

ORDINANCE NO. 4044

AN ORDINANCE AMENDING THE BEAVERTON CODE  
BY ADDING NEW PROVISIONS TO CHAPTER FOUR RELATING TO  
TELECOMMUNICATIONS SERVICE PROVIDERS.

**Whereas,** The City desires to accommodate all telecommunications utilities and competitive and shared access service providers who require use of public right of way under City's jurisdiction and control, and desires to comply with all mandatory provisions of federal and state law regarding such providers; and

**Whereas,** The City desires to treat telecommunications service providers doing business within the city on a competitively neutral basis and not impose a barrier to entry upon any one provider or class of providers; and

**Whereas,** The City intends by this Ordinance to permit and manage reasonable access to the public right of way under City's control for telecommunications purposes, to conserve the limited physical capacity of the right of way, and to assure that the public receives adequate compensation for use of public right of way by persons offering telecommunications services for sale to others; now, therefore,

**THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:**

**Section 1.** The Beaverton Code is amended by adding new provisions to be numbered and to read as follows:

**"4.20.010 Definitions.** Words not defined in this section shall have their ordinary meaning unless another meaning is stated in the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and as hereafter amended, or unless another meaning is stated in Oregon statutes and Oregon Administrative Rules. When not inconsistent with the context, the present tense includes the future, the plural includes the singular and vice-versa. In this ordinance the word 'telecom' is substituted for telecommunications for other than proper nouns. For the purpose of this Ordinance, the following mean:

**'Cable Service'** means the one-way transmission to subscribers of video or other programming service and any subscriber interaction required for the selection or use of such programming.

**'Commercially Reasonable'** means those terms and conditions of transactions between telecom service providers that are promulgated by the OPUC or the FCC or that are prevalent in the telecom services industry in Oregon.

**'Day'** means calendar day unless otherwise specified.

**'FCC'** means the Federal Communications Commission or its successor.

**'Franchisee'** means a person who is a party to a contract with the City for use of public right of way for facilities used to offer telecom services for hire. In this Ordinance the terms 'franchisee,' 'grantee' and 'permittee' may be used interchangeably and have the same meaning unless the context requires otherwise.

**'Local Access Revenue'** means revenue derived in whole or part from "exchange access services" within the city as that latter phrase is defined in ORS 401.710 (as amended from time to time), less related net uncollectibles.

**'Local Exchange Access Service'** means telecom exchange access lines or channels that provide local access to the local telecom network to effect the transfer of information, and any facility or service provided in connection therewith, as is further defined by the OPUC from time to time. Local exchange access service includes 'shared telecommunications service' as defined in ORS 759.005(2)(f)(1997).

**'OPUC'** means the Oregon Public Utility Commission or its legal successor.

**'Person'** means any individual or any legal entity.

**'Private Telecommunications Network'** means (a) A system to provide telecom service by a person for the person's exclusive use and not for resale, directly or indirectly; and, (b) Services provided by the State per ORS 190.240 and 283.140.

**'Public Right-of-way'** includes utility easements granted to the City for use and benefit of the public where use of same for telecom services is compatible with use for other public utilities existing or planned.

**4.20.020 Telecom Franchise.** No person shall use or occupy any portion of public right of way to provide telecom services for hire without a current, valid franchise granted in compliance with the provisions of this ordinance or existing before the effective date of this ordinance, unless: (a) the person is exempt from such requirement by express provision of state or federal law; or, (b) the City allows use of right of way to provide those services in consideration of the provider's payment of a privilege tax in lieu of a franchise fee.

**4.20.030 Nonexclusive Grant.** The rights and privileges granted hereunder to any person under this chapter are not exclusive, and the City reserves the right to grant similar privileges to other persons for use of public right of way for the same or any other purpose. This ordinance and any franchise granted under the terms of this ordinance shall not create any unique property right in any person to the public right of way.

**4.20.040 Franchise Fee Not a Tax.**

A. The compensation payable for the use of public right of way shall be as provided for in this ordinance or in an existing franchise agreement. The compensation payable for the use of public right of way is separate and distinct from other legally authorized federal, state, and local taxes as may be imposed upon or due from a provider of telecom services.

B. Any fee imposed by this ordinance is not subject to the property tax limitations of Article XI, Sections 11(b) and 11(19), of the Oregon Constitution and is not a fee imposed on property or property owners by fact of ownership nor is it a new or increased fee for purposes of those subsections.

