telecommunications service to persons and areas outside the City, or to persons or areas in the City, shall first obtain a restricted or unrestricted franchise granting the use of such public rights-of-way from the City pursuant to this chapter and pay all the fees as provided herein or as may be set by resolution.

#### **12.20.050 Cable franchise and fees.**

Except as otherwise provided herein, any service provider who desires to construct, install, operate, maintain, or locate telecommunications facilities in rights-of-way for the purpose of providing cable services shall first obtain a cable franchise from the City pursuant to this chapter and pay all the fees as provided herein or as may be set by resolution and in the cable franchise.

#### **12.20.060 Application to existing franchise ordinances and agreements.**

This chapter shall have no effect on any existing franchise agreement until:

- A. The expiration of said franchise agreement; and
- B. An amendment to an unexpired franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

#### **12.20.070 Penalties.**

Any person found violating, disobeying, omitting, neglecting, or refusing to comply with any of the provisions of this chapter shall be fined not less than \$250.00 no more than \$750.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

#### **12.20.080 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. Registration**

### **12.20.090 Registration required.**

All service provider having telecommunications facilities within the unincorporated City, or all service provider or providers that offer or provide telecommunications service originating, terminating or existing within the City, shall register with the City hereunder on forms provided by the City Engineer, or any other department as the City Manager may designate, which shall include the following:

- A. The identity and legal status of the registrant, including any affiliates;
- B. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement;
- C. A description of registrant's existing or proposed telecommunications facilities with the City;
- D. A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses, or institutions within the City;
- E. Information sufficient for City to determine whether the registrant is subject to franchising under this chapter;
- F. Information sufficient for City to determine whether the transmission, origination, or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal permit, license, or franchise fee;
- G. Copies of the applicant's registration filed with the WUTC pursuant to Chapter 480-121 WAC, and any tariff or price list or other authorization or related filings as may be required by the WUTC to provide telecommunications services. Alternatively, the applicant shall submit a statement detailing the reasons that registration and related filings with the WUTC are not required;
- H. Information sufficient for City to determine that the applicant has applied for and received any utility right-of-way permit, operating license or other approvals required by the FCC to provide telecommunications services or facilities within the City; and
- I. Such other information as the City may require.

### **12.20.100 Purpose of registration.**

The purposes of registration are to:

- A. Provide the City with accurate and current information concerning the service provider and providers who offer or provide telecommunications services within the City, or who own or operate telecommunications facilities within the City;
- B. Assist the City in enforcement of this chapter;
- C. Assist the City in the collection and enforcement of any franchise fees, license fees, or charges that may be due the City; and
- D. Assist the City in monitoring compliance with local, state, and federal laws.

### **12.20.110 Exception of registration and franchise.**

The following service providers and providers are exempted registration and franchise under this chapter:

- A. A company or person which provides telecommunications services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control; provided, however, the company or person obtains a right-

of-way use permit if it intends to use or occupy the right-of-way, and, further, it complies with all other applicable requirements of this chapter.

### **Article III. Franchise Agreement – Master Permit**

#### **12.20.120 Franchise – Master permit.**

A franchise shall be required of any telecommunications provider who desires to make use of telecommunications facilities which occupy rights-of-way and to provide telecommunications services to any person or area in the City.

#### **12.20.130 Franchise application.**

Any person that desires a franchise hereunder shall file an application in accordance with this chapter, which shall include the applicable portions of the required franchise application information.

#### **12.20.140 Determination by the City.**

Within 120 days after receiving a complete application hereunder, the City Engineer, or other department as the City Manager may designate, shall make a recommendation to the City Council on whether to grant or deny the application in whole or in part. A recommendation to deny an application may be based on the criteria contained in MTMC 19.137.070, MTMC 19.137.080 for small cell facilities proposed for location in the Public rights-of-way and with respect to all franchise applications any of the following:

- A. The financial and technical ability of the applicant;
- B. The legal ability of the applicant to provide the service or use proposed for franchise authorization;
- C. The capacity of the rights-of-way to accommodate the applicant's facilities;
- D. The capacity of the rights-of-way to accommodate additional utility and telecommunications facilities if the application is granted;
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;
- F. The public interest in minimizing the cost and disruption of construction with the rights-of-way;
- G. The service that the applicant will provide to the region;
- H. The effect, if any, on general public health, safety and welfare in City's sole opinion if the application is granted;
- I. The availability of alternate routes or locations for the proposed facilities;
- J. Applicable federal, state and local laws, regulations, rules and policies;
- K. Such other factors as may demonstrate that the grant to use the rights-of-way will serve the community interest.

#### **12.20.150 Franchise agreement – Master permit.**

No franchise shall be granted hereunder unless the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use rights-of-way will be granted and said agreement has been recorded in accordance with RCW 36.55.080. All franchises granted pursuant to this article shall contain substantially similar terms and conditions, which, taken as a whole and considering relevant characteristics of

the applicants, do not provide more or less favorable terms and conditions than those required of other franchisees.

**12.20.160 Nonexclusive grant.**

No franchise granted hereunder shall confer any exclusive right, privilege or franchise to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes.

**12.20.170 Rights granted.**

A. No franchise granted hereunder shall convey any right, title or interest in the rights-of-way but shall be deemed a franchise only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.

B. No franchise granted hereunder shall authorize or excuse a franchisee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way excess capacity in an underground facility or surplus space in an overhead facility. Franchisee shall obtain the written approval of the facility or structure owner, if the franchisee does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way.

C. No franchise granted hereunder shall be construed as any warranty of title.

**12.20.180 Term of grant.**

Unless otherwise specified in a franchise or unless otherwise renewed, a franchise granted hereunder shall be valid for a term of not more than 10 years.

**12.20.190 Franchise territory – Route.**

A franchise granted hereunder shall be limited to a grant of use of specific right-of-way and defined portions thereof and/or a specific geographic area of the City to be served by the franchisee, and the specific rights-of-way necessary to serve such area.

