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MEMORANDUM

To: Dave Ramsay, City Manager

From: Janice Perry, MultiMedia Communications Manager
Brenda Cooper, Chief Information Officer

Date: September 1, 2009

Subject: Title 26 Updates

Recommendation

City Council adopt the attached ordinances Amending Title 26, the Telecommunications Chapter of the Kirkland Municipal Code.

Background/Discussion

Overall Purpose of the Revisions:

Telecommunications and Cable Television Providers operating in the City of Kirkland are subject to various levels of regulation by various levels of government. The City currently consolidates the exercise of its regulatory authority over these companies and their behavior in the rights-of-way in KMC Title 26. As the telecommunications world and state and federal law have evolved, existing Title 26 has become dated. In several places, it is obsolete or inconsistent with preemptive actions by the state and federal authorities. In others, existing Title 26 fails to implement existing City authority to best protect the interests of the City in managing the rights-of-way and protecting consumers.

The proposed ordinances address these problems in several ways:

1. Conforms the City's regulation of communications right-of-way users in Title 26 to current state and federal law requirements and obligations;
2. Consolidates and updates the City's exercise of its authority to regulate cable television operators, including the awarding of franchises; and
3. Establishes minimum cable television consumer protection requirements;

The Existing Regulatory Framework:

Cable operators inside the City of Kirkland are regulated via a series of tools applied by different levels of government.

- The Federal Communications Commission (FCC) and the federal Communications Act of 1934 (which includes the Cable Television Act of 1984 as amended) preempts some state and local authority, sets some minimum requirements for local cable franchises, and leaves broad areas of cable regulation to local government.
- The State of Washington regulates telephone services and establishes certain requirements local governments must follow in permitting use of rights of way.
- The City regulates cable television operators. A local cable franchise authority (e.g., the City of Kirkland) has two tools available to exercise its regulatory authority over a cable operator: the Franchise Agreement contract and local police power regulations and ordinances.
- The City regulates and manages the City's rights-of-way.

Now that Verizon is offering cable television services, the City must reconcile its authority over cable services with the Washington Utilities and Transportation Commission (WUTC) pre-emptive regulation of voice and data services over the same telephone company network.

As the City exercises its right-of-way and cable television regulatory authority, it must balance which issues should be dealt with through ordinance (one size DOES fit all) and which issues should be left to contract (different provisions for different companies). The cable operators typically want the cable franchise contract to dominate the relationship, seeking to prevent the City from acting unilaterally through ordinance. For that reason, the City's agreements with both Comcast and Verizon make the terms of the cable franchise agreement controlling over the KMC, and where the contracts are silent, then the KMC applies.

Recent History:

In January 2006, City Council adopted amendments to Title 26 to reflect modifications in federal and state legislation, and to conform the City's right-of-way management policies to the cable franchise agreement negotiated with Comcast that same year.

This action was taken after the proposed amendments were distributed to the companies affected by the ordinance; the three larger ones being Comcast, Puget Sound Energy (PSE) and Verizon. Comments were received from Comcast and Verizon. Where appropriate to improve clarity, operation, and minimize the administrative burden on the City and the companies, staff recommended changes to the proposed ordinances based on comments received. We did not however, incorporate changes which would have limited the City's authority or prevented the City from requiring submission of information it needs to properly manage the rights-of-way.

Since the 2006 KMC amendments, more changes have occurred in federal and state communications and cable television regulations. And the federal courts have clarified the reach and scope of several federal statutes and rules.

In addition, Verizon came into town as a new provider of cable television services and requested a cable franchise. Because Verizon is primarily a telephone system provider and is regulated by the state for most of its activities, current Title 26 is both confusing and ambiguous (some portions apply only to Comcast, some to Comcast and Verizon, and others to neither). Verizon refused to accept the Comcast franchise agreement or even to use that document as a starting place. Thus the final Verizon Franchise Agreement document is somewhat different than Comcast agreement, even though every effort was made to keep the two companies on reasonably equal competitive footing. Since the KMC and franchise documents work together, we now need to change the KMC to exercise the City's regulatory authority in a manner consistent with the two cable franchises.

We hired the same law firm that assisted on the Verizon franchise, Miller & Van Eaton, to modify the KMC since they already knew the franchise well.

The staff once again distributed these proposed draft ordinances to the companies now in the City's rights-of-way for their review and comment. The three larger ones are Comcast, Puget Sound Energy (PSE) and Verizon. Comments were received from Verizon. Where appropriate to improve the clarity, operation, and minimize the administrative burden on the City and the companies, we made changes to the ordinances based on comments received. We did not however, incorporate changes which would limit the City's authority or prevent the City from requiring information it needs to properly manage the rights of way.

What Changed?

Taken together, the changes are generally more numerous than substantive. Most are editorial and reformatting changes as the proposed ordinances now assemble related topics into common sections, and segregate the City's cable television regulatory function from the right-of-way management function. The following list includes most of the more substantive changes:

- Title 26 is now the Communications Rights-of-Way Ordinance, Title 30 is the Cable Ordinance and Title 31 is the Cable Consumer Protection Ordinance.

The previous version of Title 26 was unclear about who it applied to when. Also different topics such as customer service requirements for cable operators and right of way management requirements for competitive telephone companies were grouped into one fairly confusing document. Rather than one large Title, we have broken it into three separate ordinances: right of way authorization and use by communications companies generally, cable television-specific regulation, and cable television consumer protection.

The scope or applicability of each ordinance is somewhat different. The ROW ordinance applies to all communications companies occupying the rights-of-way, including telecommunications carriers and cable television operators. The consumer protection ordinance applies only to cable operators but does extend, potentially, to their non-cable services.

The changes provide more clarity as to which requirements apply to which type of service providers.

- The ordinances establish right-of-way registration requirements and (where relevant) application criteria and regulations for all communications companies working in the rights-of-way.
- New wording assures that if a franchisee bundles cable service with non-cable service, the franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the franchise fee payments required under this ordinance and the cable franchise agreement.
- The ordinances require that facility owners must comply with our street regulations, such as tree laws (i.e. overhead lines), and traffic management during construction. These are examples of clarifications – our street tree and traffic management laws would apply whether or not we called it out here, but this makes it easier for a company to understand its responsibilities.
- The ordinances now require that any owner or permittee conducting work in the rights-of-way must obtain a use permit. The ordinance does permit major right-of-way occupants to get a master use permit.
- The ordinances add consumer protection language which establishes minimum standards for cable operator performance of customer services, such as telephone wait times, customer installations, written disclosure of policies, and customer billing practices.

Examples of changes Verizon requested but which we did not incorporate:

- Verizon claims it is exempt from the need for a master permit and from the registration requirement because it is a telephone company which, based on its acquisition of GTE assets, was grandfathered in the Washington State constitution.
 - The proposed ordinance preserves the City's rights and is consistent with current state law. The ordinance does not require action contrary to any company's constitutional rights. If Verizon, its successors or other companies can prove the constitutional exemption, we would allow it for them.
 - The registration requirement is not an assertion by the City that Verizon must get the City's prior permission to operate in the City. Registration is a reasonable exercise of the City's right-of-way management authority to identify and coordinate activities in the rights-of-way.
- Verizon opposes the requirement to provide maps of its facilities in the rights-of-way, as required in 26.7.2. Verizon makes several arguments, including that the additional charges related to filing the maps violate state law and the requirement to provide maps is unduly burdensome. We believe the City can collect reasonable administrative fees related to its regulatory functions, and appropriate planning and management of rights-of-way requires knowledge of the location of the existing facilities. The ordinance does not require disclosure of competitively sensitive information (like fiber counts, or the technical capability of the facilities). We believe it is important to our work as regulators and as protectors of the public rights-of-way to understand what and where facilities are in our rights of way. This can be of particular importance in an emergency.

- Verizon wants the City to pay all costs of forced relocation of facilities in the rights-of-way. Washington law specifies the terms under which various parties pay relocation costs and the ordinance is consistent those state requirements.
- Verizon objects to financial penalties for failing to perform duties under this ordinance. Verizon claims the state law which prohibits the City from assessing a fee on telephone company use of the rights-of-way as a prohibition against financial penalties. We believe that a financial penalty for non-compliance is a regulatory action and not the imposition of a fee for use.

These are simply examples. There are other areas where we and Verizon disagree. However, it should be noted that we also accepted many of Verizon's suggested changes which are in the ordinances which are presented to you here. Some examples include:

- Accepting a number of suggestions that clarify the relationship between state telephone regulatory authority and City rights-of-way management authority;
- Rewording the minimum insurance requirements to allow combinations of insurances to reach required limits;
- Changes in the administration of right-of-way coordinating activities, like notice periods prior to construction and rights to participate in joint trenching activities, and coordination with facility locator services to make working in the City more efficient and less costly to the providers;
- New language that allows companies to protest findings that we may make against them (for example, it allows them to contest a stop work order).

Conclusion:

The proposed ordinances have been reviewed by our Multimedia Services Manager, Public Works, the Chief Information Officer, the City Attorney's Office, and our outside legal counsel. The drafts have been provided to those businesses most likely affected, and one of them made significant comment, to which we have responded. On balance we believe that these revised ordinances represent changes consistent with the City's authority under existing state and federal laws, and that the proposed ordinances will be easier for everyone from cable consumers to telephone companies to interpret and follow. The staff recommendation is that Council pass these ordinances.

ORDINANCE NO. 4205

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO USE OF RIGHT OF WAY FOR COMMUNICATIONS PURPOSES AND REPEALING AND REENACTING TITLE 26 OF THE KIRKLAND MUNICIPAL CODE.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Title 26 of the Kirkland Municipal Code is hereby repealed.

Section 2. A new Title 26 of the Kirkland Municipal Code, entitled "Right of Way--Communications" is hereby adopted to read as follows:

***Chapter 26.04
PURPOSE***

Sections:
26.04.010 Purpose.

26.04.010 Purpose

The purpose of this title is to:

- (a) Permit and manage reasonable access to the rights-of-way of the city for communications 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 communications services on the widest possible basis to the businesses, institutions and residents of the city;
- (d) Promote competition in communications;
- (e) Conserve and manage the limited physical capacity of the rights-of-way held in public trust by the city;
- (f) Minimize unnecessary local regulation;
- (g) Ensure that the city's current and ongoing costs of granting and regulating private access to and use of the rights-of-way are fully paid by the persons seeking such access and causing such costs;
- (h) Ensure that all owners of communications facilities within the city comply with the applicable ordinances, rules and regulations of the city;
- (i) Ensure that the city can continue to fairly and responsibly protect the public health, safety and welfare;
- (j) Enable the city to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

Chapter 26.08
DEFINITIONS AND RULES OF CONSTRUCTION

Sections:

- 26.08.010 Rules of construction
26.08.020 Defined terms

26.08.010 Rules of construction

(a) For the purposes of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. 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; words not defined therein shall be given the meaning set forth in ESSB 6676; and words not defined therein shall have their common and ordinary meaning.

(b) 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; the masculine gender includes the feminine gender, and vice versa.

(c) The words "shall" and "will" are mandatory, and "may" is permissive.

(d) The term "written" shall include electronic documents.

26.08.020 Defined terms

(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) "City" means the city of Kirkland.

(c) "City Manager" means the city manager, or the city manager's lawfully appointed designee.

(d) "City property" means all real property now or hereafter owned by the city whether in fee ownership or other interest.