C. Compliance with this chapter does not excuse compliance with any other provisions of City Code or any City ordinance except as expressly provided herein.

**4.20.050 Application.**

A. A person who desires to occupy public right of way with facilities for use in providing telecom services for hire shall apply for a telecom franchise to the City Finance Director showing the following information:

(1) The identity of the applicant including all names by which the applicant does business and all business names registered with the State of Oregon, together with the name and address of the applicant's agent for service of process, if any;

(2) A generalized, non-proprietary description of the services that the applicant presently plans to offer using facilities located within public right of way, and a description of those facilities;

(3) A nonproprietary description of proposed routes for facilities within public right of way, in a scale and with other detail sufficient for the City to identify potential conflicting uses and impacts, and a schedule or timetable for deployment;

(4) Financial information sufficient to demonstrate the applicant's financial ability to obtain performance and maintenance bonds and liability insurance for its work within public right of way;

(5) Information showing that the applicant has applied for or obtained all other governmental approvals and permits necessary to construct and operate the facilities and provide the telecom services proposed;

(6) Information showing whether the applicant intends to provide cable service, video-dial-tone service or other video programming service for the City's use in determining if the applicant is subject to a cable television franchise; and,

(7) Other information as City may request after initial review.

B. At the applicant's request, the City shall deem (any of) the matter submitted to be exempt from public disclosure to the extent allowed by Oregon law.

C. The Council by resolution may impose a fee on an application for a telecom franchise to defray the costs of City staff time spent reviewing the application.

**4.20.060 Determination By City Council.** The Council after public hearing on the application shall by resolution grant, deny or grant with conditions an application for a franchise based on all information available to the Council at the time. The Council shall state in writing its reasons for denial of an application. A franchise shall be deemed subject to the City's charter and general ordinances except where the same are expressly superseded by the terms of the franchise itself or by state or federal law. A franchise granted under this Ordinance does not grant any authority to operate a cable system or provide video programming as those terms are defined in federal law.

**4.20.070 Effective Only Upon Acceptance.** No franchise is effective unless and until the City receives the applicant's written acceptance of same no later than 30 days after the date of the resolution granting the franchise. On an applicant's failure to accept the City's grant of franchise within the time allowed by this section, the Council in its discretion may extend the time for acceptance, may rescind its offer of a franchise in whole or part or may impose a privilege tax on the applicant's revenues to the extent permitted by state or federal law.

**4.20.080 Term of Grant; Renewal.**

A. A franchise granted under this Ordinance shall have a negotiated term that reflects the grantee's need for predictability in planning its operations and the City's need to assure continued fair compensation to the public for use of public right of way and to assure continued regulation of private use of public right of way to the full extent allowed by state and federal law as those laws are amended from time to time. Any enactment by the state or federal government during the term of a franchise that materially affects the consideration passing to either party under the franchise or that materially revises the schedule of fees and costs that any telecom service provider may include in a regulated rate base shall entitle the affected party to demand renegotiation of the franchise. Upon a franchisee's failure or refusal to renegotiate a franchise in good faith on City's demand as provided for in this section, the

franchise shall expire on the 90<sup>th</sup> day after the date of demand.

B. A person who desires to renew a telecom franchise shall apply to the Finance Director in writing no later than ninety (90) days prior to expiration of term of the existing franchise, showing the information required of new applicants by this Ordinance (and any amendments to this Ordinance effective prior to the date of renewal) noting any information or circumstances that have changed since the person's prior application and showing such other information as the City reasonably requires. The Council by resolution after public hearing shall grant, deny or grant with conditions an application for franchise renewal within ninety (90) days after the City receives the application.

#### **4.20.090 Assignment and Transfer.**

A. A franchisee shall not sell, lease, mortgage, assign or otherwise transfer any or all of its rights or obligations under a franchise without the City's prior written consent or the approval of the transfer by the Oregon Public Utilities Commission. The City may make reasonable inquiries into the qualifications of the transferee to perform the obligations of this Ordinance and those of the franchisee and its readiness to accept those obligations without condition, and the franchisee shall cooperate with City in that inquiry. Nothing in this section shall prohibit the mortgage, pledge or assignment of a franchisee's tangible assets in connection with the financing of equipment, construction or operation of a franchisee's services but any such conveyance shall be subject to City's rights under this Ordinance and under the franchise agreement.

B. Any conveyance made in violation of this section shall be ineffective to grant the transferee any right to use of public right of way for any private purpose and shall constitute a default in the franchise between the City and the transferor.

