

ORDINANCE NO. 1114

**AN ORDINANCE OF THE CITY OF LACEY, STATE OF WASHINGTON,
PROVIDING FOR THE REGULATION OF USE OF PUBLIC RIGHTS OF WAY
FOR TELECOMMUNICATIONS AND CABLE FACILITIES LOCATED IN OR
USING PUBLIC RIGHTS OF WAY AND ADDING NEW CHAPTER 5.60 TO
THE LACEY MUNICIPAL CODE**

WHEREAS, pursuant to the Revised Code of Washington, the Federal Communications Act of 1982 and 1996, and other lawful authority, City of Lacey ("City") has the authority to regulate the use of its streets and other City property; and

WHEREAS, the Lacey City Council ("City Council") finds that an increasing number of telecommunications carriers and cable operators have requested or may request access to and the use of rights of way and public property; and to the extent permitted by law, the City finds it is in the public interest to require the obtaining of business registration, licenses, franchises, cable franchises and leases from the persons or entities that use public property, easements and rights of way; and

WHEREAS, to ensure orderly and reasonable access to the rights of way and public property for telecommunications carriers and cable operators while protecting the public health, safety and welfare, the City Council determines that it needs to include regulations and standards for the use of such property;

**NOW, THEREFORE, THE CITY COUNCIL OF CITY OF LACEY,
WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

The City of Lacey Telecommunications Ordinance is hereby adopted to add new Chapter 5.60 to the Lacey Municipal Code as set forth below:

CITY OF LACEY TELECOMMUNICATIONS ORDINANCE

Chapter	
5.60.010	Purpose
5.60.020	Definitions
5.60.030	Administration
5.60.040	Existing Licenses or Franchises

- 5.60.050 Existing Telecommunications Carriers or Operators Occupying the Rights of Way without a License or Franchise
- 5.60.060 Registration Required
- 5.60.070 License or Franchise Application
- 5.60.080 Determination by City
- 5.60.090 Conditions
- 5.60.100 Applicability to Use of Rights of Way
- 5.60.110 Amendment of Grant
- 5.60.120 Renewal of Grant
- 5.60.130 Revocation or Termination of Grant
- 5.60.140 Grantee Insurance and Bond
- 5.60.150 Release, Indemnity, and Hold Harmless
- 5.60.160 Applicability of Fees and Compensation
- 5.60.170 Penalties
- 5.60.180 Other Remedies
- 5.60.190 Severability
- 5.60.200 Interpretation of License and Franchise Terms
- 5.60.210 Effective Date
- 5.60.220 Short Title

5.60.010 Purpose. The purpose of this Chapter is to:

- A. Permit and manage reasonable, fair, and equitable access to the public rights of way of the City for telecommunications purposes on a competitively neutral basis;
- B. Establish predictable, enforceable, clear and nondiscriminatory local regulations, guidelines, standards and time frames for the exercise of local authority with respect to the regulation of Telecommunications Carriers and Cable Operators;
- C. Conserve the limited physical capacity of the public rights of way held in public trust by the City;
- D. Assure that the City's current and ongoing costs of granting and regulating private access to and use of the public rights of way and/or public property are fully compensated by the persons seeking such access and causing such costs;
- E. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare; and

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

5.60.020 **Definitions.** Terms used in this Chapter shall have the following meanings:

"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.

"Business Registration" means a requirement of all Telecommunications and Cable Providers who are not otherwise required to license or franchise with the City.

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

"Cable Facilities" see "Facilities"

"Cable Operator" shall have the same meaning as defined in the Cable Acts.

"Cable Service" shall have the same meaning as defined in the Cable Acts.

"City" means City of Lacey.

"City Council" means the Lacey City Council.

"City Manager" means the office of the Lacey City Manager or designee.

"Development Standards" are those standards set forth in Chapter 12.28 of the Lacey Municipal Code and the City of Lacey Development Guidelines.

"Director" means the Director of the City of Lacey Public Works Department or designee.

"Excess Capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the right of way that is or will be available for use for additional Telecommunications or Cable Facilities.

"Facilities" means the plant, equipment, structures and property within the City used to transmit, receive, distribute, provide or offer Telecommunications or Cable Service.

"FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to regulate and oversee Telecommunications Carriers, Services and Cable Operators on a national level.