(e) "Claims" means all actions, costs, damages, demands, expenses, fines, injuries, judgments, liabilities, losses, penalties, suits, fees, attorneys' fees, and costs.

(f) "Communications" means information services, telecommunications, video, or similar services.

(g) "Department" means the department of public works.

(h) "Director" means the director of the department of public works, or his or her designee.

(i) "Facility" means all appurtenances or tangible things owned, leased, operated, or licensed by an owner or provider.

(j) "Master permit" means a grant from the city authorizing an owner to make use of the rights-of-way for a specified purpose, other than a cable franchise.

(k) "Master permittee" means a person who has received a master permit from the city.

(l) "Obstruction" means any object or structure that blocks or impedes the construction or maintenance of public works, including private facilities that provide communications services to customers; shrubbery or plants of any kind; and storage materials.

(m) "Overhead facilities" means facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

(n) "Owner" means a person who owns facilities that are installed or maintained in the rights-of-way of the city for communications purposes. To the extent consistent with state law, the term "owner" excludes any governmental or non-profit entity that owns facilities installed or maintained in the rights-of-way of the city for communications purposes if such facilities are combined with facilities owned by the city in such a way that any right-of-way activities affecting the facilities of such governmental or non-profit entity would also affect the city's facilities.

(o) "Permit" means a master permit or use permit.

(p) "Permittee" means a master permittee or use permittee.

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

(r) "Personal Wireless Facilities" shall have the same meaning as in 47 U.S.C. § 332(c)(7)(C)(ii), which states as of the date of enactment of this title that this term means facilities for the provision of personal wireless services.

(s) "Personal Wireless Service" shall have the same meaning as in 47 U.S.C. § 332(c)(7)(C)(i), which states as of the date of enactment of this title that this term means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

(t) "Provider" means an owner whose facilities in rights-of-way are used to provide communications to customers in the city.

(u) "Right-of-way work" means any construction, installation, maintenance, repair, removal, or other work with respect to facilities in or on the surface or subsurface of rights-of-way.

(v) "Rights-of-way" means land acquired or dedicated for public roads and streets. It does not include (a) state highways; (b) structures, including poles and conduits, located within the right of way; (c) federally granted trust lands or forest board trust lands; (d) lands owned or managed by the state parks and recreation commission; (e) 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; or (f) parks or other public property not used as a public right-of-way.

(w) "State" means the state of Washington.

(x) "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.

(y) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.

(z) "Use permit" means the authorization by which the city grants permission to an owner or provider to enter and access specified right-of-way for the purpose of installing, maintaining, repairing, or removing identified facilities.

(aa) "Use permittee" means a person who has received a use permit from the city under this title.

(bb) "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.

(cc) "Wireless" means communications using radio frequency or optical emissions to complete one or more communications paths in whole or in part among originating and receiving points without other tangible physical connection, including without limitation radio and unguided optical waves, and the apparatus used for such transmission.

(dd) "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.

Chapter 26.12
APPLICABILITY

Sections:

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| 26.12.010 | Persons subject to this title |
| 26.12.020 | Authorizations required by persons subject to this title |

26.12.010 Persons subject to this title

All owners, providers, master permittees, and use permittees shall be subject to this title.

26.12.020 Authorizations required by persons subject to this title

(a) Any owner must have a master permit prior to installing or maintaining any facilities in the rights-of-way for communications purposes, except as provided in subsections 26.12.020(b) and 26.12.020(c).

(b) Any owner that shows that it has a cable franchise from the city need not obtain a master permit pursuant to this title for its use of the rights-of-way for cable service. It must obtain a master permit pursuant to this title if it uses the rights-of-way for any purposes other than cable service.

(c) Any owner that shows that the state of Washington has granted it the right to operate within the city's rights-of-way without the city's consent may, but is not required to, obtain a master permit pursuant to this title. A person asserting such a state grant consistent with RCW 35.99.010, shall register with the city pursuant to Chapter 26.16 of this title and, in so doing, provide the city with a statement, and supporting documentation, detailing the basis for the assertion of a state-wide grant.

(d) An owner placing wireless facilities in the city's rights-of-way shall comply with the provisions of 26.20.080.

(e) Any owner or permittee conducting right-of-way work in the rights-of-way must obtain a use permit pursuant to this title.

(f) Owners, permittees, and providers that do not require authorizations pursuant to Section 26.12.020 may nonetheless be required to register with the city pursuant to Section 26.16.010.

Chapter 26.16
REGISTRATION

Sections:

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| 26.16.010 | Registration required |
| 26.16.020 | Purpose of registration |
| 26.16.030 | Exception to registration |

26.16.010 Registration required

All owners and permittees, and all providers that offer or provide communications to customers within the city, shall register with the city hereunder on forms provided by the Department. The information provided in this registration shall include the following:

- (a) The identity and legal status (*e.g.*, corporation, partnership, limited partnership) of the registrant;
- (b) The address and telephone number of the registrant;
- (c) The name, address, telephone number, and electronic mail address of the officer, agent or employee responsible for the accuracy of the registration statement;
- (d) A description of the registrant's existing or proposed facilities within the city;
- (e) Information sufficient for the city to determine whether the registrant is subject to this title pursuant to Section 26.12.010;
- (f) Information sufficient for the city to determine whether any communications services provided or to be provided by the registrant constitute an occupation or privilege subject to any municipal tax, permit, license or franchise fee;
- (g) To the extent allowed by law, copies of the applicant's registration filed with the Washington Utilities and Transportation Commission pursuant to Chapter 480-121 WAC. Alternatively, applicant shall submit a statement detailing the basis (along with pertinent supporting materials) for its authorizations to provide telecommunications services or, in the further alternative, the reasons that registration with the WUTC is not required;
- (h) To the extent allowed by law, information sufficient for the city to determine that the applicant has applied for and received any permit, operating license or other right or approvals required by the Federal Communications Commission to provide telecommunications services or facilities;
- (i) If the registrant believes that it is not required to obtain a master permit or franchise from the city, the showing referred to in Section 26.12.020(b) or 26.12.020(c);
- (j) Such other information as the city may reasonably require with respect to its authority to manage, regulate and control public rights-of-way.

26.16.020 Purpose of Registration

The registration requirement is an exercise of the City's police power to obtain information the City needs to effectively and efficiently plan,

organize and manage demands placed on its rights of way. Registration does not constitute a grant or deprivation of the right to occupy the rights of way, but simply provides the City with necessary information to manage the rights of way in a manner consistent with the City's rights under state law. The purpose of registration is to:

- (a) Provide the city with accurate and current information necessary for the management and regulation of city right-of-way;
- (b) Assist the city in enforcement of this title;
- (c) Assist the city in the collection and enforcement of any municipal taxes, fees, or charges that may be due to the city; and
- (d) Assist the city in monitoring compliance with local, laws.

26.16.030 Exception to Registration

A 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, that such company or 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 title.

Chapter 26.20 ***MASTER PERMITS***

Sections:

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| 26.20.010 | Authority granted by master permit |
| 26.20.020 | Treatment of franchises and licenses |
| 26.20.030 | Applications for master permits |
| 26.20.040 | Acceptance |
| 26.20.050 | Characteristics of master permits |
| 26.20.060 | Amendment of master permit |
| 26.20.070 | Renewal of master permit |
| 26.20.080 | Personal wireless facilities in rights-of-way |
| 26.20.090 | Use of poles and conduit |
| 26.20.100 | Removal |

26.20.010 Authority granted by master permit

(a) Owners must obtain master permits pursuant to Section 26.12.020(a).

(b) A master permit authorizes the master permittee to use the rights-of-way, and only the rights-of-way, for a specified purpose. Use of city property other than the rights-of-way, including any use of city poles or other facilities, requires a separate site license from the city.

(c) A master permit shall state the specific purpose for which it authorizes the master permittee to use the rights-of-way. The issuance of a master permit does not relieve the applicant from obtaining any other legal authority that may be necessary to use the rights-of-way for any other purpose.

(d) A master permit shall apply either to wireline or to wireless use of the rights-of-way, but not both. If an owner wishes to install both sorts of facilities, it must obtain separate master permits. The master permit shall expressly state the type of facility to which it applies.

26.20.020 Treatment of franchises and licenses

Any franchise granted pursuant to Section 26.04.050 as amended in 2006, and any license granted pursuant to Section 26.04.040 as amended in 2006, shall be treated as a master permit for purposes of this title during the remainder of its term.

26.20.030 Applications for master permits

(a) An application for a master permit shall be submitted in the form and manner specified by the Department.

(b) An application for a master permit shall include the following information, as specified in the form provided by the Department:

(1) The information required in Section 26.16.010(a) through 26.16.010(c);

(2) A copy of the applicant's registration pursuant to Section 26.16.010 (which may be submitted simultaneously with the master permit application);

(3) Such other information as the city may reasonably require.

(c) Within twenty-eight calendar days after the date of submittal of the application, the city shall provide the applicant a written determination of whether the application is complete, and, if the application is not complete, what must be submitted by the applicant in order for the application to be complete. The procedures for approval of a license and the requirements for a complete application shall be available in written form.

(d) Within one hundred twenty days after receiving a complete application hereunder, the City Council shall make a determination granting or denying the application in whole or in part. The one-hundred-twenty-day period may be extended by a specific number of days or to a defined date by written agreement between the city and the applicant. The one-hundred-twenty-day period shall not apply in any case the City Council cannot reasonably act within the one-hundred-twenty-day period.

(e) The following standards shall apply when determining to grant or deny the application:

(1) The capacity of the rights-of-way to accommodate the applicant's facilities;

(2) The capacity of the rights-of-way to accommodate additional utility and telecommunications facilities if the application is granted;

(3) The damage or disruption, if any, to 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;

(4) The public interest in minimizing the cost and disruption of construction within the rights-of-way;

(5) The availability of alternate routes or locations that are reasonable for placement of the proposed facilities;

(6) Such other factors as may relate to the city's authority to manage, regulate and control public rights-of-way.

(f) If the application is denied, the determination shall include the reasons for denial. Denial of a master permit shall be supported by substantial evidence contained in a written record.

(g) If the application is approved, the city shall issue the permit as a written document with any conditions necessary to preserve and maintain the public health, safety, welfare, and convenience.

26.20.040 Acceptance

No master permit granted hereunder shall be effective until it has been approved by the city council by ordinance and the applicant has accepted the master permit, in writing, in a form acceptable to the city.

26.20.050 Characteristics of master permits

(a) A master permit shall be nonexclusive.

(b) No master permit shall be in effect for a term of more than ten years, unless a longer term is expressly specified in the master permit.

(c) If a master permittee does not provide communications to customers in the city, the master permit shall authorize the master permittee to use only those specific portions of the rights-of-way indicated in the master permit. If a master permittee does provide communications to customers in the city, the master permit may specify limited portions of the rights-of-way, or it may allow the master permittee to use any portion of the rights-of-way.

(d) In accepting any master permit, the permittee acknowledges that its rights hereunder are subject to the lawful exercise of the police power and zoning power of the city to adopt and enforce ordinances necessary to protect the safety and welfare of the public, and it agrees to comply with all applicable laws enacted by the city pursuant to such powers.

(e) No master permit shall convey any right, title or interest in rights-of-way, but shall be deemed authorization only to use and occupy the rights-of-way for the limited purposes and term stated in the master permit.

(f) No master permit shall excuse the master permittee from securing any further easements, leases, permits or other approvals that may be required to lawfully occupy and use rights-of-way.

(g) No master permit shall be construed as any warranty of title.