**4.20.100 Revocation for Default.** A franchise to use or occupy public rights-of-way of the City may be denied or revoked and a franchisee deemed in default for any the following reasons:

1. Construction or operation at an unauthorized location;
2. A material misrepresentation in any application for a franchise or renewal of same;
3. A judgment by a court of competent jurisdiction that the franchisee or applicant has committed fraud in any of its dealings with the City;
4. Failure to remove or relocate facilities in the public right of way pursuant to City's police powers, as provided for in this Ordinance, within a commercially reasonable time;
5. Failure to pay compensation due the City for use of the right of way if the City's accounting of same is not disputed;
6. Failure to maintain required insurance or performance security, or insolvency or bankruptcy of the franchisee;

7. Any other matter stated in this Ordinance or in a franchise between City and the franchisee as constituting grounds for default;
8. Violation of a material provision of this Ordinance or a material term of the franchise.

**4.20.110 Notice and Opportunity to Cure.** The City shall give written notice of its reason to believe that a franchisee is in default of the franchise agreement by a concise statement of the matter constituting a default. Within 30 days from the date of mailing such notice the franchisee may show that it has or will undertake specified measures to cure the default, or show reasons why the City's belief is disputed, or show reasons why the franchise should not be revoked notwithstanding the default. On receipt of such a showing or on the expiration of the time allowed for response, whichever is sooner, the Council with notice to the franchisee shall conduct a public hearing to hear the franchisee and any other interested person on the question of whether the franchisee is in default and if so, whether revocation or another remedy is appropriate. In deciding whether to revoke the franchise, pursue a different remedy or impose a sanction other than revocation, the Council shall consider all relevant circumstances.

**4.20.120 Construction Codes.** Telecom service facilities both in the right of way and on public and private property shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code as those codes are amended from time to time.

**4.20.130 Construction Permits Required.** No person shall construct, reconstruct, install or remove any telecom facilities within public right of way except under the terms of a current, valid City franchise or permit and except in compliance with this Ordinance. All work shall be performed according to the requirements of the City Development and Site Development Codes and the current version of the Engineering Design Manual as adopted by the City Council. All work within right of way is subject to inspection by the City for conformance with those standards and is subject to removal for noncompliance. All such work is subject to the authority of the City Engineer to stop the work for material deviation from the terms of the approved plans or terms and conditions of the permit and for any practice that presents an imminent threat to public health, safety or welfare. The City Engineer in his or her discretion shall grant, deny or grant with conditions a permit to construct facilities within the public right of way or may require the permit applicant to utilize an alternate method or route based on adequate capacity for the proposed facilities without conflicting with existing utilities; the potential for damage or disruption to other public or private facilities, improvements, and

services; and, the planned schedule for public improvements to the same area that may require relocation of the applicant's facilities in the foreseeable future.

**4.20.140 Permit Applications.**

A. An application for a permit to construct, reconstruct or install facilities in public right of way shall show, at a minimum, the location, approximate elevation and route of all facilities to be constructed; the location of all other existing facilities that lie parallel to or intersect the proposed route (to the best of the applicant's knowledge) to show potential conflicts; a showing that excess capacity is not available in existing ducts, conduits or vaults; drawings to scale and in industry standard media and format acceptable to City showing the relation to the street, curb, sidewalk and similar improvements; and, the location and dimension of all trees of 2" caliper or greater as to which the drip line is within the public rights-of-way along the route proposed.

B. The applicant shall show the detail required by this section on at least three copies of its construction plans. Except in an emergency, the applicant shall submit its plans reasonably prior to the proposed start of construction to allow City's review and approval, and shall telephone the City Engineer's inspection section 24 hours prior to the actual start of work on any site within the right of way. The applicant shall submit with its plans its proposed construction schedule for all work to be performed within the actual confines of the public right of way.

C. In case of an emergency the applicant shall telephone the City Engineer's inspection section prior to the start of work giving detail as to place, time, location and type of work to be performed. In such case the applicant shall submit the additional detail required by this section within two (2) working days after the date the work commences and pay the required fee. Notwithstanding the emergency the applicant shall use best management practices to control erosion at the site, specifically controlling sediment run off in to storm sewers, and the applicant shall utilize traffic control to the standards of the Manual on Uniform Traffic Control Devices and the Oregon Department of Transportation Highway Manual for any work within the right of way of an arterial or collector street.