"Franchise" an agreement required with any Telecommunications Carrier or Cable Operator who desires to construct, install, operate, maintain or otherwise locate Facilities in rights of way and to also provide Telecommunications or Cable Services to persons or areas in the City.

"Grantee" means Telecommunications Carriers and Cable Operators granted rights and bound by obligations as more fully described herein.

"License" is an agreement with any Telecommunications Carrier who desires to construct, install, operate, maintain or otherwise locate Telecommunications Facilities in rights of way and to also provide Telecommunications Services exclusively to persons and areas outside the City.

"Open Video System" means those systems defined and regulated as Open Video Systems by the Federal Communications Commission, pursuant to Section 653 of the Federal Communications Act of 1934, as amended, 47 U.S.C. 573.

"Ordinance" means the City of Lacey Telecommunications Ordinance, Chapters 5.60 of the Lacey Municipal Code.

"Overhead Facilities" means Telecommunications and/or Cable Facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

"Person" means corporations, companies, associations, firms, partnerships, limited liability companies, other entities and individuals.

"Rights of Way" includes the surface of and space above and below any real property in the City in which the City has any interest whether in fee, easements, or otherwise, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, reservoirs, alleys, sidewalks, tunnels, viaducts, bridges, skyways, parks, trails, or any other public place, area or property under the control of the City.

"Service Connection" means a connection made to a Telecommunications Facility and/or Cable Facility for the purpose of providing Telecommunications or Cable Services.

"State" means the State of Washington.

"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 Washington Utilities and Transportation Commission, to allow its use by a Telecommunications Carrier for a pole attachment.

"Telecommunications Carrier" for purposes of this Chapter includes every person that directly or indirectly owns, controls, operates or manages plant, equipment, structures, or property within the City, used or to be used for the purpose of offering Telecommunications Service. Provided, however, this does not include lessees that solely lease bandwidth (and do not own Telecommunications Facilities within the City of Lacey).

"Telecommunications Facilities" see "Facilities"

"Telecommunications Service" means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic or video programming information or service(s) between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium, provided, however, for the purposes of this Chapter, Cable Service shall not be considered a telecommunications service. For Wireless Communications Services and Facilities see LMC 16.68.

"Underground Facilities" means Telecommunications and/or Cable Facilities located under the surface of the ground, alone or in combination, direct buried or in utility tunnels or conduits, excluding the underground foundations or supports for overhead facilities.

"Washington Utilities and Transportation Commission" or "WUTC" means the State administrative agency, or lawful successor, authorized under Title 80 of the Revised Code of Washington to regulate and oversee Telecommunications Carriers, Services and Telecommunications Providers in the State of Washington to the extent prescribed by law.

5.60.030 Administration. The City Manager is authorized to administer this Chapter and to establish further rules, regulations and procedures for the implementation of this Chapter.

5.60.040 Existing Licenses or Telecommunications or Cable Franchises. Except as otherwise provided in this Chapter, and to the extent provided by law, this Chapter shall have no effect on any license or telecommunications or cable franchise existing as of the date of adoption of this Chapter until the expiration of said license, franchise or cable franchise; or an amendment to an unexpired license, franchise or cable franchise, unless both parties agree to defer full compliance to a specific date not later than the present expiration date

5.60.050 Existing Telecommunications Carriers and/or Cable Operators Occupying the Rights of Way without a License or Franchise. Notwithstanding the foregoing, the requirements of this Chapter shall apply to any Telecommunications Carrier or Cable Operator who currently occupies rights of way without a license, franchise, cable franchise or other agreement with the City. Any such Telecommunications Carrier or Cable Operator shall register or apply for a license, telecommunication franchise or cable franchise as provided by this Chapter within 120 days of the effective date of this Chapter. This Chapter shall not apply to lessees that solely lease bandwidth (and do not own Telecommunications Facilities within the City) so long as the lessor has complied with the requirements of this Chapter.

5.60.060 Registration Required.

A. **Business Registration.** All Telecommunications Carriers or Cable Operators having Facilities within the City that offer or provide Telecommunications or Cable Service within the City who are not otherwise required to acquire a license or franchise, shall register with the City as set forth in Chapter 5.12 of the Lacey Municipal Code.