**12.20.200 Location of facilities.**

Unless otherwise specified in a franchise, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

A. Telecommunications facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility, unless such location is not feasible due to the technology employed in the facility.

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

C. Whenever any existing telephone facilities, electric utilities, cable facilities or telecommunications facilities are located underground within rights-of-way, a franchisee with written authorization to occupy the same rights-of-way must also locate its telecommunications facilities underground to the extent technologically feasible.

D. Whenever any new or existing telephone facilities, electric utilities, cable facilities or telecommunications facilities are located or relocated underground within rights-of-way, a franchisee shall concurrently relocate its facilities underground if technologically feasible. It is the responsibility of the franchisee to obtain written authorization from the owner of the facility.

E. If requested, franchisee shall provide the City with additional duct or conduit and related structures necessary to access the conduit; provided, that:

1. The City enters into a contract with the franchisee consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the franchisee. If the City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated costs of the franchisee. The franchisee shall state both contract rates in the contract. The City shall inform the franchisee of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the City.

2. Except as otherwise agreed by the franchisee and the City, the City shall agree that the requested additional duct or conduit space and related access structures will not be used by the City to provide telecommunications or cable television service for hire, sale, or resale to the general public.

3. The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of the franchisee.

4. The value of the additional duct or conduit requested by the City shall not be considered a public works construction contract.

5. This subsection shall not affect the provision of an institutional network by a cable television provider under federal law.

#### **12.20.210 Utility right-of-way permits.**

All franchisees are required to obtain utility right-of-way permits and pay all fees for telecommunications facilities as required by City of Mountlake Terrace ordinances and/or resolutions. Such permits are use permits within the meaning of RCW 35.99.010(8) and shall be processed in accord with RCW 35.99.030.

#### **12.20.220 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.

#### **12.20.230 Amendment of franchise agreement.**

A. A new franchise application and grant shall be required of any service provider that desires to extend its franchise territory or to locate its telecommunications facilities in rights-of-way which are not included in a franchise previously granted hereunder.

B. A new franchise application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a franchise previously granted.

C. If ordered by the City to locate or relocate its telecommunications facilities in rights-of-way not included in a previously granted franchise, the City shall grant a franchise amendment without further application.

#### **12.20.240 Renewal applications.**

A franchisee that desires to renew its franchise hereunder shall, not more than 180 days nor less than 90 days before expiration of the current franchise, file an application with the City for

renewal of its franchise which shall include the following information:

- A. The applicable information required pursuant to the franchise.
- B. Any other information required by the City.

**12.20.250 Renewal determinations.**

Within 120 days after receiving a complete application hereunder, the City Engineer, or other department as the City Manager may designate, shall make a recommendation to the City Council on whether the City should grant or deny the renewal application in whole or in part. If the renewal recommendation is to deny, the recommendation shall include the reasons for nonrenewal. The standards enumerated in MTMC 12.20.140 shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this chapter and the franchise agreement.

**12.20.260 Obligation to cure as a condition of renewal.**

No franchise shall be renewed until any ongoing violations or defaults in the franchisee's obligations under the franchise, or the requirements of this chapter, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the City.

**Article IV. Cable Franchise**

**12.20.270 Grant of cable franchise.**

The City may grant one or more cable franchises containing such provisions as are reasonably necessary to protect the public interest, and each such cable franchise shall be awarded in accordance with and subject to the provisions of this chapter. This chapter may be amended from time to time, and in no event shall this chapter be considered a contract between the City and a cable franchisee such that the City would be prohibited from amending any provision hereof; provided, no such amendment shall in any way impair any contract right or increase obligations of a cable franchisee under an outstanding and effective cable franchise except in the lawful exercise of the City's police power.

**12.20.280 Cable franchise required.**

No person may construct, operate or maintain a cable system or provide cable service over a cable system within the City without a cable franchise granted by the City authorizing such activity. No person may be granted a cable franchise without having entered into a cable franchise agreement with the City pursuant to this chapter. For the purpose of this provision, the operation of part or all of a cable system within the City means the use or occupancy of rights-of-way by facilities used to provide cable service. Telecommunications facilities used to provide telephone service which are also used to provide cable service shall be subject to this chapter and shall also require a cable franchise. Use of such facilities to provide services similar to cable service, such as open video service, shall be subject to this chapter to the extent provided by law. A system shall not be deemed as operating within the City, even though service is offered or rendered to one or more subscribers within the City, if no rights-of-way by facilities used to provide cable service are used or occupied. All cable franchises granted pursuant to this article shall contain substantially similar terms and conditions, which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other cable franchisees.

**12.20.290 Length of cable franchise.**

Unless otherwise specified in a cable franchise, or unless otherwise renewed, no cable franchise shall be granted for a period of more than 10 years.

**12.20.300 Cable franchise characteristics.**

A. A cable franchise authorizes use of rights-of-way for installing, operating and maintaining cables, wires, lines, optical fiber, underground conduits and other devices necessary and appurtenant to the operation of a cable system to provide cable services within the City, but does not expressly or implicitly authorize a cable franchisee to provide service to, or install a cable system on, private property without owner consent, or to use publicly or privately owned poles, ducts or conduits without a separate agreement with the owners.

B. A “cable franchise” shall not mean or include any exclusive right or authorization for the privilege of transacting and carrying on a business within the City as generally required by the ordinances and laws of the City. A cable franchise shall not confer any authority to provide telecommunications services or any other communications services besides cable services. A cable franchise shall not confer any implicit rights other than those mandated by federal, state and local law.

C. Once a cable franchise has been accepted and executed by the City and a cable franchisee, such cable franchise shall constitute a valid and enforceable agreement between the cable franchisee and the City, and the terms, conditions and provisions of such franchise, subject to this chapter and all other duly enacted and applicable laws and regulations, shall define the rights and obligations of the cable franchisee and the City relating to the cable franchise.