26.20.060 Amendment of master permit

(a) If a master permittee wishes to modify the conditions of the master permit, including the portions of the rights-of-way it is authorized to use and occupy, it shall make a new application to the city pursuant to the procedures set forth in Section 26.20.030.

(b) If a master permittee is ordered by the city to locate or relocate its facilities in rights-of-way not included in a previously granted master permit, the city shall grant an amendment making that change without further application.

26.20.070 Renewal of master permit

A person that wishes to renew its master permit hereunder shall, not more than one hundred eighty days nor less than ninety days before the expiration of the current master permit, make a new application to the city for an additional term pursuant to the procedures set forth in Section 26.20.030.

26.20.080 Personal wireless facilities in rights-of-way

(a) The city may impose a site-specific charge pursuant to an agreement with a service provider of personal wireless services for:

(1) The placement of new personal wireless facilities in the right-of-way regardless of height, unless the new facility is the result of a city-mandated relocation, in which case the city will not charge the service provider if the previous location was not charged;

(2) The placement of replacement structures when the replacement is necessary for the installation or attachment of personal wireless facilities, and the overall height of the replacement structure and the personal wireless facility is more than sixty feet; or

(3) The placement of personal wireless facilities on structures owned by the city located in the right-of-way; however, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures unless the structure is owned by the city.

(b) The city is not required to approve a permit for the placement of personal wireless facilities that meets one of the criteria in this section 26.20.080 absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location and zoning requirements. Costs of the arbitration, including compensation for the services of the arbitrator(s), must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses in connection with the arbitration proceeding.

26.20.090 Use of poles and conduit

(a) The city may, in accordance with RCW 35.99.070, require a telecommunications or cable service provider that is constructing, relocating or placing ducts or conduits in the rights-of-way to provide the city with additional duct or conduit and related structures necessary to access the conduit.

(b) Subject to such reasonable rules and regulations as may be prescribed by the pole owner and subject to the limitations prescribed by RCW 70.54.090 or any other applicable law, the city may post city signs on an owner's poles within the city.

(c) Subject to the owner's prior written consent, which may not be unreasonably withheld, the city may install and maintain city-owned overhead wires upon an owner's poles for communications purposes, subject to the following:

(1) Such installation and maintenance shall be done by the city at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as the owner may specify from time to time (including, without limitation, requirements accommodating its facilities or the facilities of other parties having the right to use the pole);

(2) The owner shall have no indemnification obligations in connection with any city-owned wires so installed and maintained;

(3) The owner shall not charge the city a fee for the use of such poles in accordance with this Section 26.20.090 as a means of deriving revenue therefrom; provided, however, that nothing herein shall require the owner to bear any cost or expense in connection with such installation and maintenance by the city.

(4) The owner shall not enter into an agreement with a third person which would require the owner to exclude the city or any other person from use of such poles.

(5) The owner may not condition the city's use of such poles on the city's acceptance of limitations on the purpose or use of the city's facilities.

26.20.100 Removal

(a) Within thirty days following written notice from the city, any owner of facilities in the city's rights-of-way that are not authorized pursuant to Section 26.12.020(a) through 26.12.020(c) shall, at its own expense, remove such facilities from the rights-of-way. If such owner fails to remove such facilities, the city may cause the removal and charge the owner for the costs incurred. Facilities are unauthorized and subject to removal in the following circumstances:

(1) Upon termination of the owner's authorization under Section 26.12.020(a) through 26.12.020(c);

(2) If the facilities were constructed or installed without the prior grant of a franchise or master permit;

(3) Upon abandonment of a facility within the rights-of-way;

(4) If the facilities were constructed or installed at a location not permitted by the master permit or franchise.

(b) The city retains the right to cut or move any facilities located within the city's rights-of-way to the extent the city may determine such action to be necessary in response to any public health or safety emergency.

Chapter 26.24 USE PERMITS

Sections:

| | |
|-----------|--|
| 26.24.010 | Use permit required |
| 26.24.020 | Applications for use permits |
| 26.24.030 | Maintenance permits |
| 26.24.040 | Surveyor |
| 26.24.050 | Duration and validity; non-transferability |
| 26.24.060 | Permit to excavate in recently paved rights-of-way |
| 26.24.070 | Permit to be available at site |
| 26.24.080 | Completion of construction |
| 26.24.090 | As-built drawings |

26.24.010 Use permit required

(a) A person may not enter or use the rights-of-way for the purpose of installing, maintaining, repairing, or removing identified facilities without first obtaining a use permit from the Department.

(b) In the event of an unexpected repair or emergency, an owner may commence such repair and emergency response work as required under the circumstances, provided that the owner shall notify the Director as promptly as possible, either before such repair or emergency work begins or as soon thereafter as possible if advance notice is not practicable.

26.24.020 Applications for use permits

(a) An application for a use permit shall be submitted in the form and manner specified by the Department and must be signed by the owner or the agent of the firm that will actually be performing the work.

(b) An application for a use permit shall include the following information, as specified in the form provided by the Department:

(1) The information required in Section 26.16.010(a) through 26.16.010(c);

(2) A copy of, or specifically identifiable citation to, the applicant's registration pursuant to Section 26.16.010;

(3) A statement of, and citation to, the specific authority according to which the applicant is authorized to use and occupy the rights-of-way, including the category under which the applicant falls as outlined in Section 26.12.020(a) through 26.12.020(d);

(4) A statement that any land use application that must be considered in conjunction with the use permit has been filed with the city, and a copy of, or specifically identifiable citation to, each such application;

(5) A specific description of the portions of the rights-of-way that will be affected by the applicant's right-of-way work under the use permit;

(6) The location and route of all facilities to be installed on existing utility poles;

(7) The location and route of all facilities to be located under the surface of the ground, including line and grade proposed for the burial at all points along the route which are within the rights-of-way;

(8) The location of any other facilities to be constructed within the city, but not within the rights-of-way, in connection with the proposed right-of-way work, in accordance with applicable city building and land use regulations;

(9) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way;

(10) The location, dimension and types of any trees that will be impacted during construction within or adjacent to the 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; and

(11) Such other information as the city may reasonably require.

(c) If the applicant for a use permit has obtained a master permit or cable franchise from the city, the city shall act on the application within thirty days of receiving a complete application, unless the applicant consents to a different time period. For purposes of this paragraph, "act" means that the city makes the decision to grant, condition, or deny the use permit, or notifies the applicant in

writing of the amount of time that will be required to make the decision and the reasons for this time period. Such a notice shall state the amount of additional time required, and the reasons for the additional time. Conditioned or denied permits may be appealed to the city hearing examiner within fourteen days of the date of the permit or permit denial.

(d) Unless otherwise provided by law or by a master permit or franchise, no use permit shall be issued unless the applicant has paid all fees required pursuant to this title.

(e) The Director may approve, conditionally approve, or deny an application for a use permit.

(f) If an application is approved, the Director shall issue a use permit to the applicant.

(g) If an application is conditionally approved, the Director may condition the use permit with specified requirements that preserve and maintain the public health, safety, welfare, and convenience.

(h) If an application is denied, the Director shall advise the applicant by a written communication of the basis for the denial. Such basis shall include findings of fact and conclusions of law that support the denial.

(i) When the city in its capacity as a provider engages in any activity that includes right-of-way work in the paved portion of a right-of-way, the city need not obtain a use permit, but it shall keep a record of the date, location, purpose, and size of the right-of-way work.

26.24.030 Maintenance permits

(a) The Director may issue a maintenance permit on an annual basis to a provider instead of issuing individual use permits for activities in the rights-of-way covered by the maintenance permit.

(b) A maintenance permit covers:

(1) Emergency activity in the paved or unpaved area of the rights-of-way that is necessary for the preservation of life, health, or property or for the restoration of interrupted service; and

(2) Those non-emergency activities, excluding right-of-way work in or under the paved rights-of-way, that are specified in the permit, which may include:

(A) An activity that makes no material change to the footprint of the facility or to the surface or subsurface of right-of-way but disturbs or impedes traffic on a neighborhood access road;

(B) Replacing overhead facilities; or

(C) New individual services to a residence or building from existing facilities that are on the same side of the rights-of-way, so long as the activity related to the service does not exceed 300 feet.

26.24.040 Surveyor

If the use permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standards, the Director may require the use permittee to cause the location of its facilities to be verified by a registered Washington land surveyor. The use permittee, at its expense, shall relocate any facilities which are not located in compliance with use permit requirements.

26.24.050 Duration and validity; non-transferability

(a) A use permit other than a maintenance permit shall expire 90 days after issuance, but the Department may extend the expiration date for good cause.

(b) A use permit is not transferable.

26.24.060 Permit to excavate in recently paved rights-of-way

The Director may not issue a use permit to excavate in a public right-of-way that was reconstructed, repaved, or resurfaced in the preceding five-year period, unless the Director finds good cause for issuance. No use permit shall be issued to cut any right-of-way the surface of which is less than five years old, unless the use permittee overlays the surface of any rights-of-way that are cut by the use permittee.

26.24.070 Permit to be available at site

A use permit or a copy of the use permit shall be available for review upon request (at the work site or via a Web site accessible to the Department) for the duration of the activity allowed by the use permit.

26.24.080 Completion of construction

A use permittee shall promptly complete all right-of-way work so as to minimize disruption of the rights-of-way and other public and private property. All right-of-way work authorized by a use permit, including restoration, must be completed within ninety days of the date of issuance or by such other time as the city may specify in writing upon issuance of the use permit.

26.24.090 As-built drawings

In the event the permittee installs facilities for the city, the permittee shall provide the city with as-built or record drawings of the city facilities, submitted in formats as stipulated in the Kirkland Pre-Approved Plans and Policies.

Chapter 26.28 ***INSPECTION, REPORTS AND NOTICE***

Sections:

| | |
|-----------|--|
| 26.28.010 | Inspection of Right of Way Construction and Restoration Activities |
| 26.28.020 | Maps |
| 26.28.030 | Reports to the City |
| 26.28.040 | Notice to Department |
| 26.28.050 | Notice to Public |

26.28.010 Inspection of Right-of-Way Construction and Restoration Activities

(a) The city or its designee may inspect all right-of-way construction and restoration activities and conduct any tests that the city finds necessary to ensure compliance with the terms of this title and any other applicable law or agreements.

(b) An owner shall allow the city or its designee to make such inspections referred to in subsection (a) at any time on at least ten days' notice or, in case of an emergency, on demand without prior notice.

26.28.020 Maps

Within three months after enactment of this title, each owner shall file with the Department existing plats or drawings that show the location of any underground facilities in the city's rights-of-way for which the owner has existing plats or drawings. Thereafter, on an annual basis, the owner shall file in the form required by the Department a full and complete survey, including descriptions and as-built maps, of the location of underground facilities installed in the city's rights-of-way in the previous year. All maps shall be submitted in formats as set forth in the Kirkland Pre-Approved Plans and Policies. If applicable law allows the city to keep electronic copies confidential, then each owner shall use its best efforts to provide electronic versions to the city in a format compatible, in the city's judgment, with the city's GIS system.

26.28.030 Reports to the City

(a) The city or its designee may require such reports and information as the city finds necessary to ensure compliance with the terms of this title and any other applicable law or agreements.