- B. **Exception to Registration.** A person that provides Telecommunications or Cable 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 that such person does not use or occupy any rights of way of the City or other ways within the City, is excepted from the registration requirements pursuant to this Chapter.

5.60.070 **License or Franchise Application.** To the extent permitted by law, any Telecommunications Carrier or Cable Operator who currently occupies or desires in the future to occupy any rights of way with any Facilities for the purpose of providing Telecommunications or Cable Services shall file an application on a form provided by the City Manager for one or more of the following:

- A. **License.** Required if the Telecommunications Carrier or Cable Operator provides or intends to provide services exclusively to persons or areas outside the City.
- B. **Telecommunications Franchise.** Required if the Telecommunications Carrier provides or intends to provide service to any person or area within the City.
- C. **Cable Franchise.** Required if the Cable Operator provides or intends to provide cable services to any person or area in the City. Services similar to cable service, such as Open Video Systems, shall also be subject to this Chapter, and subject to substantially similar terms and conditions as those contained in franchise agreement(s) issued to Cable Operator(s) in the City with respect to franchise fee obligations, public, educational, and governmental access programming obligations, and all other franchise obligations to the extent provided by law.

5.60.080 **Determination by the City.** Within 120 days after receiving a complete application hereunder, the City Council shall make a determination on behalf of the City granting or denying the application in whole or in part. If the application is denied, the determination shall include the reasons for denial. The following criteria shall apply when determining whether to grant or deny the application:

- A. The applicant must have current registration issued by the FCC and WUTC.
- B. The applicant must demonstrate the willingness and ability to mitigate and/or repair damage or disruption, if any, to public or private facilities, improvements, services, travel or landscaping if the application is granted.

- C. The grant to use the rights of way will serve the community interest.
- D. Applicable Federal, State and local laws, regulations, rules and policies will be met.

5.60.090 **Conditions.** The following conditions apply to each license or franchise granted hereunder

A. Area and Location. As part of the construction permitting process for specific routes requested within each license or telecommunications or cable franchise, a determination will be made whether sufficient capacity is available in the rights of way. Alternate routes or locations for the proposed facilities may be considered if feasible.

- 1. **License Route.** A license granted hereunder shall be limited to a grant of specific rights of way and defined portions thereof, as may be indicated in the license agreement.
- 2. **Franchise Territory.** A telecommunications or cable franchise granted hereunder shall encompass all territory within the corporate limits.
- 3. **Facilities Maps.** Upon request by the Director, the Grantee shall provide the City with maps in a format agreed to by the Grantee and the City, identifying the location of all Telecommunications and Cable Facilities within the rights of way except individual Service Connections.

B. Leased Capacity. A grantee shall have the right to offer or provide excess conduit capacity to another Telecommunications or Cable Provider with prior City notification, provided that:

- 1. Grantee shall furnish the City sixty (60) days advance written notice of any such proposed lease or agreement;
- 2. The proposed lessee shall comply with all of the requirements of this Chapter prior to providing Telecommunications or Cable Service.

C. **Consistency within class.** All licenses and telecommunications and cable franchises granted pursuant to this Chapter shall contain substantially similar terms which, taken as a whole and considering relevant characteristics of applicants, are substantially consistent with those required of other licensees and telecommunications and cable franchisees.

D. **Limitations.**

1. No grant shall convey any right, title or interest in rights of way but shall be deemed a license or franchise only to use and occupy the rights of way for the limited purposes and term stated in the grant.
2. No grant shall authorize or excuse a licensee or franchisee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights of way.
3. No grant shall expressly or implicitly authorize a licensee or franchisee to provide service to, or install a 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 and to the extent provided by law.
4. No grant shall confer any exclusive right, privilege or license to occupy or use the rights of way for delivery of Telecommunications or Cable Services or for any other purposes.
5. 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.

D. **Term.** Unless otherwise specified in a license, telecommunications franchise or cable franchise agreement, the term shall be for no more than ten (10) years.

5.60.100 **Applicability to Use of Rights of Way.** The terms of this Chapter shall apply to all Grantees.