D. All privileges prescribed by a cable franchise shall be subordinate to any prior lawful occupancy of the rights-of-way and the City reserves the right to reasonably designate where a cable franchisee’s facilities are to be placed within the rights-of-way through its generally applicable permit procedures.

E. A cable franchise shall be a privilege that is in the public trust and personal to the original cable franchisee. No cable franchise transfer shall occur without the prior written consent of the City upon application made by the cable franchisee pursuant to this chapter and the cable franchise, which consent shall not be unreasonably withheld, and any purported cable franchise transfer made without application and prior written consent shall be void and shall be cause for the City to revoke the cable franchise.

**12.20.310 Cable franchisee subject to other laws, police powers.**

A. A cable franchisee shall at all times be subject to and shall comply with all applicable federal, state and local laws and regulations, including this chapter. A cable franchisee shall at all times be subject to all lawful exercise of the police power of the City including, but not limited to, all rights the City may have under the Cable Acts and all powers regarding zoning, supervision of construction, control of rights-of-way and consumer protection.

B. The City shall have full authority to regulate cable systems, cable franchisees and cable franchises as may now or hereafter be lawfully permissible.

**12.20.320 Interpretation of cable franchise terms.**

A. In the event of a conflict between this chapter and a cable franchise, the provisions of this chapter control except where the conflict arises from the lawful exercise of the City’s police power.

B. The provisions of this chapter and a cable franchise will be liberally construed in accordance with generally accepted rules of construction to promote the public interest.

**12.20.330 Operation of a cable system without a cable franchise.**

Any person who occupies rights-of-way for the purpose of operating or constructing a cable system or provides cable service over a cable system and who does not hold a valid cable franchise from the City shall be subject to all requirements of this chapter. In its discretion, the City at any time may by ordinance require such person to enter into a cable franchise within 30 days of receipt of a written notice to such person from the City that a cable franchise is required; require such person to remove its property and restore the affected area to a condition satisfactory to the City; direct City personnel to remove the property and restore the affected area to a condition satisfactory to the City and charge the person the costs therefor, including by placing a lien on the person's property; or take any other action it is entitled to take under applicable law. In no event shall a cable franchise be created unless it is issued by the City pursuant to this chapter and subject to a written cable franchise.

**12.20.340 Acts at cable franchisee's expense.**

Any act that a cable franchisee is or may be required to perform under this chapter, a cable franchise or applicable law shall be performed at the cable franchisee's expense.

**12.20.350 Eminent domain.**

Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the City's power of eminent domain.

**12.20.360 Exclusive contracts and anti-competitive acts prohibited.**

A. No cable franchisee or other multichannel video programming distributor shall enter into or enforce an exclusive contract for the provision of cable service or other multichannel video programming with any person or demand the exclusive right to serve a person or location, as a condition of extending service to that or any other person or location.

B. No cable franchisee or other multichannel video programming distributor shall engage in acts that have the purpose or effect of limiting competition for the provision of cable services or services similar to cable service in the City.

**12.20.370 Cable franchise fees.**

The cable franchisee shall be subject to the cable franchise fees, payments and costs provided in their cable franchise and as may be set by resolution.

**Article V. Conditions of Grant of Franchise or Cable Franchise****12.20.380 General duties.**

A. All grantees, before commencing any construction in the rights-of-way, shall comply with all requirements of this chapter.

B. All grantees shall provide written confirmation sufficient for customary land survey and land title insurance purposes concerning the location of its facilities in rights-of-way and disclaiming any interest in rights-of-way where it has no franchise to construct or operate its facilities.

**12.20.390 Interference with the rights-of-way.**

No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the rights-of-way by the City, by the general public or other persons, or

other persons authorized to use or be present in or upon the rights-of-way. All such facilities shall be moved by and at the expense of the grantee, temporarily or permanently, as determined by the City.

**12.20.400 Damage to property.**

No grantee or any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any rights-of-way, including specifically City property, real or personal, or public ways or other property located in, on or adjacent thereto except in accordance with this chapter.

**12.20.410 Notice of work.**

Unless otherwise provided in a franchise agreement, no grantee, or any person acting on the grantee's behalf, shall commence any nonemergency work in or about rights-of-way. Any private property owner whose property will be affected by a grantee's work shall be afforded 10 working days' advance written notice of such work.

**12.20.420 Repair and emergency work.**

In the event of an emergency or an emergency repair necessary to protect the public, restore service or mitigate further damage to the system, a grantee may commence such repair and emergency response work as required under the circumstances; provided, the grantee shall notify the City Engineer, or other department as the City Manager may designate, as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

**12.20.430 Maintenance of facilities.**

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

**12.20.440 Relocation or removal of facilities.**

Within 30 days following written notice from the City, a grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the rights-of-way whenever the City Engineer, or other department as the City Manager may designate, 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 rights-of-way;
- B. The operations of the City or other governmental entity in or upon the rights-of-way;
- C. The vacation of a street or the release of a utility easement.

**12.20.450 Removal of unauthorized facilities.**

Within 30 days following written notice from the City Engineer, or other department as the City Manager may designate, any grantee, service provider, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the rights-of-way shall, at its own expense, remove such facilities or appurtenances from the rights-of-way. If such grantee fails to remove such facilities or appurtenances, the City may cause the removal and charge the grantee for the costs incurred. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:



- A. Upon expiration or termination of the grantee's franchise;
- B. Upon abandonment of a facility within the rights-of-way;
- C. If the system or facility was constructed or installed without the prior grant of a franchise;
- D. If the system or facility was constructed or installed without the prior issuance of a required utility right-of-way;
- E. If the system or facility was constructed or installed at a location not permitted by the grantee's franchise;
- F. Any such other reasonable circumstances deemed necessary by the City Engineer, or other department as the City Manager may designate.

**12.20.460 Failure to relocate.**

If a grantee is required to relocate, change or alter the telecommunications facilities constructed, operated and/or maintained hereunder and fails to do so, the City may cause such to occur.