(b) Within ten days of receipt of a written request from the city manager, or such other reasonable time as the city manager may specify in writing, each owner, permittee or provider shall furnish the city manager with information sufficient to demonstrate:

(1) That it has complied with all requirements of this title;

(2) That all fees due the city in connection with the services and facilities provided by the owner, permittee or provider have been properly collected and paid; and

(3) That the owner, permittee or provider has furnished the city with all necessary information with respect to its facilities in city rights-of-way.

26.28.040 Notice to Department

For emergency activity, a use permittee shall notify the Department within 24 hours after completion of the right-of-way work. For non-emergency activities, the use permittee shall notify the Department at least five working days before the right-of-way work takes place. For both emergency and non-emergency activities, the use permittee shall provide information about the right-of-way work as required by the Department.

26.28.050 Notice to Public

(a) Except in the case of an emergency involving public safety or an outage, or service interruption to a large number of customers, an owner or permittee shall give reasonable advance notice to private property owners of construction work on or in adjacent rights-of-way, as provided in subsection (b) of this section.

(b) In particular, the following requirements shall apply to non-emergency activity in the city's rights-of-way when the activity adjoins residentially zoned and developed property and will not be completed and restored in a period of two weeks or less.

(1) A use permittee shall either:

(A) At least 72 hours before commencement of the right-of-way work, (i) post and maintain a notice that is located at the beginning and end points of the activity, and (ii) deliver notice to

each address in the area of the activity and within 175 feet of its boundaries; or

(B) At least 15 calendar days before commencement of the right-of-way work, provide written notice individually to each address in the area of the right-of-way work and within 175 feet of its boundaries.

(2) For good cause, the Director may require a use permittee to employ a combination of the notices required by Section 26.28.050(b)(1).

(3) The notices required by Section 26.28.050(b)(1) shall include the name, telephone number, and address of the owner and use permittee, a description of the work to be performed, the duration of the work, and the name, address, and telephone number of a person who will provide information to and receive complaints from any member of the public concerning the work. Posted notices shall be in a format and size acceptable to the Department.

Chapter 26.32
FEES

Sections:

| | |
|-----------|--|
| 26.32.010 | Purpose |
| 26.32.020 | Registration fees |
| 26.32.030 | Master permit application fees |
| 26.32.040 | Use permit application fees |
| 26.32.050 | Other city costs |
| 26.32.060 | Appeal to hearing examiner |
| 26.32.070 | Compensation |
| 26.32.080 | Regulatory fees and compensation not taxes |

26.32.010 Purpose

The purpose of the fees established in this chapter is to ensure the recovery of the city's direct and indirect costs and expenses, including, but not limited to, actual costs of city staff time and resources as well as any outside consultation expenses which the city reasonably determines are necessary. The fees set forth are in addition to any construction fees which may be required under Section 19.12.090 and Section 5.74 of the Kirkland City Code.

26.32.020 Registration fees

Each application for registration pursuant to Chapter 26.16 shall be accompanied by a fee in such amount as the city determines is required to cover all direct and indirect costs associated with the registration process.

26.32.030 Master permit application fees

(a) Prior to the acceptance of a master permit application by the city, the applicant shall participate in a pre-application conference with the city for the purpose of establishing the minimum application fee.

(b) The city shall establish a minimum application fee, based on the city's estimated reasonable costs in reviewing the application, after the conference referred to in Section 26.32.030(a). The minimum fee

may be up to two thousand five hundred dollars. The applicant shall deposit the minimum fee with the city within thirty days after the city notifies the applicant of the amount. This application fee shall be applied towards actual expenses and costs of the city.

(c) The City shall establish the final application fee after it acts on the application, reflecting the city's actual reasonable costs in reviewing the application. The city shall notify the applicant of the reimbursement amount and a description of the costs incurred by the city in reviewing the application. If the city's actual reasonable costs are less than the minimum application fee, the city shall refund the unused application fees, within thirty days after granting or denial of the permit. If the city's actual reasonable costs exceed the minimum application fee, the applicant shall reimburse the city within thirty days of receiving written notice from the city requesting reimbursement.

(d) An applicant that withdraws or abandons its application shall, within sixty days of its application and review fee payment, be refunded the balance of its deposit under this section, less (1) the registration fee; and (2) all reasonable costs and expenses incurred by the city in connection with the application.

(e) All disputes as to the amounts required shall be resolved by an appeal to a hearing examiner.

26.32.040 Use permit application fees

(a) Prior to issuance of a use permit, the use permittee shall pay a permit fee to be calculated in accordance with Section 5.74.040 and Section 19.12.090 of this code. The purpose of the use permit fee shall be to recover the city's actual direct and indirect construction plan review and inspection costs, as well as any damage or diminution of the value of the rights-of-way that result from the use permittee's right-of-way work.

(b) The recipient of an annual maintenance permit pursuant to Section 26.24.030 shall pay an annual permit fee set by the Department from time to time at a level sufficient to recover the city's annual costs as described in Section 26.32.040(a) for the recipient of the maintenance permit.

26.32.050 Other city costs

To the extent allowed by law, all owners, permittees, and providers shall, within thirty days after written demand therefor, reimburse the city for all direct and indirect costs incurred by the city in connection with any modification, amendment, renewal or transfer of a master permit.

26.32.060 Appeal to hearing examiner

Any applicant or permittee may initiate a review of the fees established in Sections 26.32.030 through 26.32.050 of this title. Within ten days of notice of the fee from the city, the applicant or permittee may appeal to the hearing examiner. Pursuant to the provisions of Chapter 3.34 of this code, the hearing examiner is authorized to review and make determinations as provided herein.

26.32.070 Compensation

To the extent permitted by law, each master permit granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property

pursuant to the master permit, provided that nothing in this title shall prohibit the city and a master permittee from agreeing upon the compensation to be paid.

26.32.080 Regulatory fees and compensation not taxes

The regulatory fees provided for in this title, and any compensation charged and paid for the rights-of-way provided for herein, are separate from and additional to any and all federal, state, local and city taxes as may be levied, imposed or due from an owner or provider or its customers or subscribers.

Chapter 26.36 WORK IN RIGHTS-OF-WAY

Sections:

| | |
|-----------|---|
| 26.36.010 | Placement of facilities |
| 26.36.020 | Obstructions in rights-of-way |
| 26.36.030 | Completion of make-ready work. |
| 26.36.040 | Restoration |
| 26.36.050 | Relocation of facilities |
| 26.36.060 | Underground conversions |
| 26.36.070 | Maintenance |
| 26.36.080 | Compliance with applicable laws and standards |
| 26.36.090 | Traffic control plan |
| 26.36.100 | Coordination of right-of-way work |
| 26.36.110 | Damage to facilities |
| 26.36.120 | Obligations of developers |

26.32.010 Placement of facilities

(a) All facilities placed by an owner in rights-of-way within the city shall be so located as to minimize interference with the proper use of rights-of-way and other public places, and to minimize interference with the rights or reasonable convenience of property owners who adjoin any of these rights-of-way.

(b) An owner with written authorization to install overhead facilities shall install its facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

(c) Whenever existing telephone, electric utilities, or telecommunications facilities are located or relocated underground within rights-of-way, an owner with written authorization to occupy the same rights-of-way must also locate or relocate its facilities underground.

(d) Whenever new telephone, electric utilities or telecommunications facilities are located underground within the city's rights-of-way, an owner that currently occupies or will occupy the same rights-of-way shall concurrently place its telecommunications facilities underground at its expense. The provider may seek reimbursement for its expenses pursuant to RCW 35.99.060 only by making a valid written request specifying the reason for the reimbursement and including evidence of the costs incurred.

(e) An owner or permittee shall utilize existing poles and conduit wherever possible. New poles (other than replacement poles)

will not be allowed without specific written authorization from the city manager.

26.36.020 Obstructions in rights-of-way

(a) A person who places or maintains an obstruction in, on, over, under or through the city's rights-of-way shall promptly shift, adjust, accommodate, or remove the obstruction on reasonable notice from the city.

(b) If a person fails or refuses to shift, adjust, accommodate, or remove an obstruction after reasonable notice, the Department may shift, adjust, accommodate, or remove the obstruction, and the Director may charge the person having or maintaining the obstruction for the cost of performing the work.

(c) Any opening or obstruction in the rights-of-way made by an owner in the course of its operation shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

26.36.030 Completion of make-ready work

To the extent consistent with state law, an owner shall have thirty days to perform any requested "make ready" work (work required to prepare the owner's poles or other facilities for attachment by another party) or alterations to its facilities upon request by persons authorized to use or be present in or upon the rights-of-way. If an owner fails to perform such work within thirty days, then the authorized persons may perform such "make ready" work or alterations at their own cost.

26.36.040 Restoration

(a) No owner or permittee shall take any action or allow any action to be done which may permanently impair or damage any rights-of-way or other property located in, on or adjacent thereto.

(b) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or any public or private property, the owner or permittee shall, in a manner acceptable to the city, replace, repair, and restore all paving, sidewalk, utility covers, survey monuments, driveway or surface of any rights-of-way, or other public or private property, that has been disturbed by the owner or permittee's activities in as good condition as before said work was commenced.

(c) In particular, and without limitation, all trees, landscaping and grounds removed, damaged or disturbed as a result of right-of-way work by owners or permittees shall be replaced or restored to the condition existing prior to performance of the work. An owner or permittee shall comply with all applicable provisions of the Kirkland Zoning Code and the Pre-Approved Plans regarding all trees, landscaping and grounds.

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

(e) All restoration work within the rights-of-way shall be done in accordance with landscape plans approved by the Director.

(f) Restoration pursuant to this section shall be at the owner's or permittee's cost and expense, except to the extent otherwise required by applicable law.

(g) In the event that the owner or permittee fails to complete any work required for the repair, protection, or restoration of the rights-of-way or private property, or any other work required by law or ordinance, within the time specified by and to the reasonable satisfaction of the city, the city, following notice and an opportunity to cure, may cause such work to be done. In such a case, the owner or permittee shall reimburse the city the cost thereof within thirty (30) days after receipt of an itemized list of such costs, or the city may recover such costs through any bond or other security instrument provided by the owner or permittee, except to the extent otherwise required by applicable law.

26.36.050 Relocation of facilities

(a) The city may require a grantee to relocate authorized facilities within the right-of-way when reasonably necessary for construction, alteration, repair or improvement of the right-of-way for the purpose of public health, welfare and safety, at no cost to the city, except to the extent otherwise required by applicable law.

(b) The city shall notify the owner as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date by which relocation must be completed, the city shall consult with the affected owners and consider the extent of the facilities to be relocated, the owners' service requirements, and the construction sequence required, within the city's overall project construction sequence and constraints, to safely complete the relocation. Owners shall complete the relocation by the date specified unless the city or a reviewing court establishes a later date for completion, after showing by an owner that the relocation cannot be completed by the date specified, using best efforts and meeting safety and service requirements.

(c) Subject to Section 26.36.050(d), whenever any person, other than the city or one of its departments or agencies, requires the relocation of an owner's facilities to accommodate work of such person within the franchise area, then owner shall have the right as a condition of any such relocation to require payment to owner, at a time and upon terms acceptable to owner, for any and all costs and expenses incurred by owner in the relocation of owner's facilities.

(d) Notwithstanding the provisions of Section 26.36.050(c), if the City reasonably determines and notifies the owner that the primary purpose of imposing such condition or requirement upon such person is to cause or facilitate the construction of a public works project to be undertaken within a segment of the franchise area on the city's behalf and consistent with the City's Capital Improvement Plan, Transportation Improvement Program or the Transportation Facilities Program, then only those costs and expenses incurred by the owner in reconnecting such relocated facilities with owner's other facilities shall be paid to owner by such person, and owner shall otherwise relocate its facilities within such segment of the franchise area in accordance with subsection (a) of this section.