A. **General Duties.**

1. All Grantees, before commencing any construction in the rights of way, shall acquire appropriate permits and comply with all requirements of the Lacey Municipal Code, specifically Chapters 12.16 and 12.22, and the City of Lacey Development Guidelines. In the event of a conflict between this Chapter and the Lacey Development Guidelines, the Lacey Development Guidelines shall control.
2. All Grantees shall have no ownership rights in rights of way, even though they may be granted a license, franchise or cable franchise to construct or operate their facilities.
3. Nothing herein shall limit or otherwise affect the authority of the City to require a lease for any use, occupation, construction, installation, maintenance or location upon any property owned in fee by the City.

B. Physical Location of Facilities. Unless otherwise required in current or future City ordinances regarding underground construction requirements, all facilities shall be constructed, installed and located in accordance with hierarchy of the following terms and conditions:

1. Telecommunications and Cable Facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility and permission can be obtained reasonably from the installer of such duct or conduit.
2. Whenever one or more existing Telephone, Electric Utilities, Cable Systems or Telecommunications Facilities are located underground within rights of way, a licensee or franchisee shall occupy the same trench where reasonable and practical.
3. When sufficient capacity is not available under 1 or 2 above, the Telecommunications or Cable Facility shall be installed underground within the rights of way below the sidewalk or within the planter strip.
4. A franchisee or licensee with written authorization to install overhead facilities shall install its Telecommunications or Cable Facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

5. When a franchisee or licensee has been granted authority to install overhead facilities as in Section 4 above and the City directs such facilities to be relocated to allow construction or reconstruction within the right of way, a licensee or franchisee that occupies the same rights of way shall concurrently relocate its facilities underground at its expense.

C. **Conduit Occupancy.** In furtherance of the public purpose of reduction of rights of way excavation, it is the goal of the City to encourage both the shared occupancy of underground conduit as well as the construction, whenever possible, of excess conduit capacity for occupancy of future rights-of-way occupants.

1. **City use.** At the option of the City, whenever new conduit is laid by the licensee or franchisee, the City shall be provided access to the open trench or bore hole and space shall be made available for purposes of installing one two-inch conduit for city use. There shall be no cost to the City associated with the trenching, backfilling, boring or surface restoration involved with these activities. While not an inclusive list, such option will be exercised primarily on arterial streets or near environmentally sensitive areas.
2. **Use by others.** When the City reasonably determines such construction is in an area in which another Telecommunications or Cable Provider may also construct Telecommunications or Cable Facilities in the future, the City may require the franchisee or licensee to construct or install excess conduit capacity in the rights of way, provided the expense of such excess conduit capacity shall be borne by the City or other such person who contracts with the City to bear the expense (calculated as the difference between what Grantee would have paid for the construction of its conduit and the additional cost only of the excess conduit. Grantee may manage the excess conduit itself and be permitted to charge a reasonable market lease rate for occupancy of the additional conduit space, provided such lease revenues shall be first applied to reimburse the City for its actual contribution to the construction of the excess conduit (plus interest compounded at the Washington State Local Government Investment Pool rate during the time in question).

- D. **Occupancy of City Owned Conduit.** In furtherance of the same objectives of C, above, if the City owns conduit in the path of Grantee's proposed Facilities, and provided it is technologically feasible for Grantee to occupy the conduit owned by the City, Grantee shall be required to occupy the conduit owned by the City in order to reduce the necessity to excavate the rights of way. Grantee shall pay to the City a reasonable fee for such occupancy.
- E. **Relocation or Removal of Facilities.** Within ninety (90) days following written notice from the City, a Grantee shall, at its own expense, temporarily or permanently remove, relocate, place underground, change or alter the position of any Telecommunications or Cable Facilities within the rights of way whenever the Director shall have determined that such removal, relocation, undergrounding, change or alteration is reasonably necessary for:
1. The construction, repair, maintenance or installation of any City or other public improvement in or upon the rights of way;
 2. The operations of the City or other governmental entity in or upon the rights of way.
- F. **Removal of Unauthorized Facilities.**
1. A telecommunications or cable facility is unauthorized and subject to removal in the following circumstances:
 - a. Upon expiration or termination of the Grantee's license, telecommunications franchise or cable franchise unless otherwise provided by law.
 - b. Upon abandonment of a facility within the rights of way.
 - c. If the facility was constructed or installed without the prior issuance of a required encroachment or utility permit, license, telecommunications franchise, or cable franchise.
 - d. If the facility was constructed or installed at a location not permitted by the Grantee's license, franchise or cable franchise.