**12.20.470 Emergency removal or relocation of facilities.**

The City retains the right and privilege to cut or move any telecommunications facilities located within the rights-of-way as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

**12.20.480 Damage to grantee's facilities.**

Unless directly and proximately caused by the willful, intentional or malicious acts of the City, the City shall not be liable for any damage to or loss of any telecommunications facility within rights-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the rights-of-way by or on behalf of the City.

**12.20.490 Restoration of rights-of-way or other property.**

Restoration shall comply with the requirements outlined in MTMC 12.20.400. Additionally:

A. When a grantee, or any person acting on its behalf, does any work in or affecting any rights-of-way, or any other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the same condition which existed before the work was undertaken.

B. If weather or other conditions do not permit the complete restoration required hereunder, the grantee shall temporarily restore the affected rights-of-way or other property. Such temporary restoration shall be at the grantee's sole expense and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. A grantee or other person acting on 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 rights-of-way or any other property.

**12.20.500 Facilities maps.**

Each grantee shall provide the City with an accurate as-built map or maps certifying the location of all telecommunications facilities within the City and particularly within rights-of-way. Each grantee shall provide updated as-built maps annually.

**12.20.510 Duty to provide information.**

Within 10 days of a written request from the City Engineer, or other department as the City Manager may designate, each grantee shall furnish the City Engineer, or other department as the City Manager may designate, with information sufficient to demonstrate that:

- A. The grantee has complied with all requirements of this chapter;
- B. All fees due the City in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee;
- C. All books, records, maps and other documents maintained by the grantee with respect to its facilities within rights-of-way shall be made available for inspection by the City Engineer, or other department as the City Manager may designate, at reasonable times and intervals.

**12.20.520 Leased capacity.**

Subject to the provisions of this chapter, a grantee shall have the right to offer or provide capacity or bandwidth to another telecommunications provider, with prior City approval; provided, that:

- A. The grantee shall furnish the City in advance with a copy of any such proposed lease or agreement.
- B. The proposed lessee or person shall comply with all of the requirements of this chapter.

**12.20.530 Grantee insurance.**

Unless otherwise provided, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents, representatives and employees as additional insureds:

- A. Comprehensive general liability insurance.
- B. Worker's compensation within statutory limits and employer's liability insurance.
- C. Comprehensive insurance for premises operations, explosions and collapse hazard, underground hazard and products completed hazard policies.
- D. The liability insurance policies required by this section shall be maintained at all times by the grantee. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled 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 Manager of such intent to cancel or not to renew.

- E. Within 60 days after receipt by the City of said notice, and in no event later than 30 days prior to said cancellation, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this chapter.

**12.20.540 General indemnification.**

In addition to and distinct from the insurance requirements of this chapter, each grantee hereby agrees to defend, indemnify and hold the City and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense arising out of, resulting from or alleged to arise out of or result from the acts, omissions, failure to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise agreement made or entered into pursuant to this chapter.

**12.20.550 Performance and construction surety.**

Before a franchise granted pursuant to this chapter is effective, and as necessary thereafter, the grantee 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 the City of Mountlake Terrace, or by an applicable franchise or other applicable code, ordinance, resolution or rules and regulations of the City.

**12.20.560 Security fund.**

The City may require at its discretion that each grantee shall establish a permanent security fund with the City by depositing an amount not to exceed \$100,000 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 grantee so long as any of the grantee's telecommunications facilities are located within rights-of-way. This security fund shall be separate and distinct from any other bond or deposit required.

A. The fund shall serve as security for the full and complete performance of the grantee's obligations under this chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, resolutions, rules, regulations, or permits of the City.

B. Before any sums are withdrawn from the security fund, the City Engineer, or other department as the City Manager may designate, shall give written notices to the grantee:

1. Describing the act, default or failure to be remedied, or the damages, costs or expenses which the City has incurred by reason of the grantee's act or default;
2. Providing a reasonable opportunity for the grantee to first remedy the existing or ongoing default or failure, if applicable;
3. Providing a reasonable opportunity for the grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and
4. Providing the grantee will be given an opportunity to review the act, default or failure described in the notice with the City Engineer, or other department as the City Manager may designate.

C. The grantee shall replenish the security fund within 14 days after written notice from the City Engineer, or other department as the City Manager may designate, that there is a deficiency in the amount of the fund.

**12.20.570 Construction and completion bond.**

Unless otherwise provided in a franchise, a bond written by a surety acceptable to the City equal to at least 100 percent of the estimated cost of constructing the grantee's telecommunications facilities within rights-of-way shall be deposited before construction is commenced.

A. The construction bond shall remain in force until 60 days after substantial completion of the work, as determined by the City Engineer, or other department as the City Manager may designate, including restoration of all rights-of-way 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 rights-of-way and any other property affected by the construction;

5. The submission of as-built drawings after completion of the work which is hereby specifically required;

6. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

**12.20.580 Coordination of construction activities.**

All grantees are required to cooperate with the City and with each other.

A. Each grantee shall meet with the City, other grantees and users of the rights-of-way annually or as determined by the City to schedule and coordinate construction in rights-of-way.

B. All construction locations, activities, and schedules shall be coordinated, as ordered by the City Engineer, or other department as the City Manager may designate, to minimize public inconvenience, disruption or damages.

**12.20.590 Assignments or transfers of grant of franchise.**

Ownership or control of a telecommunications system or franchise or any part of transmission capacity 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, nor may there be a transfer of working control (which includes not only actual control, but also the ability to affect or influence decisions) without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance and then on such conditions as may be prescribed therein and:

A. No grant shall be assigned or transferred in any manner within 12 months after the initial grant of the franchise, unless otherwise provided by law.