D. The City may require a payment of a fee intended to compensate for City's time spent in reviewing an application for a permit to work within the public right of way. The permit fee may or may not be deductible in the computation of the franchise fee owed to the City as provided for in the terms of a franchise and according to the extent allowed by Oregon law.

**4.20.150 Construction Permit Fee.** To the extent allowed by Oregon law, the City may require a franchisee to pay a fee for a permit to work within the public right of way according to City's current adopted fee

schedule unless expressly provided otherwise in the franchise agreement between the permit applicant and the City. Fees paid by a franchisee to compensate City for its review of franchisee's work in the right of way or on other public or private property shall not be deducted from the franchisee's revenues for purposes of computation of a percentage of those revenues as a franchise fee payable to City unless expressly provided by an order of the OPUC, the FCC or the terms of the franchise.

**4.20.160 Locates.** All work by a franchisee within public right of way is subject to Oregon Revised Statutes Chapter 757 relating to a uniform ('one-call') system for locating underground utility facilities, to which the franchisee shall comply at its own initiative and expense.

**4.20.170 Completion of Construction.** The franchisee shall promptly complete all construction activities so as to minimize disruption of right of way, remove obstructions and restore all improvements, landscaping and vegetation affected by the work to as good or better a condition as existed before the work commenced. The City may direct or allow temporary restoration in case of unusually severe weather or similar circumstances. Failure to restore improvements, landscaping or vegetation as required by this section within a commercially reasonable time is declared to be a public nuisance and shall be cause for City to effect such restoration at the franchisee's expense. The costs of any such work by City shall be stated to the grantee and shall be due and payable on demand and in any event, no later than the date of the next regular payment of compensation due under the franchise.

**4.20.180 Performance and Completion Bond.** The cost to complete all work by a franchisee within public right of way, and the estimated cost to repair any defects in material or workmanship that may be evident or imminent within one year following substantial completion and restoration to City's satisfaction shall be assured by a guarantee or surety in a form acceptable to the City Attorney to be submitted by the franchisee before any such work commences. A franchisee may offer an annual performance bond covering all work to be performed in the forthcoming year. In case of work within the right of way done in an emergency the assurance shall be submitted after the fact with the application for a permit as provided for in this Ordinance.

**4.20.190 Coordination of Construction.** A franchisee shall cooperate with the City and with other owners of utilities located within public right of way to coordinate construction activity. Conflicts between or among the construction schedules of various utility owners shall be resolved by the City Engineer.



**4.20.200 Location of Facilities.** All facilities located within the public rights-of-way or utility easements shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement.

A. The grantee shall install its new telecom facilities underground whenever existing electric, television or telecom facilities are underground at the location in question.

B. The grantee shall install its new telecom facilities underground whenever undergrounding of utilities is required as a condition of approval of new development or redevelopment of property at the location in question.

C. The grantee shall install its facilities in or on existing aerial or underground plant whenever available to the grantee on a commercially reasonable basis. The grantee may, with permission of the owner, apply to the City to add capacity to existing aerial plant by replacement with higher poles or otherwise.

D. The grantee shall install or relocate its facilities underground in all cases where existing electric, cable television or telecom facilities are relocated underground within the public right-of-way in the course of maintenance, repair or reconstruction of the right of way at the direction of the public entity having jurisdiction over the right of way at that location.

E. The City Engineer may grant exceptions to some or all of the requirements of this section consistent with practices prevailing in the industry so long as not inconsistent with the public health, safety or welfare.

**4.20.210 Location and Relocation of Facilities.** Telecom facilities shall be located so as not to unreasonably interfere with the use of the public right of way by the City, by the general public or by other authorized users. A franchisee shall temporarily or permanently move or relocate its facilities within right of way pursuant to City's police powers within a commercially reasonable time and at the franchisee's expense when required to accommodate newly constructed or reconstructed publicly owned improvements or when the City otherwise determines that the public interest so requires. The cost of removal or relocation shall be paid by the franchisee unless the cost is chargeable to another party or to the City by law or tariff. A franchisee shall temporarily or permanently move or relocate its facilities at the request of a private party to facilitate that private party's use of public right of way within a commercially reasonable time following such request and at the private party's expense. A franchisee's failure to move or relocate its facilities for a public or private purpose pursuant to City's police powers shall be deemed to have authorized City to cause such relocation using City's own forces, in which case the franchisee shall be liable to City for all of City's direct and indirect costs and expenses, including delay damages for which City may be liable under any contract with others, incurred by fact

of the franchisee's failure to act upon demand.