- e. To the extent permitted by law, any such other reasonable circumstances affecting public health, safety and welfare deemed necessary by the City Manager.
2. The City Manager may exercise discretion to allow an unauthorized facility to come into compliance with this chapter upon written request of the unauthorized Telecommunications Carrier or Cable Operator made within thirty (30) days after said Carrier or Operator is notified that the facility is unauthorized pursuant to this chapter. Notice shall be given in accordance with LMC 5.60.130. The City Manager shall make the determination of whether to allow said Carrier or Operator to cure by using the standards of review set forth in LMC 5.60.130.
3. Notwithstanding any other provision of this Chapter, the City Manager may, if deemed appropriate, allow a Grantee or other person who may own, control or maintain a Telecommunications or Cable Facilities within the rights of way of City to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the City Manager. Any plan for abandonment or removal of such facilities must be first approved by the City Manager and all necessary permits must be obtained prior to commencement of such work. Upon permanent abandonment of any Telecommunications or Cable Facilities of such persons in place, the facilities shall become the property of the City, and such persons shall submit to the City Manager an instrument in writing, to be approved by the City Attorney, transferring ownership of such facilities to the City. The provisions of this Section shall survive the expiration, revocation or termination of any license, franchise or cable franchise granted under this Chapter.

5.60.110 Amendment of Grant.

- A. **Adding or modifying services.** Additions or modifications to initial route(s) identified for licenses which are determined to be significant by the Director of Public Works will require a new license.
- B. **Relocation of services.** If ordered by the City to locate or relocate its Telecommunications or Cable Facilities in rights of way not included in a

previously granted license, telecommunications franchise or cable franchise, the City shall grant a license or franchise amendment without further application.

- C. **Assignments or Transfers.** All assignees or transferees of interest in a License, Franchise, or Cable Franchise of any Telecommunications Carrier or Cable Operator must comply with the terms and conditions of this Chapter, the license, telecommunications franchise, or cable franchise agreement, the requirements of the FCC, and the requirements of the WUTC. If said assignee or transferee fails to comply with such requirements, the license, telecommunications franchise, or cable franchise assigned or transferred is subject to revocation.

5.60.120 Renewal of Grant.

- A. **Renewal application.** A licensee or franchisee that desires to renew its license or franchise hereunder shall, not more than 180 days nor less than 120 days before expiration of the current license or franchise, file an application with the City for renewal of its license or franchise.
- B. **Renewal Determination.** Within 90 days after receiving an application hereunder, the City Manager shall make a determination on behalf of the City granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for non-renewal. The criteria enumerated in this Chapter shall apply when determining whether to grant or deny the application, and the City may further consider the applicant's compliance with the requirements of this Chapter and the license or franchise agreement.
- C. **Obligation to Cure as a Condition of Renewal.** No license or franchise shall be renewed until any on-going violations or defaults in the licensee's or franchisee's performance of the license or franchise agreement, of 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 licensee or franchisee has been approved by the City Manager. Failure to comply with the terms of an approved plan shall be grounds for non-renewal or revocation of the license or franchise.

5.60.130 Revocation or Termination of Grant. A license, telecommunications franchise or cable franchise granted by the City to use or occupy rights of way may be

revoked pursuant to the provisions of LMC Sections 5.60.100F, 5.60.110C, and 5.60.120C.

A. **Notice and Duty to Cure.** In the event that the City Manager believes that grounds exist for revocation of a license or franchise, written notice shall be given of the apparent violation or noncompliance, including a short and concise statement of the nature and general facts of the violation or noncompliance. The Grantee shall be given a reasonable period of time, not exceeding thirty (30) days, to furnish evidence:

1. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
2. That rebuts the alleged violation or noncompliance.
3. That it would be in the public interest to impose some monetary damages, penalty or sanction less than revocation.

B. **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 license, telecommunications franchise or cable franchise or applicable codes, statutes, or rules and regulations, the City Manager shall make a preliminary determination whether to revoke the license, telecommunications franchise or cable franchise, and issue a written order, or to impose monetary damages, a penalty, or other such lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

1. Whether the misconduct was egregious.
2. Whether substantial harm resulted.
3. Whether the violation was intentional.
4. Whether there is a history of prior violations of the same or other requirements.
5. Whether there is a history of overall compliance.