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 grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the City Engineer, or other department as the City Manager may designate:

1. Complete information setting forth the nature, terms and conditions of the proposed transfer or assignment;

2. All information required of a franchise applicant pursuant to this chapter with respect to the proposed transferee or assignee;

3. All information required by federal, state and local law or regulation (i.e., FCC Form 394);

4. Any other information reasonably required by the City Engineer, or other department as the City Manager may designate.

D. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other qualifications in the City's sole discretion to own, hold and operate the telecommunications system pursuant to this chapter.

E. The grantee shall reimburse the City for all direct and indirect fees, costs and expenses incurred by the City in considering a request to transfer ownership in or assign a franchise.

F. Any transfer of ownership in or assignment of a franchise, system or integral part of a system without prior approval of the City under this chapter shall be void and is cause for revocation of the franchise.

G. Upon receipt of all information required herein, and any other information required by the City, the City shall have 120 days to review and approve or deny the requested assignment or transfer, unless such period is extended by agreement of the City and grantee.

**12.20.600 Transactions affecting control of grant of franchise.**

Any transaction which results in any change of the ownership or in any manner the working control of the grantee, of the ownership or working control of a franchise, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth or any part of the transmission capacity of the grantee's telecommunications system, facilities or any parts thereof, all defined as five percent or more ownership or control, shall be considered an assignment or transfer requiring City approval hereunder. Transactions between affiliated entities are not exempt from City approval.

**12.20.610 Revocation or termination of grant of franchise.**

A franchise granted by the City to use or occupy rights-of-way may be revoked for any one or more of the following reasons:

- A. Construction or operation at an unauthorized location;
- B. Unauthorized transfer of control of the grantee;
- C. Unauthorized assignment of a franchise;
- D. Unauthorized sale, assignment or transfer of the grantee's franchise assets or an interest therein;
- E. Misrepresentation or lack of candor by or on behalf of a grantee in any application to the City;
- F. Abandonment of telecommunications facilities in the rights-of-way;
- G. Failure to relocate or remove facilities as required in this chapter;
- H. Failure to pay taxes, compensation, fees or costs when and as due the City;
- I. Insolvency or bankruptcy of the grantee;
- J. Violation of a material provision of this chapter;
- K. Violation of a material term of a franchise.

**12.20.620 Notice and duty to cure.**

In the event that the City Engineer, or other department as the City Manager may designate, believes that grounds exist for revocation of a franchise, the grantee shall be given written notice of the apparent violation or noncompliance, be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding 30 days to furnish evidence that:

- A. Corrective action has been, or is being, actively and expeditiously pursued to remedy the violation or noncompliance.
- B. Rebuts the alleged violation or noncompliance.
- C. It would be in the public interest to impose some monetary damages, penalty or sanction less than revocation.

**12.20.630 Revocation hearing.**

In the event that a grantee fails to provide evidence reasonably satisfactory, as provided hereunder, to the City Engineer, or other department as the City Manager may designate, he/she

shall refer the apparent violation or noncompliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

**12.20.640 Standards for revocation or lesser sanctions.**

If persuaded that the grantee has violated or failed to comply with a material provision of this chapter or of a franchise or applicable codes, ordinances, resolutions, or statutes, the City Council shall determine whether to revoke the franchise, and issue a written decision relating thereto, or to establish some monetary damages, penalty, lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- 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.

**Article VI. Small Cell Deployments; Franchise and Small Cell Permits**

**12.20.700 Overview.**

In order to manage its right-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the City, the City of Mountlake Terrace has adopted this administrative process for the deployment of small cell and microcell technology. Service providers seeking to use the public right-of-way for small cell deployment, data transmission or other related services to the citizens of the City must have a valid franchise to provide the specific service which utilizes the right-of-way and a Small Cell Permit or specific franchise authorization to deploy small cell technology. Entities with current franchises who wish to utilize a small cell deployment to upgrade or expand their existing services shall obtain a Small Cell Permit prior to deployment of their technology and obtain design approval for specific installations. The Small Cell Permit process administers deployment under the franchise. An entity without a franchise may apply concurrently for a franchise and Small Cell Permit which shall be processed concurrently as one Master Permit within the meaning of RCW 35.99.010(3) and 35.99.030. For entities with a valid franchise, see 12.20.740 MTMC.

A. Nothing in this ordinance revises or diminishes the rights and obligations of an existing franchise.

B. The term “small cell deployment” shall include the deployment of small cell facilities, microcells and small cell networks as those terms are defined by RCW 80.36.375.

C. See Chapter 19.137 MTMC for additional definitions related to Wireless Communication Facilities.

**12.20.710 Application.**

Applications for a franchise for wireless communications facilities and/or small cell deployment shall generally conform to the requirements of this chapter. The City Manager shall delegate administrative authority to an appropriate City Director (hereinafter “Director”). The Director is charged with administration of small cell deployments and other wireless communication review processes established under Articles VI and VII of chapter 12.20 MTMC.

Service providers seeking to utilize the City's right-of-way for small cell deployments shall specify the geographic boundaries for the small cell deployment described in the application. The applicant may designate the entire city at its discretion or any portion thereof as the franchise boundary. Phased development is permitted, and an applicant is encouraged to specify at least the initial small cell deployment in its application.

The following additional information shall be provided by all applicants for franchises seeking to deploy small cell facilities. Existing franchisees who seek to utilize a small cell deployment to expand or implement an existing franchise shall provide the information as a part of a Small Cell Permit application for small cell deployment.

A. Designation of Facilities. The application shall provide specific locational information including GIS coordinates of all facilities to the extent known and specify whether and where small cell facilities are to be located on existing utility poles including City-owned light standards (included in the definition of utility pole), or will utilize replacement utility poles, new poles, towers, and/or other structures. To the extent known conduit and/or ground-mounted equipment necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from an infrastructure provider. Detailed schematics and visual renderings of facilities sought to be approved by Franchise or Small Cell Permit shall be provided by the applicant. Failure to provide sufficient detail may result in a later finding of a significant change in the facility if significant elements of the facility were not shown on the originally approved franchise exhibit. Failure to include significant elements may also result in the requirement that new or undocumented elements complete the approval processes detailed in this Chapter and as applicable Chapter 19.137 MTMC.