(e) The city may require relocation of facilities at no cost to the city in the event of an unforeseen emergency that creates an immediate threat to public health, welfare and safety.

(f) If an owner is required to relocate, change or alter facilities hereunder and fails to do so, the city may cause such to occur and charge the owner for the costs incurred.

26.36.060 Underground conversions.

In the event that conversion of an owner's overhead facilities to underground is required for reasonably necessary for construction, alteration, repair, or improvement of the rights-of-way for purposes of public welfare, health, or safety (such as projects that may include, without limitation, road widening, surface grade changes or sidewalk installation), an owner, to the extent permitted by applicable law, shall bear the costs of converting the owner's facilities from an overhead system to an underground system as follows:

(a) Engineering – To ensure proper space and availability in the supplied joint trench, an owner shall pay for the work (time and materials) necessary to complete related engineering and coordination with the other utilities involved in the project.

(b) Cost(s) – An owner shall pay its proportionate share of the cost of labor and materials necessary to place its cables, conduits and vaults/pedestals in the supplied joint trench and/or stand-alone cable trench. If, however, the city's costs for owner are not agreeable to owner, then the owner shall have the right to hire its own contractor(s) to complete its work within the joint trench.

(c) If an owner decides to use its own contractor(s) to complete its portion of the work, then the owner and its contractor(s) are responsible for coordinating with the city to provide reasonable notice and time to complete the placement of the owner's cables, conduits and vaults/pedestals in the trench. If the owner fails to complete the above work within the time prescribed and to the city's reasonable satisfaction, the city may cause such work to be done and bill the reasonable cost of the work to the owner, including all reasonable costs and expenses incurred by the city due to the owner's delay. In such an event, the city shall not be liable for any damage to any portion of the owner's facilities. Within forty-five (45) days of receipt of an itemized list of those costs, the owner shall pay the city.

(d) Within the underground conversion area, an owner shall cooperate with the city and its contractor on any on-site coordination. The city shall be responsible for traffic control, trenching, backfill, and restoration of all work performed by its contractor. An owner shall be responsible for traffic control, trenching, backfill, and restoration of all work performed by its contractor for stand-alone cable trenches. In the event a Local Improvement District (LID) has been created to fund a relocation or conversion project, an owner shall be reimbursed by the LID for all expenses incurred as a result of the project.

26.36.070 Maintenance

An owner of aerial facilities shall be required to trim trees upon and overhanging rights-of-way and other public places of the city so as to prevent the branches of such trees from coming in contact with the facilities of the owner, all trimmings to be done at the expense of the owner, except to the extent otherwise required by applicable law. An owner shall comply with all provisions of KMC Ch. 19.36 (Street Trees).

26.36.080 Compliance with applicable laws and standards

(a) All right-of-way work, including work by the city in its capacity as a provider, shall be performed in accordance with all applicable law and regulations, including, where applicable, the Occupational Safety and Health Act of 1970, as amended; the National Electrical Safety Code, prepared by the National Bureau of Standards; and the National Electrical Code of the National Board of Fire Underwriters.

(b) All right-of-way work shall comply with the requirements of the most recently adopted city Pre-Approved Plans and Policies, and in the event of a conflict between the aforesaid Pre-Approved Plans and Policies and this title, the standards of the Pre-Approved Plans and Policies shall control.

(c) All of an owner's facilities shall be installed in accordance with good engineering practice. All of an owner's facilities shall be maintained in a safe condition, in good order and repair, and in compliance with all applicable federal, state and local requirements.

(d) All safety practices required by law shall be used during construction, maintenance, and repair of an owner's facilities.

(e) An owner or permittee shall at all times employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(f) One Call. An owner or permittee shall maintain membership in good standing with the Utilities Underground Location Center or other similar or successor organization which is designated to coordinate underground equipment locations and installations. An owner shall abide by the State's "Underground Utilities" statutes (Chapter 19.122 RCW) and will further comply with and adhere to city regulations related to the One Call locator service program.

26.36.090 Traffic control plan

(a) All use permittees shall comply with the Manual on Uniform Traffic Control Devices with respect to traffic control. The city may require a traffic control plan demonstrating the protective measures and devices that will be employed.

(b) A use permittee 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 its right-of-way work.

26.36.100 Coordination of right-of-way work

(a) An owner or permittee shall joint trench or share bores or cuts and work with other owners or permittees so as to reduce the number of right-of-way cuts within the City, to the extent such joint work would not impose undue economic burdens or delay upon the owner or permittee.

(b) The city shall provide as much advance notice as reasonable of plans to open the rights-of-way to those providers who are current users of the rights-of-way or who have filed notice with the clerk of the city within the past twelve months of their intent to place facilities in the city.

(c) If applicable law allows the city to keep electronic copies confidential, then by the first day of February each year, each owner shall prepare and submit to the Department a plan, in a format specified by the Department, that shows all reasonably foreseeable

right-of-way work in the paved portion of the rights-of-way anticipated to be done in the next year, or a statement that no right-of-way work is proposed. The owner shall report to the Department promptly any changes in the plan as soon as those changes become reasonably foreseeable.

(1) The Department may disclose information contained in such a plan to another party only on a need-to-know basis in order to facilitate coordination and avoid unnecessary right-of-way work, or as otherwise required by law. If an owner clearly and appropriately identifies information contained in the plan as proprietary, a trade secret, or otherwise protected from disclosure, then to the maximum extent permissible under federal, state, and local laws applicable to public records, the Department may not disclose that information to the public. If the Department determines that information is not clearly or appropriately identified, the Department shall notify the owner that the Department intends to disclose the requested information unless ordered otherwise by a court.

(2) The Department shall review the annual plans submitted by owners and identify conflicts and opportunities for coordination of right-of-way work in the paved rights-of-way. Each applicant shall coordinate, to the extent practicable, with the city and with each potentially affected owner and permittee to minimize disruption in the rights-of-way.

(d) If a communication provider is to be placed underground in a new subdivision, the communication provider shall give written notice to other known providers in the area within which the property is located. Such notice shall be given at least 48 hours before commencement of trenching construction.

(e) The city may facilitate joint use of the property, structures, and appurtenances of each owner located in the rights-of-way and other public places, insofar as such joint use may be reasonable and practicable.

26.36.110 Damage to facilities

To the extent permitted by Washington law, the city shall not be liable for any damage to or loss of any facilities within the 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.

26.36.120 Obligations of Developers

A developer shall provide for underground facilities for providers to serve a development in accordance with applicable law for underground facilities. The developer shall execute all required agreements relating to the underground facilities, including easements, and provide proof to the city that the agreements have been executed.

Chapter 26.40
LIABILITY, INDEMNIFICATION AND SECURITY

Sections:

26.40.010 Warranty and liability

| | |
|-----------|--|
| 26.40.020 | Insurance |
| 26.40.030 | Indemnification |
| 26.40.040 | Security fund |
| 26.40.050 | Construction bond |
| 26.40.060 | Work of contractors and subcontractors |

26.40.010 Warranty and liability

(a) For a period of two years after satisfactory completion of work in a right-of-way, the owner and use permittee warrant and guarantee the quality of the work performed and are responsible for maintaining the site free from any defects resulting from the quality of the work and, in the event of such defects, for repairing or restoring the site to a condition that complies with all applicable law and regulations. Any repair or restoration during the warranty period shall cause the warranty period to run for one additional year beyond the original two-year period with respect only to what was repaired.

(b) The issuance of a use permit or any inspection, repair, suggestion, approval, or acquiescence of any person affiliated with the city does not relieve the owner or permittee from the warranty and liability provisions of this section, the indemnification provisions of Section 26.40.030, or any other term or condition of this title.

26.40.020 Insurance

(a) Unless otherwise provided by a master permit or franchise, each owner shall, as a condition of the grant, secure and maintain the following liability insurance policies (which may be evidenced by an acceptable certificate of insurance) insuring both the owner and the city, and its elected and appointed officers, officials, agents, representatives and employees, as additional insureds:

(1) Commercial general liability insurance with limits not less than five million dollars combined single limit for bodily injury (including death) and property damage; including premises operation, products and completed operations and explosion, collapse and underground coverage extensions;

(2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of three million dollars for each accident for bodily injury and property damage; and

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars for each accident/disease/policy limit.

(b) Commercial General Liability and Automobile Liability limits may be attained by a combination of primary and excess/umbrella liability insurance.

(c) The insurance policies required by this section shall be maintained at all times by the owner. Each such certificate of insurance 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 thirty 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."

Within ten days after receipt by the city of said notice, and in no event later than twenty days prior to said cancellation, the owner shall obtain and furnish to the city replacement insurance policies or a certificate of insurance meeting the requirements of this title.

26.40.030 Indemnification

(a) In addition to and distinct from the insurance requirements of this title, by accepting a permit each owner and permittee 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 owner or permittee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its facilities in the city, and in providing or offering services over the facilities, whether or not such acts or omissions are authorized, allowed or prohibited by this title or by an agreement made or entered into pursuant to this title; provided, however, that an owner or permittee shall not be required to indemnify the city to the extent the damages, loss and expenses are the result of negligence by the city or its employees, agents or contractors.

(b) The indemnification obligations assumed under a permit survive expiration of the permit and completion of the activities authorized by the permit.

26.40.040 Security fund

(a) Each owner shall establish a permanent security fund with the city by depositing the amount of up to fifty thousand dollars with the city in cash, an unconditional letter of credit, or other instrument acceptable to the city (the "security fund"), which fund shall be maintained at the sole expense of the owner so long as any of the owner's facilities are located within the rights-of-way. This security fund shall be separate and distinct from any other bond or deposit required under other code provisions or agreements.

(b) The owner shall deposit the security fund with the city on or before the effective date of its master permit, or, if the owner does not have a master permit, on or before the date the owner places in service its facilities in the rights-of-way.

(c) The security fund shall serve as security for the full and complete performance of the owner's obligations under this title and under any agreement between the owner and the city, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the owner to comply with the codes, ordinances, rules, regulations or permits of the city.

(d) Before any sums are withdrawn from the security fund, the city manager or designee shall give written notice to the owner:

(1) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the city has incurred by reason of the owner's act or default;

(2) Providing a reasonable opportunity for the owner to remedy the existing or ongoing default or failure, if applicable;

(3) Providing a reasonable opportunity for the owner to pay any moneys due the city before the city withdraws the amount thereof from the security fund, if applicable; and

(4) Stating that the owner will be given an opportunity to review the act, default or failure described in the notice with the city manager or designee.

(e) The owner shall replenish the security fund within fourteen days after written notice from the city that the city has withdrawn an amount from the security fund.

26.40.050 Construction bond

(a) This provision shall apply to any owner or permittee that is not required to provide a security deposit pursuant to Section 19.12.090 or a construction bond pursuant to Section 19.12.095.

(b) Unless otherwise provided in a master permit or franchise agreement, each use permittee shall deposit with the city, before a use permit is issued, a construction bond written by a surety acceptable to the city equal to at least one hundred percent of the estimated cost of the right-of-way work covered by the use permit.

(c) The construction bond shall remain in force until ninety days after substantial completion of the work, as determined by the Director, including restoration of rights-of-way and other property affected by the right-of-way work. However, in addition to the foregoing, the city reserves the right to require a maintenance bond pursuant to Chapter 175 of the Kirkland zoning code.