6. Whether the violation was voluntarily disclosed, admitted or cured.

C. **Appeal.** Any person aggrieved by the granting or denying of a telecommunications license, telecommunications franchise or cable franchise or the renewal thereof pursuant to this Chapter shall have the right to appeal to the City Council as follows:

1. All appeals filed pursuant to this Section must be filed in writing with the City Manager within fifteen (15) working days of the date of the decision appealed from;
2. All appeals filed pursuant to this Section shall specify the error of law or fact, or new evidence that was not reasonably available at the time of the City Manager's decision, which shall constitute the basis of the appeal;
3. Upon receipt of a timely written notice of appeal, the City Manager shall advise the City Council of the pendency and schedule a date for a hearing.

5.60.140 Grantee Insurance and Bond. Each Grantee shall secure and maintain insurance and bond as set forth below:

- A. **Insurance required.** Commercial General Liability Insurance, and, if necessary, Umbrella Liability Insurance, which will cover bodily injury, property damage, and any other exposure which be reasonably identified as potentially arising from the Grantee's activities within the rights of way. The limit of liability shall not be less than two million dollars (\$2,000,000) for each occurrence. The City, its elected and appointed officers, officials, employees, agents, and representatives shall be named as additional insured with respect to activities occurring within its rights of way. Coverage shall be comprehensive with respect to the Grantee's activities within the rights of way and shall include completed operations, explosions, collapse, and underground hazards. Such insurance shall name the City as additional insured and provide a certificate of insurance with a 45-day cancellation notice.
- B. **Bond required.** The grantee or the contractor for the grantee shall post with the city a bond with surety qualified to do a bonding business in this state, a cash deposit or an assigned savings account or other security acceptable to the city in

an amount equal to one hundred fifty percent of the cost of the work as estimated by the Director of Public Works or in an amount as set forth in the franchise agreement. Such bond, deposit or other security shall be conditioned upon the grantee or its contractor performing the work pursuant to the terms of this Chapter, including the restoration and/or replacement of the street, sidewalk, or other rights of way within the time specified by the Director of Public Works

5.60.150 Release, Indemnity, and Hold Harmless.

- A. **Additional requirements.** In addition to and distinct from the insurance requirements of this Chapter, Grantee releases and shall defend, indemnify, and hold harmless City from any and all claims, losses, costs, liabilities, damages, and expenses (except those damages caused solely by the negligence of the City), including, but not limited to, those of the Grantee's lessees, and also including, but not limited to, reasonable attorneys' fees arising out of or in connection with the Telecommunications or Cable Facilities, the performance of any work, the operation of any Telecommunications or Cable Facilities, or the Grantee's system, or the acts or omissions of the Grantee or any of its suppliers or contractors of any tier, or anyone acting on the Grantee's behalf in connection with said installation of Telecommunications or Cable Facilities, performance of work, or operation of Telecommunications or Cable Facilities or Grantee's system.
- B. **Inclusions.** Such indemnity, protection, and hold harmless shall include any demand, claim, suit, or judgement for damages to property or injury to or death of persons, including officers, agents, and employees of any person including payment made under or in connection with any Worker's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused or contributed to directly or indirectly by the erection, maintenance, presence, operation, use, or removal of Grantee's Telecommunication or Cable Facilities, including any claims or demands of customers of the Grantee with respect thereto.
- C. **Indemnification.** The City shall not be liable to the Grantee or to the Grantee's customers, and the Grantee hereby indemnifies, protects and saves harmless the City against any and all such claims or demands, suit or judgement for loss, liability, damages, and expense by the Grantee's customers, or for any interruption to the service of the Grantee, or for interference with the operation of the Telecommunications or Cable Facilities.

- D. **Application.** To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless provisions shall apply to and be for the benefit of the City.
- E. **Successors and assigns.** All provisions of this Chapter shall apply to the successors and assigns of the Grantee.