**4.20.220 Removal of Unauthorized or Abandoned Facilities.**

A. In addition to any other legal remedies available to City for a violation of this Ordinance, the City may declare telecom utility facilities placed or maintained within public right of way other than under the terms of a current, valid City franchise or privilege tax to be a public nuisance that the City may abate by any legal means. Telecom service facilities shall be deemed abandoned if not used for the intended and authorized purpose for one year following expiration of a franchise or following termination for default.

B. A franchisee who seeks to discontinue use of a facility lying within public right of way shall apply to the City Engineer for a permit for removal by the same process as for an application to construct, reconstruct or install such facilities. In lieu thereof a franchisee may request that the City permit the facility to be abandoned but to remain in place. In exchange for such permission the franchisee shall agree that all right, title and interest in the facility so abandoned in place shall revert to City. The City Engineer may condition abandonment of a facility to be left in place on a showing satisfactory to the Engineer that the facility will not thereby present a risk to the public health, safety or welfare.

**4.20.230 Service to City.** Upon City's request a franchisee shall offer City telecom facilities or services, installation, or maintenance at its most favorable rate offered at the time of the request to a similar user within Oregon for a similar type and volume of goods or services, subject to any of grantee's tariffs or price lists on file with the OPUC.

**4.20.240 Use of Other City Property.** The terms by which a franchisee may occupy city property other than public right of way shall be determined by separate and express provision in the franchise. No franchise shall be deemed to grant permission to occupy any property other than public right of way absent such express provision.

**4.20.250 Franchise Fees.** In partial consideration for a grant of franchise and in addition to and not in lieu of the fees payable to City for an application for a franchise and for any permits required to work in the right of way, the grantee shall for the duration of the term of the franchise pay to City annually the greater of the following amounts:

A minimum franchise fee of \$\_\_\_\_\_ per annum, due and payable no later than 30 days after the end of the calendar year; or, a sum calculated as follows, due and payable quarterly no later than 30 days after the end of each calendar quarter:

A. As to telecom providers offering local exchange access services, other than those paying a privilege tax under ORS 221.515:

(1) Up to seven percent (7%) of local access revenue for the

preceding calendar quarter, excluding revenue derived from the sale or lease of facilities; and,

(2) Up to seven percent (7%) of revenue for that quarter from the design, engineering, construction and maintenance of facilities furnished to or for others and not otherwise connected to the franchisee's network; and,

(3) Up to seven percent (7%) of revenue for that quarter from other services that rely on use of facilities within the right of way, including but not limited to line extension fees and charges or fees to construct or install vault or conduit or facilities within the franchisee's vault or conduit for use by others; and,

(4) Up to one percent (1%) of the sales price of any facilities within the city sold within the preceding quarter; and;

(5) Up to one percent (1%) of revenues derived from the lease of facilities within the city for the preceding calendar quarter.

(6) For services having one end point in the city and the other end point outside the city, local access revenue subject to the franchise fee may be prorated in the same relation as the (lineal feet of right of way within the city) bears to the (total lineal footage) of the circuit(s) utilized to provide the service.

B. As to telecom providers who offer no local exchange access services:

(1) An amount calculated at \$2.72 per lineal foot of facilities lying within the right of way, the footage to be determined by the City's Engineer on the basis of the as-built maps to be provided by the franchisee; the amount per lineal foot to increase annually by a percentage equal to the CPI-U for the Portland, Oregon region for the preceding year; unadjusted for seasonal variations, as published by the United States Department of Labor; and

(2) Up to one percent (1%) of the sales price of any facilities within the city sold within the preceding quarter; and

(3) Up to one percent (1%) of revenues derived from the lease of facilities within the city for the preceding calendar quarter.

C. The Council may allow a provider of local exchange access services, for example, a shared telecommunications service provider, to pay a franchise fee calculated on the basis of lineal feet of facilities within the right of way and not as a percentage of revenue if the applicant for the franchise seeks the right to occupy only a limited and defined area of public right of way within the city and the Council finds that the applicant's proposed services thus or otherwise are not substantially equivalent to the services of other incumbent or competitive local exchange access providers.

D. As to telecommunications utilities, the total monetary consideration due the City shall be limited by ORS 221.515.

#### **4.20.260 Acceptance of Payment and Recomputation.**

A. City's acceptance of any franchise fee payment shall not constitute an accord that the amount paid is correct nor shall it constitute a release of any claim City may have for additional sums.