(d) 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 other property affected by the right-of-way work;
- (5) The submission of "as-built" maps after completion of right-of-way work as required by this title;
- (6) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the right-of-way work.

26.40.060 Work of contractors and subcontractors

The contractors and subcontractors of an owner or permittee shall be licensed and bonded in accordance with the City's generally applicable regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by the owner or permittee itself. The owner or permittee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this title and other applicable laws. The owner or permittee shall be jointly and severally liable for all damage, and for correcting all damage, caused by its contractors or subcontractors. It is the responsibility of the owner or permittee to ensure that contractors, subcontractors or other persons performing work on the owner or permittee's behalf are familiar with the requirements of this title and other applicable laws governing the work they perform.

Chapter 26.44
ENFORCEMENT

Sections:

| | |
|-----------|-------------------------------------|
| 26.44.010 | Enforcement procedures and remedies |
| 26.44.020 | Stop work order |
| 26.44.030 | Order to cure |
| 26.44.040 | Fines |
| 26.44.050 | Revocation |
| 26.44.060 | Standards for sanctions |

26.44.010 Enforcement procedures and remedies

(a) If the city determines that an owner or permittee has failed to perform any obligation under this title or has failed to perform in a timely manner, the city may:

- (1) Issue a stop work order pursuant to Section 26.44.020; and/or
- (2) Issue an order to cure pursuant to Section 26.44.030.

(b) If the violation is contested (as provided in 26.44.020 and 26.44.030 below), the Director shall consider the written communication provided by the owner or permittee and shall notify same of his or her final decision in writing within a reasonable time period.

(c) If the violation has not been remedied or is not in the process of being remedied to the satisfaction of the city within a reasonable time period following the later of: (i) the expiration of the time period for contesting a violation; and (ii) the notification by the Director to the owner or permittee of his or her final decision in respect of a contestation of the violation, the city may:

- (1) Enforce the provisions of this title through injunctive proceedings, an action for specific performance, or any other appropriate proceedings;
- (2) Impose a fine upon the owner or permittee pursuant to Section 26.44.040;
- (3) Assess against the owner or permittee any monetary damages provided for such violation in any agreement between the owner or permittee and the city;
- (4) Assess and withdraw the amounts specified above from the owner's or permittee's security fund or other applicable security instrument;
- (5) Revoke any master permit held by the owner or permittee pursuant to Section 26.44.050; or
- (6) Pursue any legal or equitable remedy available under any applicable law or under any agreement between the owner or permittee and the city.

(d) Remedies available to the city for violations under this title and under a master permit or franchise agreement shall be construed, except as otherwise provided in this title, as cumulative and not alternative.

(e) An owner or permittee shall pay civil penalties or liquidated damages within 30 days after receipt of notice from the city.

(f) The filing of an appeal to any regulatory body or court shall not stay or release the obligations of an owner or permittee under applicable law or any agreements with the city.

(g) An assessment of liquidated damages or civil penalties does not constitute a waiver by the city of any other right or remedy they may have under applicable law or agreements, including the right to recover from the owner or permittee any additional damages, losses, costs, and expenses, including actual attorney fees, that were incurred by the city by reason of the violation. However, the city's election of liquidated damages under the franchise agreement shall take the place of any right to obtain actual damages over and above the payment of any amounts otherwise due. This provision may not be construed to prevent the city from electing to seek actual damages for a continuing violation if it has imposed civil penalties or liquidated damages for an earlier partial time period for the same violation.

26.44.020 Stop work order

(a) The Director may issue a stop work order, impose conditions on a use permit, or suspend or revoke a use permit if the Director determines that:

(1) A person has violated applicable law or regulations or any term, condition, or limitation of a permit;

(2) Right-of-way work poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare; or

(3) There is a paramount public purpose.

(b) The Director shall notify the owner or permittee of action taken under Section 26.44.020(a) by a written communication, and the owner or permittee shall comply immediately after receipt of the notice.

(c) A stop work order shall state the conditions under which work may be resumed and shall be posted at the site.

(d) The owner or permittee may contest the stop work order by providing to the Director a written communication detailing the grounds for such contestation, within 15 days of receipt of the stop work order. However, unless the Director promptly orders otherwise for good cause, the submission of such written communication does not excuse the owner or permittee from compliance with the stop work order pending resolution of the dispute.

26.44.030 Order to cure

(a) The Director may order an owner or permittee that has violated applicable law or regulations, or any term, condition, or limitation of a permit, to cure the violation within the time specified in the order.

(b) An order issued under this section shall warn the person that a failure to comply within the time specified makes the person subject to the imposition of a penalty not to exceed one thousand dollars (\$1000.00) pursuant to the provisions of Section 1.04 of the Kirkland Municipal Code and to liability for any costs incurred by the Department to effectuate compliance.

(c) The owner or permittee may contest the cure order by providing to the Director a written communication detailing the grounds for such contestation within 15 days of receipt of the cure order. Unless the Director promptly orders otherwise for good cause,

the submission of such written communication excuses the owner or use permittee from compliance with the cure order pending resolution of the dispute.

(d) If the owner or permittee fails, neglects, or refuses to comply with an order issued under this Section 26.44.030 that involves right-of-way work, the Director may complete the right-of-way work or other work in the rights-of-way in any manner the Director deems appropriate, and the owner or use permittee shall compensate the Department for all costs incurred, including costs for administration, construction, consultants, equipment, inspection, notification, remediation, repair, and restoration. The cost of the work may be deducted from any construction bond or other security instrument of the owner or permittee. The Department's completion of right-of-way work or other work in the rights-of-way does not relieve the owner or permittee from the warranty and liability provisions of Section 26.40.010, the indemnification provisions of Section 26.40.030, or any other term or condition of this title.

26.44.040 Fines

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this title shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this title shall be subject to a fine of up to one thousand dollars or by imprisonment for a period of up to ninety days, or both such fine and imprisonment. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

26.44.050 Revocation

(a) A master permit granted by the city may be revoked for any one or more of the following reasons:

- (1) Construction or operation at an unauthorized location;
- (2) Material misrepresentation by or on behalf of an owner in any application to the city;
- (3) Abandonment of facilities in the rights-of-way without the express written permission of the city;
- (4) Failure to relocate or remove facilities as required in this title;
- (5) Failure to pay fees or costs when and as due the city;
- (6) Violation of a material provision of this title;
- (7) Violation of a material term of a master permit or use permit.

(b) In the event that the city manager believes that grounds exist for revocation of a master permit, the master permittee 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 thirty days from receipt of notice to furnish evidence on any or all of the following points:

- (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;
- and

(3) That it would be in the public interest to impose civil penalties or sanctions less than revocation.

(c) In the event that a master permittee fails to provide evidence reasonably satisfactory to the city manager as provided hereunder, the city manager shall make a preliminary determination as to whether an event of default by the master permittee has occurred and initially prescribe remedies in accordance with Section 26.44.060. In the event that a master permittee wishes to appeal such determination, it shall do so to the hearing examiner. In the event a further appeal is sought by the master permittee, it shall make such appeal to the city council. With respect to apparent violations or noncompliance, appeals provided for herein shall be made within fourteen days of a determination adverse to the master permittee. In any event, the city shall provide the master permittee with notice and a reasonable opportunity to be heard concerning the matter.

26.44.060 Standards for Sanctions

(a) In order to apply sanctions based on a master permittee's violation of or failure to comply with a material provision of this title, the master permit, or applicable codes, ordinances, statutes, rules or regulations, the city manager shall make a preliminary determination whether to revoke the master permit or to impose lesser sanctions or cure requirements, 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.

(b) The city manager shall issue a written decision containing findings of fact and conclusions of law supporting an action taken pursuant to Section 26.44.060(a).

***Chapter 26.48
MISCELLANEOUS PROVISIONS***

- Sections:
- 26.48.010 Further rules and regulations
 - 26.48.020 Captions
 - 26.48.030 Severability
 - 26.48.040 Costs

26.48.010 Further rules and regulations

The city manager or designee is authorized to establish further rules, regulations and procedures with respect to the city's authority to manage, regulate and control public rights-of-way for the implementation of this title. Except in cases of emergency, the city shall attempt to notify and provide an opportunity for comment to

persons who may be affected by rules, regulations and procedures adopted pursuant to this section.

26.48.020 Captions

The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of this title.

26.48.030 Severability

If any section, subsection, sentence, clause, phrase, or other portion of this title, 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.

26.48.040 Costs

Except where otherwise expressly stated herein, all costs incurred by an owner or permittee in connection with any provision of this Ordinance shall be borne by the owner or permittee.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 2009.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4205

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO USE OF RIGHT OF WAY FOR COMMUNICATIONS PURPOSES AND REPEALING AND REENACTING TITLE 26 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Repeals Title 26 of the Kirkland Municipal Code ("KMC").

SECTION 2. Adopts a new Title 26 of the KMC relating to the regulation and use of City right of way for communications purposes.

SECTION 3 Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2009.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk

ORDINANCE NO. 4206

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE FRANCHISING AND THE PROVISION OF CABLE SERVICES WITHIN THE CITY OF KIRKLAND.

The City Council of the City of Kirkland do ordain as follows:

Section 1. A new Title 30 of the Kirkland Municipal Code, entitled "Cable" is hereby adopted to read as follows:

Chapter 30.04
DEFINITIONS AND RULES OF CONSTRUCTION

Sections:

30.04.010 Rules of construction

30.04.020 Defined terms

30.04.010 Rules of construction

(a) For the purposes of this title, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. 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, and, if not defined therein, their common and ordinary meaning.

(b) 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; the masculine gender includes the feminine gender, and vice versa.

(c) The words "shall" and "will" are mandatory, and "may" is permissive.

30.04.020 Defined terms

(a) "Access channel" means any channel or portion thereof designated for access purposes or otherwise made available to transmit access programming.

(b) "City" means the city of Kirkland.

(c) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, without limitation, damage to persons or property from natural consequences (such as storms and earthquakes), riots or wars.

(d) "Facility" means all appurtenances or tangible things owned, leased, operated, or licensed by an operator of a cable system.

(e) "FCC" means the Federal Communications Commission, its designee, or any successor governmental entity thereto.

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

(g) "Franchise agreement" means the agreement entered into between the city and a cable operator that sets forth, subject to this title, the terms and conditions under which a franchise will be granted and exercised.

(h) "Franchise area" means the area of the city that a cable operator is authorized to serve by its franchise agreement.

(i) "Franchisee" means the person to whom or which a franchise is granted by the council under this chapter and the lawful successor, transferee or assignee of said person subject to such conditions as may be defined by city ordinance and the franchise agreement.

(j) "Gross revenues" shall have the meaning assigned to that term in a cable operator's franchise agreement. Franchise fees are not a tax and are included in gross revenues.

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

(l) "Rights-of-way" means land acquired or dedicated for public roads and streets. It does not include (a) state highways; (b) land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; (c) structures, including poles and conduits, located within the right of way; (d) federally granted trust lands or forest board trust lands; (e) lands owned or managed by the state parks and recreation commission; (f) 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; or (g) parks or other public property not used as a public right-of-way.

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

(n) The term "written" shall include electronic documents.