B. Implementation. The rights granted under the franchise are implemented through the issuance of either a Small Cell Permits or by a right-of-way permit for small cell facilities previously approved by a franchise. The franchise application may be accompanied by one or more applications for a Small Cell Permit to deploy small cells. An initial franchise and any related Small Cell Permit applications shall be processed concurrently as one Master Permit.

1. Up to fifteen (15) sites may be specified in one franchise or Small Cell Permit application for processing. The Director may allow up to five (5) additional sites in the same application in order to consider small cell sites within one logical service area in one application.

2. Issuance of a Small Cell Permit to install a small cell deployment shall be contingent upon approval of a franchise or the possession of a valid franchise.

3. If more than one application for a Small Cell Permit is submitted by an applicant, they shall be considered in the order received. If multiple applications are submitted on the same date, the applicant shall indicate which application should be considered first. All Small Cell Permits which are submitted in conjunction with a franchise application shall be considered as one Master Permit for the purposes of calculating the review period established by RCW 35.99.030(b).

a. Provided, however, that: An applicant with an existing franchise may, at the applicant's sole discretion, elect to utilize the expedited review process set forth in 12.20.790 MTMC; and

b. Any element of a deployment which qualifies as either an Eligible Facilities Request or a collocation shall be specifically designated by the applicant and may be addressed separately by the Director in order to comply with the shot clocks established by federal law and this Chapter.

4. The Director may approve, deny or conditionally approve all or any number of the sites proposed in the Small Cell Permit application.

5. Any application for a Small Cell Permit which contains an element which is not

exempt from SEPA review shall comply with Chapter 43.21C RCW and Chapter 16.05 MTMC.

6. RF Certification. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small cell deployment will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the small cell facility will operate. If facilities necessary to the Small Cell Deployment are to be provided by a third party, then the Small Cell Deployment in the initial franchise or in a subsequent Small Cell Permit shall be conditioned on an RF Certification by the third party and the requirement that the third party obtain a franchise. If such facilities will emit RF emissions, this additional RF Certification shall address the cumulative impact of the RF emissions and certify compliance with federal requirements. The applicant or franchisee shall immediately remove any facilities that exceed FCC RF Emissions requirements. A modification of the facility by an Eligible Facilities Request requires a new RF certification.

7. Regulatory Authorization. Issuance of the Use Permit for the facilities shall also be contingent upon the applicant's provision of proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

8. Completeness; Franchise and Small Cell Applications. The Director or his/her designee shall review an application for completeness and notify the applicant within thirty (30) days of submission whether the application is complete, provided, however, that an applicant may consent to a different completeness review period. A service provider may resubmit an incomplete application within sixty (60) days of notice by the Director. Failure to resubmit an application in a timely manner shall be deemed a withdrawal of that application. An applicant shall be notified in writing of the approval or denial of the application. No application shall be deemed complete without the fee deposit set by the Director.

### **12.20.720 Review Process.**

The following provisions relate to applications for a franchise which seek specific sites and small cell facilities and/or Small Cell Permit for small cell deployments.

A. Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC 253 and 47 USC 332 and applicable case law. Applicants for franchises and/or Small Cell Permits which implement franchise shall be treated in a competitively neutral and non-discriminatory manner with other service providers utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts. Franchise and Small Cell Permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

B. Concealment. Except for facilities to be located in undergrounded areas or the downtown community business (town center) zone ("Design Zone" in both this Title and in Chapter 19.137 MTMC) designated for design review ("design review") new poles, the City will permit small cell deployment on existing utility poles and replacement poles conforming to the City's generally applicable small cell design and concealment standard. See 19.137.080 MTMC. The design criteria as applicable to small cell facilities described herein shall be considered concealment elements and such small cell facilities may only be expanded upon an Eligible Facilities Request when the modifications does not defeat the concealment elements of the facility.

C. Design Review. Small cell deployment in the downtown community business (town center) zone and undergrounded areas, as well as certain new or replacement facilities, are subject to design review. See 12.20.730 and Chapter 19.137 MTMC.



D. Public Comment. The City shall provide notice of a complete application for a franchise on the City's website with a link to the franchise application. This notice requirement shall also apply to existing franchisees applying for a Small Cell Permit for small cell deployment. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant is encouraged to host informational meetings for the public regarding the deployment. The City shall post meeting notices, if any, for informational meetings on its website. These meetings are for the public's information and are neither hearings nor part of any land use appeal process.

**12.20.730 Facilities Designated in the Franchise and/or Small Cell Permit Application.**

Small cell deployments may be approved by reference to exhibits in an approved franchise. Approval of the franchise shall be deemed to approve the site and the design of small cell facilities set forth in the franchise. This approval is limited to the specific location, facility and design elements shown on the exhibits to the franchise. Any element not shown on an exhibit must be approved by the governing review processes listed in Article VI and Chapter 12.20 MTMC and, when applicable, Chapter 19.137 MTMC. All facilities shall comply with the small cell design and concealment standards adopted by the City in 12.20.720(2) MTMC and Chapter 19.137 MTMC. An existing franchisee may, at its option:

- A. Apply to amend the existing franchise to designate sites for small cell deployment, as well as approve the small cell facilities to be installed and the concealment measures to be utilized; and/or
- B. Apply for a Small Cell Permit.

**12.20.740 Small Cell Permit and Minor Deviations.**

A. The Director shall review applications for Small Cell Permits for small cell deployments approved by a franchise or described in a concurrent franchise application. The Director may authorize minor deviations in the Small Cell Permit from the dimensional design and concealment technologies referenced in the exhibits to the franchise or design standards.