B. At any time within the time for which a franchisee must maintain its records under this section, City may audit the franchisee's computation and reporting of the franchise fee due the City as to any period for which the fee is payable. A franchisee shall be liable for City's costs to perform the audit if it discloses payment of ninety-five percent (95%) or less of the franchise fees owing for the period at issue, together with interest at the statutory rate on the amount underpaid from the date that payment was due until paid. A franchisee shall be liable for one-half (1/2) of City's costs to perform the audit if it discloses payment of more than ninety-five percent (95%) but less than ninety-eight percent (98%) of the franchise fees owing for the period at issue. A franchisee's maximum liability for City's costs to perform an audit as provided for in this subsection shall be \$5000 as to any one interval for which an audit is performed.

C. Throughout the term and renewal term of the franchise and for not less than 2 years following expiration of same, all grantee's books, maps and records directly concerning its revenues and its calculation of franchise fee payments to the City shall be open for inspection by the proper officers or agents of the City upon no less than forty-eight (48) hours' prior written notice during normal business hours to determine the amount of compensation due the City under the franchise and shall be kept so as to accurately show the same. All other reports required by the Charter and chapters of the City Code shall be made by grantee from time to time as required.

D. Payment of a franchise fee shall not exempt a franchisee from liability for any other license fee, tax or charge on the business, occupation, property or income of the grantee that may be lawfully imposed by the City or other taxing authority except as otherwise provided by the enactment imposing the same and except, as to telecommunications utilities, as limited by ORS 221.515.

#### **4.20.270 Insurance Required.**

A. A franchisee shall secure and maintain throughout the term of the franchise including any renewal terms, insurance against liability in the following forms of coverage and minimum amounts, the carrier, forms of coverage and amounts to be submitted to City for its review and approval in advance of the performance of any work within public right of way, insuring both the franchisee and the City, and its elected and appointed officers, officials, agents and employees as additional insureds ("the City"):

(1) Commercial General Liability (CGL) coverage at least as broad as an ISO Form CG0001 (1988), with no exclusions for explosion, collapse or underground subsidence or claims between insureds, with

limits not less than One Million Dollars per occurrence, Two Million Dollars in the aggregate;

(2) Automobile Liability coverage for any auto, at least as broad as ISO Form CA0001, with limits of not less than One Million Dollars per occurrence;

(3) Professional Errors and Omissions coverage in the same amounts as the CGL coverage above, and endorsed to include contractual liability;

(4) Workers' Compensation and Employer's Liability within statutory limits and including a waiver of subrogation in favor of the City;

(5) The City shall be an additional insured as to liability arising out of activity performed by or on behalf of the franchisee, for products and completed operations, for premises owned, occupied or used by the franchisee and for automobiles owned, leased, hired or borrowed by the franchisee. The coverage shall include cross-liability or severability of interest clauses with no special limitations on the scope of protection afforded the City. The insurance shall be primary as respects the City. The franchisee's failure to comply with reporting or other provisions of its insurance policies shall not affect the coverage afforded to the City. Policies shall be endorsed to require 60 days' prior written notice to City of any suspension or cancellation of coverage.

B. The franchisee shall maintain the insurance coverage required by this section throughout the term of the franchise and for any extended period of time for which the grantee retains ownership of any facilities remaining within public right of way.

C. A franchisee shall show proof of replacement coverage in the amounts required by this section no later than 30 days after the date of notice to City of cancellation or non-renewal of existing insurance coverage.

**4.20.280 General Indemnification.** A franchisee shall expressly undertake in writing the obligation to defend, indemnify and hold the City and its officers, employees, and agents harmless from and against any and all damages, losses and expenses, including reasonable attorney fees and costs of suit or defense, arising out of a wrongful act or omission of the grantee or its employees, agents, or contractors arising out of its use of public right of way to provide telecom services for hire.

**4.20.290 Application to Existing Chapter and Agreements.** To the extent that this Ordinance conflicts with the provisions of any current, valid agreement between the City and a person using public right of way

to provide telecom services, the terms of the prior agreement shall supersede, provided that no such agreement shall be renewed except upon compliance with the terms of this Ordinance.”

First reading this 12 day of April, 1999.

Passed by the Council this 19 day of April, 1999.

Approved by the Mayor this 20 day of April, 1999.

ATTEST:

Darleen Coghburn  
DARLEEN COGBURN, City Recorder

APPROVED:

Rob Drake  
ROB DRAKE, Mayor