Chapter 30.08
GRANT OF FRANCHISE

Sections:

- 30.08.010 Franchise required
- 30.08.020 Application for cable franchise
- 30.08.030 Franchise agreement
- 30.08.040 Public hearing
- 30.08.050 City action on franchise application
- 30.08.060 Reimbursement of application costs

30.08.070 Franchise conditions

30.08.080 Termination on account of certain assignments or appointments

30.08.010 Franchise required

The city may grant multiple nonexclusive cable franchises. No person may construct or operate a cable system in the city without a franchise granted by the city. No person may be granted a franchise without entering into a franchise agreement with the city pursuant to this title.

30.08.020 Application for cable franchise

(a) An applicant for a franchise to construct, operate, and maintain a cable system within the city shall file an application in a form prescribed by the city, accompanied by a nonrefundable filing fee in the amount determined by the city.

(b) The city may at any time request, and the applicant shall provide, such additional information as the city reasonably deems relevant to the city's consideration of the application.

30.08.030 Franchise agreement

Within a reasonable time after submission of an application, the city shall enter into negotiations with the applicant as to the terms and conditions of a franchise agreement.

30.08.040 Public hearing

Prior to the granting of an initial franchise, the city council shall conduct a public hearing to receive information and comments on the following:

(a) That the public will be benefited by the granting of a franchise to the applicant;

(b) That the terms of the proposed franchise promotes the needs and interests of the city and its citizens;

(c) That the applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a cable system in the franchise area;

(d) That the applicant will comply with all terms and conditions placed upon a franchisee by this title;

(e) That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities proposed in its application for a franchise;

(f) That there is sufficient capacity in the rights-of-way to accommodate the cable system;

(g) That the present and future use of the rights-of-way will be compatible and consistent with the use by the cable system;

(h) The potential disruption to existing users of the rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;

(i) Any other conditions that the city may reasonably deem appropriate.

30.08.050 City action on franchise application

If the city denies a cable franchise application, it shall issue a written decision stating its reasons for the denial.

30.08.060 Reimbursement of application costs

To the extent allowed by law, after an initial franchise is granted, the applicant shall remit to the city the amount of any actual costs incurred by the city over and above the filing fee referred to in Section 30.08.020(a), within thirty days after receipt of an invoice from the city specifying such costs.

30.08.070 Franchise conditions

Every cable franchise granted pursuant to this title shall be subject to the following conditions:

(a) Any franchise granted hereunder by the city shall authorize a franchisee, subject to the provisions herein contained and the provisions of its franchise agreement:

(1) To engage in the business of operating and providing cable service and the distribution and sale of cable service to subscribers within the city; and

(2) For the sole purpose of providing cable service, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any right-of-way, such amplifiers and appliances, lines, cables, fiber, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable system; and, in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons including but not limited to any public utility or other franchisee franchised or permitted to do business in the city. No privilege or exemption shall be granted or conferred upon a franchisee by any franchise, except those specifically prescribed therein, and any use of any right-of-way shall be consistent with any prior lawful occupancy of the right-of-way or any subsequent improvement or installation therein.

(b) In accepting any franchise, a franchisee acknowledges that its rights are subject to the legitimate rights of the police power of the city to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and it agrees to comply with all applicable general laws enacted by the city pursuant to such power.

(c) In addition to the inherent powers of the city to regulate and control any franchise it issues, the authority granted to it by federal law, and those powers expressly reserved by the city, or agreed to and provided for in a franchise, the right and power is hereby reserved by the city to promulgate such additional regulations as it may find necessary in the exercise of its lawful police powers.

(d) A cable franchise shall be subject to the right of the City to revoke the same for misuse, or failure to comply with any material provisions of this title, or any federal, state or local laws, ordinances, rules or regulations, or failure to comply with any material provision of the franchise agreement.

(e) If a cable franchise terminates, and the franchisee does not have authority independent of that franchise to maintain and operate its system in the city's rights-of-way, then, to the extent not inconsistent with 47 U.S.C. § 541(b)(3), the city may order the franchisee to remove its facilities from the franchise area within a reasonable period of time as determined by the city. In that case, any property owned by the franchisee and not removed from the rights-of-way within six (6) months from the date of the city's order shall be considered to have been abandoned by the franchisee and will become the property of the city to do with as it may choose. If a franchisee fails to remove its facilities as provided in this paragraph, the city may have the removal done at the franchisee's expense, and any cost incurred by the city in removing the franchisee's facilities from the city's rights-of-way or property will be a claim against the franchisee.

(f) The grant of a franchise by the city shall be non-exclusive. It shall not preclude the city from granting other or further franchises or permits, or preclude the city from using any rights-of-way or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the city to make such changes, as the city shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and thoroughfares and other public properties.

(g) The grant of a franchise shall be for a term as provided in the franchise agreement, which shall not exceed ten (10) years; provided, however, that the city may grant a cable franchise that contains a base term with performance standards which, if met, would extend the term of the cable franchise for a defined period of time up to fifteen (15) years.

(h) A franchisee shall, where practicable, use existing towers, poles, conduits, lines, cables and other equipment and facilities. Copies of all agreements for the use of such equipment and facilities with public utilities operating within the city shall be placed on file with the city immediately upon their execution. Where such facilities are not reasonably available from public utilities, a franchisee shall have the right to erect and maintain its own poles, conduits and related facilities in the rights-of-way as may be necessary for the proper construction, installation, and maintenance of its cable system, subject to applicable law.

(i) Nothing in a franchise agreement shall be deemed to waive the requirements of the various codes, laws, and ordinances of the city regarding permits, zoning, fees to be paid, or right-of-way management, or to take the place of any general license or permit required for the privilege of transacting or carrying on a business within the city as required by the ordinances and laws of the city, or

for attaching devices to poles or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights-of-way.

(j) No reference herein, or in any franchise agreement, to "rights-of-way" shall be deemed to be a representation or guarantee by the city that its interests or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in the city and as the city may have the undisputed right and power to give.

30.08.080 Termination on account of certain assignments or appointments

(a) To the extent not prohibited by the U.S. Bankruptcy Code, any franchise shall be deemed revoked one hundred twenty calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding; provided, however, that a franchise may be reinstated *at the city's sole discretion* if, within that one hundred twenty-day period:

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this title and the applicable franchise agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this title and the applicable franchise agreement, and such other conditions as may be established or as are required by applicable law.

(b) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a franchisee, the city may revoke the franchise, following a public hearing before city, by serving notice on the franchisee and the successful bidder, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty calendar days after serving such notice, unless:

(1) The city has approved the transfer of the franchise to the successful bidder; and

(2) The successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise agreement and this title, and such other conditions as may be established or as are required pursuant to this title or a franchise agreement.

Chapter 30.12

SYSTEM PERFORMANCE AND SERVICE

Sections:

- 30.12.010 System performance
- 30.12.020 Emergency override
- 30.12.030 Emergency power
- 30.12.040 Interconnection
- 30.12.050 Continuity of cable service
- 30.12.060 Programming

30.12.010 System performance

(a) A cable operator shall comply with all applicable technical standards regarding operation of the cable system, including but not limited to the technical standards set forth in 47 C.F.R. § 76.601.

(b) A cable operator shall develop, effect, and sustain a comprehensive routine preventive maintenance program to ensure adequate operating standards in conformance with FCC regulations.

30.12.020 Emergency override

At a minimum, a cable operator shall comply with federal laws and regulations requiring installation and maintenance of an emergency alert system (EAS).

30.12.030 Emergency power

The System shall have a backup power supply capable of operating and supplying standby emergency power for a period of at least four (4) hours in the event of a power loss.

30.12.040 Interconnection

(a) A cable operator shall design its cable system so that it may be interconnected with other cable systems or similar communications systems in the city and adjacent jurisdictions.

(b) Upon the request of the city, a franchisee shall initiate good-faith negotiations with any other franchisee or operator of a similar communications system to determine the practical economic feasibility of the establishment and operation of an interconnection link and how costs may be shared equally by such franchisees or operators for both construction and operation of such a link.

(c) The interconnection shall be made within sixty (60) days of an order by the city to proceed, unless for good cause shown by the franchisee, a reasonable time extension is granted by the city.

30.12.050 Continuity of cable service

If a franchisee transfers its cable system, the franchisee shall cooperate with the city and the transferee in maintaining continuity of service to all subscribers, such that, to the extent reasonably possible, subscribers receive continuous uninterrupted service.

If a cable franchise terminates, the franchisee shall cooperate with the city and any other providers of cable service in maintaining continuity of service to all subscribers, such that, to the extent reasonably possible, subscribers receive continuous uninterrupted service. This

provision shall not be construed to require the franchisee to continue to provide cable service after the termination date.

30.12.060 Programming

Upon request, a franchisee shall file with the city a listing of its programming and the tiers in which it is placed. Subject to federal law, a franchisee shall be responsive to the city's suggestions of general program categories such as sports, weather, news, educational, music, comedy, family or others that may be found to be of interest to the citizens of the city of Kirkland as determined from time to time in residential questionnaire polls.

Chapter 30.16 RATE REGULATION

Sections:

30.16.010 Rate regulation

30.16.010 Rate regulation

The city reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

Chapter 30.20 FRANCHISE FEE

Sections:

30.20.010 Payment of franchise fee

30.20.020 No accord or satisfaction

30.20.030 Late fees and interest

30.20.040 Discounts on bundled services

30.20.010 Payment of franchise fee

(a) During the term of any franchise granted pursuant to this title, the franchisee shall pay to city for the use of the rights-of-way, as well as the maintenance, improvements, and supervision thereof, a franchise fee as specified in the franchise agreement.

(b) Each payment shall be accompanied by supporting information, verified by an officer of the franchisee, containing a detailed, accurate statement of the franchisee's gross revenues and the computation of the payment amount, in the form and containing the information specified in the format attached to this title as Appendix A.

30.20.020 No accord or satisfaction

No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claims the city may have for further or additional sums due or payable as a franchise fee under the franchise agreement or for the performance of any other obligation of the

franchisee hereunder, or as an acknowledgement that the amount paid is the correct amount due.

30.20.030 Late fees and interest

(a) Any unpaid fees shall be subject to interest charges computed from the due date, at the maximum allowed rate as provided under state law until the date the city receives the payment.

(b) If any franchise fee payment is not made on or before the required date, the franchisee shall pay a late payment charge of five percent of the amount originally due, as a cost incidental to the enforcing of the franchise, in addition to the interest charge specified in subsection (a) of this section. This charge shall be applicable only with respect to late payment of an undisputed amount. If it is later determined as a result of a dispute or audit that there was an underpayment on a payment that was timely made, the five percent charge shall not be applicable.

30.20.040 Discounts on bundled services

If a franchisee bundles cable service with non-cable service, the franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the franchise fee payments required under this ordinance and its franchise agreement. In the event that the franchisee or any affiliate shall bundle, tie, or combine cable services (which are subject to the franchise fee) with non-cable services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on cable services, a *pro rata* share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges and they are reasonable, the *pro rata* share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this Section.

Chapter 30.24 ***PERFORMANCE REVIEW***

Sections:

30.24.010 Periodic meetings

30.24.020 System evaluation

30.24.010 Periodic meetings

Upon request, a franchisee shall meet with designated city officials and/or designated representative(s) to review the performance of the franchisee. The franchisee shall designate an officer or employee who

is knowledgeable about the cable system and has decision-making authority with regard to the areas of concern identified by the city. The subjects may include, but are not limited to, customer service, technical issues or problems, franchise compliance and other areas of concern to the city regarding those items covered in the periodic reports and performance tests.