B. Deviations in the dimensions or volume of small cell facilities which do not exceed the cumulative total provided by the definition of a small cell or microcell facility in RCW 80.36.375 may be considered a minor deviation when an applicant replaces components of an existing, approved small cell facility. Provided, however, that in each instance the new or revised facilities do not defeat the concealment features set by City's generally applicable small cell and concealment design standard adopted pursuant to Chapter 19.137 MTMC.

C. The decision of the Director to approve a Small Cell Permit with a minor deviation, if any, shall be final and is not subject to appeal under City code or further legislative review.

**12.20.750 Significant Deviations.**

Any request for a new pole and/or significant deviations from the approved small cell facilities design designated in the franchise, Small Cell Permit or City's design standards shall be considered as a conditional use permit processed as provided in Chapter 19.137 for WCF facilities and pursuant to the timelines established in this Chapter in Article VII. An applicant seeking approval of a new pole or a replacement pole in the downtown community business (town center) zone or undergrounded areas shall be subject to administrative review process. See 19.137.080(F) MTMC.

**12.20.760 Wireless Communication and Small Cell Deployment Facility Approvals and Processes.**

Approval of a franchise, Small Cell Permit and/or other approval referenced in this chapter are conditioned on the following requirements:

A. Comply with the small cell design and concealment standards adopted in 19.137.080 MTMC.

B. Obtain conditional use permit, applicable to new poles or an administrative concealment design approval for small cell facilities to be installed in the downtown community business (town center) zone.

C. Obtain the written approval of the owner of any utility pole for the installation of its facilities on such utility pole. Approval of a franchise does not authorize attachment to City-owned utility poles or other structures.

D. Unless specifically provided for in a franchise, obtain a lease from the City to utilize the City's ground space for the installation of any new pole, a replacement utility pole over sixty (60) feet or to locate any new ground-based structure, base station or other attendant equipment on City right-of-way or City property.

E. Comply with all City construction standards and State and federal codes when operating in the right-of-way and obtain a required permit to enter the right-if-way.

F. Installation of a facility which is not exempt from SEPA review shall be processed in the provisions of Chapter 16.05 MTMC.

G. Small Cell facilities approved pursuant to this chapter shall be considered as an outright permitted use when located within the right-of-way.

**12.20.770 Additional Review Procedures.**

Wireless communication facilities in Shorelines Management Zones, or Critical Areas are subject to review as provided in Title 16 MTMC. See also Chapter 16.05 MTMC for SEPA requirements.

**12.20.780 Expedited Review.**

An applicant, at its option, may opt for expedited review. Absent such a request, the City will process applications on a first-come, first-served basis, taking into account its resources and the federal shot clocks incorporated by Chapter 12.20. Article VII MTMC. An applicant requesting expedited review may select a third-party consultant from a list established by the City through requests for qualifications or may propose an independent reviewing entity for review by the City. Such entity shall be engaged pursuant to a third-party contract. The applicant shall be responsible for paying the actual costs incurred in the expedited review process. Nothing herein shall be deemed to require an applicant to utilize expedited review.

**12.20.790 Compliance with State Processing Limitations.**

The provisions of Chapters 12.20 and 19.137 MTMC shall be interpreted and applied to insure compliance with Chapter 35.99 RCW and federal law.

A. An application for a franchise seeking general permission to utilize the public right-of-way for telecommunications is an application for a Master Use Permit within the meaning of RCW 35.99.010(3), and shall be processed in compliance with the time limits established by RCW 35.99.030(1)(b).

B. An application to deploy specific new small cell facilities at specific locations in the public right-of-way which have not been previously approved as a part of a franchise approval, will be

considered under the procedures of this chapter as a police power exercise governed by RCW 35.99.040(2) and shall be governed by the time limits established by federal law for new facilities, provided, however, that:

1. The City will endeavor to process the application within ninety (90) days;
2. Applications qualifying as Eligible Facilities Requests shall be processed as provided in Chapter 12.20, Article VII.

C. A small cell permit application submitted concurrently with an application for a new or amended franchise shall be considered as an application for a consolidated Master Use Permit and shall be processed with the time limits established by RCW 35.90.030(1)(b).

D. A telecommunications franchise, a consolidated Master Permit for telecommunications (Franchise and Small Cell Permit) or a Small Cell Permit which authorizes deployment of specific facilities at specific locations are implemented through the issuance of right-of-way use permits. These authorizations to enter the public right-of-way to install specifically approved small cell facilities are use permits within the meaning of RCW 35.99.010(8) and shall be issued within thirty (30) days of receipt of a complete application as required by RCW 35.99.030(2), provided that requests for minor deviations shall be processed by the Director pursuant to 12.20.750 MTMC within the same time frame.

## **Article VII. Federally Required Review Periods**

### **12.20.800 Purpose.**

Congress and the Federal Communications Commission (“FCC”) have, pursuant to the authority granted by 47 USC 253(c) and 47 USC 332(a), required local governments to act on wireless communication facility applications within a reasonable period of time and have established time limits or “shot clocks” for local review. The Washington State Legislature has also adopted similar limitations under the provisions of Chapter 35.99 RCW. Accordingly, the City adopts the following time limits for review of applications for Eligible Facility Requests, Small Cell Permits, and other approvals for service providers of telecommunication services regardless of whether filed under this chapter or Chapter 19.137 MTMC.

### **12.20.810 Eligible Facilities Request.**

#### **A. Application Review.**

1. Application. The Director shall prepare and make publicly available an application form which shall be limited to the information necessary for the City to consider whether an application is an Eligible Facilities Request. The applicant is not required to demonstrate a need or business case for the proposed modification.

2. Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, the Director shall review the application to determine whether it qualifies as an Eligible Facilities Request.

3. Timeframe for Review. Within sixty (60) days of the date on which an applicant submits an application seeking approval under this Chapter, the Director shall approve the application unless he/she determines that the application is not covered by this Article VII Chapter 12.20.