5.60.160 Applicability of fees and compensation.

- A. **Fees.** The fees to be paid to the city at the time of application for registration, license, or franchise or construction permits shall be established by resolution of the City Council. All fees paid shall be nonrefundable. Fees may include business registration, application, rights of way compensation, utility permit and inspection, and other regulatory fees.
- B. **Compensation to City.** Each license granted hereunder is subject to the City's right, to the extent permitted by law, to fix a fair and reasonable compensation to be paid for use of property pursuant to the license or franchise, provided nothing in this Chapter shall prohibit the City and a licensee or franchisee from agreeing upon the compensation to be paid or services to be provided. In the absence of such an agreement, such compensation shall be in an amount reasonably established by the City Council. Provided that the compensation required from any telecommunications provider or carrier engaged in the telephone business as defined in RCW 82.04.065 shall be consistent with RCW 35.21.860.
- C. **Fees and Compensation Not a Tax.** The fees, charges, and fines provided for in this Chapter and any compensation charged and paid for the rights of way provided herein, whether fiduciary or in-kind, are separate from, and additional to, any and all Federal, State, local, and City taxes (as set forth in LMC 3.01) as may be levied, imposed or due from a telecommunications carrier or provider, its customers, or subscribers or on account of the lease, sale, delivery, or transmission of telecommunications services.

5.60.170 Penalties. Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be guilty of a gross misdemeanor. Upon conviction any person violating any provision of this Chapter shall

be subject to a fine of up to five thousand dollars (\$5,000.00). A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

5.60.180 Other Remedies. Nothing in this Chapter shall be construed as limiting any other remedies that the City may have, at law or in equity, for enforcement of Chapter 5.60 of the Lacey Municipal Code. Notwithstanding the existence or use of any other remedy, the City may seek legal or equitable relief to enjoin any acts or practices and abate any conditions that constitute or will constitute a violation of this Chapter.

5.60.190 Severability.

- A. **Validity.** If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any Person is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.
- B. **Conflict.** If any provision of this Chapter is held to be in conflict with any statutory provision of the State of Washington or applicable Federal law, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

5.60.200 Interpretation of License or Franchise Terms.

- A. **Conflict.** In the event of a conflict between this Chapter and a license or franchise, the provisions of the license or franchise shall control.
- B. **Construction.** The provisions of this Chapter and a license or franchise will be liberally construed in accordance with generally accepted rules of construction to promote the public interest.
- C. **Consistency.** 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.

5.60.210 Effective Date. This Ordinance shall take effect on September 6, 1999.

5.60.220 **Short Title.** Chapter 5.60 of the Lacey Municipal Code shall be known as the City of Lacey Telecommunications Ordinance.

ADOPTED: August 26, 1999

ATTEST:

CITY COUNCIL
City of Lacey, Washington

Charlotte M Taylor
City Clerk

Nancy Peterson
Mayor

APPROVED AS TO FORM:

[Signature]
City Attorney

Published: Wednesday, September 1, 1999

SUMMARY FOR PUBLICATION
ORDINANCE NO. 1114
CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on August 26, 1999, Ordinance No. 1114 entitled "AN ORDINANCE OF THE CITY OF LACEY, STATE OF WASHINGTON, PROVIDING FOR THE REGULATION OF USE OF PUBLIC RIGHTS OF WAY FOR TELECOMMUNICATIONS AND CABLE FACILITIES LOCATED IN OR USING PUBLIC RIGHTS OF WAY AND ADDING NEW CHAPTER 5.60 TO THE LACEY MUNICIPAL CODE"

The main points of the ordinance are as follows:

1. The ordinance establishes non-discriminatory local regulations, guidelines and standards for the use of public right-of-ways within the city by telecommunications carriers and cable operators.
2. As part of the regulations, the ordinance establishes the means and methods for obtaining a franchise by those who provide services to locations within the city and licenses for those who seek to use the public right of way but do not provide services to locations within the city.
3. Conditions, regulations and guidelines of the ordinance include the following:
 - a. Shared capacity is emphasized;
 - b. Consistency between licenses and franchise to be granted is required;
 - c. The length of such license or franchise is specified;
 - d. The location of the actual facilities within the right of way is addressed;
 - e. Provisions for the addition of conduit for city use may be required;
 - f. Various requirements such as the conditions of removal of facilities, the amendment or renewal of licenses and franchises, the revocation or termination of such licenses or franchises, the providing of insurance or bonds and a specification of the fees applicable to such licenses and franchises are also set forth;
 - g. The terms under which the ordinance is applicable or not applicable to existing franchise holders and those using the right of way without a license or franchise are specified.
4. The ordinance declares a violation of its terms to be a gross misdemeanor and provides for a fine for such violation.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: September 1, 1999.

Wednesday