4. Tolling of the Time Frame for Review. The sixty (60) day review period begins to run when the application is filed and may be tolled only by mutual agreement by the Director and the applicant or in cases where the Director determines that the application is incomplete. The timeframe for review of an Eligible Facilities Request is not tolled by a moratorium on the review

of applications.

a. To toll the timeframe for incompleteness, the Director shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.

b. The timeframe for review begins running again when the applicant makes supplemental submission in response to the Director's notice of incompleteness.

c. Following a supplemental submission, the Director will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

B. Determination That Application Is Not an Eligible Facilities Request. If the Director determines that the applicant's request does not qualify as an Eligible Facilities Request, the Director shall deny the application. To the extent additional information is necessary, the Director may request such information from the applicant to evaluate the application under other provisions of this Chapter and applicable law.

C. Failure to Act. In the event the Director fails to approve or deny a request for an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the Director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

D. Remedies. Both the applicant and the City may bring claims related to Section 6409(a) of the Spectrum Act to any court of competent jurisdiction.

#### **12.20.820 Collocation.**

Eligible collocations (see Chapter 19.137 MTMC) shall be processed within ninety (90) days of receipt of an application. The Director will notify the applicant within thirty (30) days of receipt of an application whether it is complete or if additional information is required. The term collocation shall not apply to the initial placement of a small cell facility on a tower or base station that was not in existence on the date the application was filed.

#### **12.20.830 New Wireless Communication Facilities.**

Unless otherwise provided for in Articles VI and VII of this Chapter, applications to install new wireless communications facilities shall be processed within 150 days of receipt of a complete application. The Director will notify the applicant within 30 days of receipt of an application whether it is complete or if additional information is required.

### **Article VIII. Construction**

#### **12.20.840 Construction standards/codes.**

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the City except as provided in any applicable code, ordinance, resolution, rule, regulation or permit of the City of Mountlake Terrace. Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including, but not limited to, the National Electrical Safety Code.

**12.20.850 Utility right-of-way permits.**

No person shall construct or install any telecommunications facilities within the City without first obtaining a utility right-of-way therefor; provided, however:

A. No permit shall be issued for the construction or installation of telecommunications facilities within the City unless the service provider has filed a registration statement with the City pursuant to this chapter.

B. No permit shall be issued for the construction or installation of telecommunications facilities in rights-of-way unless the service provider has applied for and received a franchise and/or lease agreement in accordance with this chapter.

C. No permit shall be issued for the construction or installation of telecommunications facilities without payment of all required fees as may be set by resolution or ordinance.

D. The permit shall be processed in accordance with RCW 35.99.030.

**12.20.860 Applications.**

Applications for permits to construct telecommunications facilities shall be submitted in accordance with applicable code, ordinance, resolution, rule or regulation of the City of Mountlake Terrace. The applicant shall pay all associated fees and shall include any additional information as requested by the City Engineer, or other department as the City Manager may designate. The application 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 or replacement 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 rights-of-way;

D. The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the rights-of-way along the underground route proposed by the applicant;

E. The location of all other facilities to be constructed within the City, but not within rights-of-way;

F. The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to rights-of-way;

G. For wireline facilities, the location, dimensions and types of all trees within or adjacent to rights-of-way 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.

**12.20.870 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.

**12.20.880 Construction surety.**

Prior to issuance of a utility right-of-way permit, the permittee shall provide a construction bond, as provided by ordinance.

**Article IX. Fees****12.20.890 Registration fee.**

Each application for registration as a service provider shall be accompanied by a fee or fee deposit in an amount as determined by the City Council and adopted by resolution.

**12.20.900 Application and review fee.**

Any applicant for a franchise pursuant to this chapter shall pay an application and review fee or fee deposit in an amount as determined by the City Council and adopted by resolution. This application and review fee covers the costs associated with the City's initial review of the application; provided, however, that the applicant shall be required to pay all necessary permit fees. This application and review fee shall be deposited with the City as part of the application filed pursuant to this chapter.

**12.20.910 Refund.**

An applicant whose franchise application has been withdrawn, abandoned or denied shall, within 60 days of its application and review fee payment, be refunded the balance of its deposit under this section, less:

- A. The application and review fee; and
- B. All ascertainable costs and expenses incurred by the City in connection with the application.

**12.20.920 Other City costs.**

All grantees shall, within 30 days after written demand therefor, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any grant, modification, amendment, renewal or transfer of any franchise.

**12.20.960 Right-of-way permit fee.**

Prior to issuance of a right-of-way permit, the permittee shall pay a permit fee in an amount as determined by the City Council and adopted by resolution.

**Article X. Business Licensing of Service Providers****12.20.970 Purpose of business license registration.**

The purposes of telecommunications business licensing are to:

- A. Provide the City with accurate and current information concerning the cable operators and service 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.

**12.20.980 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 on forms to be provided by the City Manager, 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 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 FCC to provide services or construct facilities within the City.

#### **12.20.990 Business license fees.**

Each application for a business license as a cable operator or service provider shall be accompanied by an application fee which shall be set by the City Council by ordinance or resolution.

### **Article XI. Miscellaneous**

#### **12.20.1000 Context.**

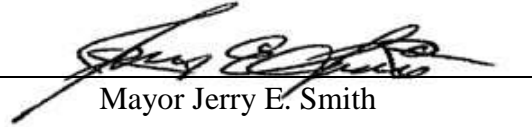
When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

**Section 2. Corrections.** The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 3. Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

**Section 4. Summary, Publication, and Effective Date.** This Ordinance or a summary thereof consisting of the title, shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after its adoption and publication as required by law.

PASSED by the City Council of the City of Mountlake Terrace this 2<sup>nd</sup> day of April, 2018, and signed in authentication of its passage this 2<sup>nd</sup> day of April, 2018.

  
\_\_\_\_\_  
Mayor Jerry E. Smith

ATTEST:   
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:   
\_\_\_\_\_  
Gregory G. Schrag, City Attorney