30.24.020 System evaluation

(a) In addition to periodic meetings, the city may require reasonable routine system evaluation sessions at any time during the term of a franchise, but not to exceed one evaluation per year. The city shall provide a franchisee thirty days' prior written notice of a system evaluation. Notwithstanding the foregoing, in the case of recurring problems, the city may conduct as many evaluations as are necessary.

(b) To assist in the preliminary evaluation, the city may enlist independent consultants to analyze the cable system and its performance and to submit a report of such analysis to the city.

(c) During an evaluation session, a franchisee shall fully cooperate with the city and shall provide within a reasonable time, without cost, such reasonable information and documents as the city may request to perform the evaluation.

(d) If, as a result of the evaluation session, or at any other time, the city determines that reasonable evidence exists of inadequate cable system performance, it may require a more detailed technical evaluation and analyses directed toward such suspected inadequacies. The report of such evaluation and analyses shall include at least:

(1) A description of the technical problems in cable system performance which precipitated the special tests;

(2) A description of what cable system components were tested;

(3) A description of the equipment used and the procedures employed in testing;

(4) The method, if any, by which such cable system performance problem was resolved;

(5) Any other information pertinent to said tests and analyses that may be required by the city, or determined when the tests are performed.

(e) If the tests indicate that the cable system is not in compliance with FCC standards or the requirements of the franchise, a franchisee shall reimburse the city for any costs involved in conducting such tests, as well as associated consultant fees and other expenses. Such fees or expenses shall not exceed fifteen thousand dollars for each evaluation. A franchisee shall have an opportunity to rebut any findings which illustrate noncompliance, and if the franchisee is found to be in compliance, then the city shall pay for the evaluation.

Chapter 30.28
REPORTS AND RECORDS

Sections:

- 30.28.010 Open books and records
- 30.28.020 Inspection of books and records
- 30.28.030 Rate schedule
- 30.28.040 Annual report
- 30.28.050 Communications with regulatory agencies
- 30.28.060 Confidentiality

30.28.010 Open books and records

(a) A franchisee shall manage all of its cable system operations in accordance with a policy of open books and records.

(b) The city shall retain throughout the life of any franchise the right to require such information pertaining to the operation of the franchise as it reasonably deems useful or necessary to ensure compliance with the terms of the franchise agreement and applicable law.

30.28.020 Inspection of books and records

(a) The city may inspect the records of a franchisee relating to the operation of the cable system in the franchise area during normal business hours. Such documents may include, but are not limited to, such information as financial records, subscriber records, and appropriate information and plans pertaining to a franchisee's operation in the city.

(b) Such inspections shall be conducted in a manner that will not unreasonably disrupt the franchisee's normal operations.

(c) If any books or records that relate to the cable system are not kept in the city, the franchisee shall pay all reasonable and necessary expenses incurred in making the inspection.

30.28.030 Rate schedule

Upon written request by the city, a franchisee shall submit a complete schedule of all present rates charged to all subscribers.

30.28.040 Annual report

A franchisee shall furnish an annual report of its activities as appropriate within ninety days of the end of its calendar year. Such report shall include:

- (a) The most recent annual report;
- (b) A copy of the 10-K Report, if required by the Securities and Exchange Commission;
- (c) The number of homes passed;
- (d) The number of subscribers with basic service;
- (e) The number of subscribers with cable programming service, as that term is defined in 47 U.S.C. § 543(1)(2);
- (f) The number of subscribers with premium services;
- (g) The number of installations in the period;

- (h) The number of disconnects in the period;
- (i) A summary of escalated or repeated complaints received by category, length of time taken to resolve and action taken to provide resolution;
- (j) A statement of its current billing practices and a sample copy of the bill format;
- (k) A current copy of its subscriber service contract; and
- (l) Such other reports as the city deems necessary.

30.28.050 Communications with regulatory agencies

(a) A franchisee shall file with the city all reports and materials submitted to or received from the following agencies by the franchisee or its affiliates that relate specifically to the cable system or could affect the franchisee's operations within the boundaries of the city: the FCC, the Security and Exchange Commission, and any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the franchisee's cable system.

(b) Materials filed with city pursuant to Section 30.28.050(a) shall be filed as follows: Materials submitted by the franchisee or an affiliate shall be filed with city at the time they are submitted to the receiving agency. Materials received by the franchisee shall be filed with city within thirty (30) days of the date they are received by the franchisee, except that if applicable law permits a response to such materials by the city and sets a deadline of sixty (60) or fewer days for the city's response, they shall be filed with city within five (5) days of the date they are received by the franchisee.

30.28.060 Confidentiality

(a) To the extent permitted by applicable law, the city shall maintain the confidentiality of any trade secrets or other proprietary information received from a franchisee, and such records shall be exempt from inspection under this section to the extent required by applicable law regarding subscriber privacy.

(b) If a franchisee clearly and appropriately identifies information as confidential or proprietary, then to the maximum extent permissible under applicable federal, state, and local laws related to public records, the city may not disclose that information to the public.

(c) If city determines that requested information is not clearly or appropriately identified, or that disclosure is otherwise required by law, city shall notify the franchisee that city intends to disclose the requested information unless ordered otherwise by a court.

Chapter 30.32 ENFORCEMENT

Sections:

- 30.32.010 Enforcement procedures and remedies
- 30.32.020 Fines
- 30.32.030 Revocation

30.32.040 Security fund

30.32.010 Enforcement procedures and remedies

(a) If the city determines that a cable operator has failed to perform any obligation under this title or has failed to perform in a timely manner, the city may make a written demand on the cable operator that it remedy the violation.

(b) If the violation is not remedied or in the process of being remedied to the satisfaction of the city within a reasonable time period following a written demand or order to cure, the city may:

(1) Enforce the provisions of this title through injunctive proceedings, an action for specific performance, or any other appropriate proceedings;

(2) Impose a fine upon the cable operator pursuant to Section 30.32.020;

(3) Assess against the cable operator any monetary damages provided for such violation in any agreement between the cable operator and the city;

(4) Assess and withdraw the amounts specified above from the cable operator's security fund or other applicable security instrument;

(5) Revoke the franchise pursuant to Section 30.32.030;

or

(6) Pursue any legal or equitable remedy available under any applicable law or under any agreement between the cable operator and the city.

(c) Remedies available to the city for violations under this title and under a franchise agreement shall be construed, except as otherwise provided in this title, as cumulative and not alternative.

(d) A cable operator shall pay civil penalties or liquidated damages within 30 days after receipt of notice from the city.

(e) The filing of an appeal to any regulatory body or court shall not stay or release the obligations of a cable operator under applicable law or any agreements with the city.

(f) An assessment of liquidated damages or civil penalties does not constitute a waiver by the city of any other right or remedy it may have under applicable law or agreements, including the right to recover from the cable operator any additional damages, losses, costs, and expenses, including actual attorney fees, that were incurred by the city by reason of the violation. However, the city's election of liquidated damages under the franchise agreement shall take the place of any right to obtain actual damages over and above the payment of any amounts otherwise due. This provision may not be construed to prevent the city from electing to seek actual damages for a continuing violation if it has imposed civil penalties or liquidated damages for an earlier partial time period for the same violation.

30.32.020 Fines

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this title shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this title shall be subject to a fine of up to one thousand dollars or by imprisonment for a period of up to ninety days, or both such fine and imprisonment. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

30.32.030 Revocation

(a) The city may revoke a cable franchise as a master permit pursuant to the provisions of KMC 26.44.050.

(b) In addition to the reasons stated in KMC 26.44.050(a), a cable franchise may be revoked for the following reasons:

(1) Failure to perform any material obligation under its franchise agreement or applicable law;

(2) Willful failure for more than three (3) days to provide continuous cable service; or

(3) Attempt to evade any material provision of the franchise agreement or applicable law, or to practice any fraud or deceit upon the city or subscribers.

30.32.040 Security fund

(a) Upon request by the city, each franchisee shall establish a permanent security fund with the city by depositing the amount of up to two hundred fifty thousand dollars (as specified in the franchise agreement) with the city in cash, a bond or other instrument acceptable to the city. This fund shall be maintained at the sole expense of the franchisee so long as it provides cable service in the city. This security fund shall be separate and distinct from any other bond, letter of credit, security or deposit required.

(b) This security fund may be utilized by the city for the following purposes: (1) reimbursement to the city by reason of a franchisee's failure to pay the city any sums due under the terms of this title or a franchise; (2) reimbursement to the city for reasonable costs and damages borne by the city to correct franchise violations not corrected by a franchisee after due notice; (3) monetary remedies or damages assessed against a franchisee due to default or violations of a franchise or this title; and (4) any other lawful purpose.

(c) If a franchisee is in default under this title or a franchise, or if a franchisee fails to pay the city any franchise fees, damages, or monetary sanctions, or if a franchisee fails to perform any of the conditions lawfully imposed by the city, the city may withdraw from the security fund an amount sufficient to compensate the city's costs and damages, with interest at the maximum legal rate under state law, or twelve percent, whichever is less.

(d) Upon such withdrawal, the city shall notify the franchisee in writing, by certified mail, of the amount and date thereof. Within thirty days of mailing notice to a franchisee that the city has withdrawn

funds from the security fund, a franchisee shall deposit such further bond or sum of money, or other security, as deemed sufficient to meet the requirements of this chapter.

Chapter 30.36
TRANSFERS

Sections:

30.36.010 Transfers

30.36.010 Transfers

A franchisee shall comply with all provisions of its franchise agreement regarding transfers, ownership and control.

Chapter 30.40
ADMINISTRATION

Sections:

30.40.010 Administration

30.40.010 Administration

The city council reserves the right to delegate its authority for franchise administration to a designated agent.

Chapter 30.44
MISCELLANEOUS PROVISIONS

Sections:

30.44.010 Captions

30.44.020 Severability

30.44.030 Costs

30.44.040 Compliance with applicable law

30.44.050 No recourse

30.44.010 Captions

The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of this title.

30.44.020 Severability

If any section, subsection, sentence, clause, phrase or portion of this title is for any reason held invalid or unenforceable by any court or agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

30.44.030 Costs

Except where otherwise expressly stated herein, all costs incurred by a franchisee or cable operator in connection with any provision of this title shall be borne by the franchisee or cable operator.

30.44.040 Compliance with applicable law

A cable operator shall comply with all applicable federal, state and local laws, rules and regulations, ordinances and resolutions, including those governing the monitoring and tapping of cablecast signal privacy, and the penalties for violation thereof.

30.44.050 No recourse

Without limiting the immunities that the city or other persons may have under applicable law, the franchisee shall have no recourse whatsoever against the city or its officers, officials, boards, commission, agents or employees for any loss, cost, expense or damage arising out of the exercise of its authority pursuant to any provisions or requirements of this title, the franchise agreement, or any franchise granted hereunder or because of its enforcement, except as may otherwise be provided herein.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 2009.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4206

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE FRANCHISING AND THE PROVISION OF CABLE SERVICES WITHIN THE CITY OF KIRKLAND.

SECTION 1. Adopts a new Title 30 of the Kirkland Municipal Code relating to cable franchising and the provision of cable services within the City of Kirkland.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2009.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk

ORDINANCE NO. 4207

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE CONSUMER PROTECTION WITHIN THE CITY OF KIRKLAND.

The City Council of the City of Kirkland do ordain as follows:

Section 1. A new Title 31 of the Kirkland Municipal Code, entitled "Cable Consumer Protection" is hereby adopted to read as follows:

Chapter 31.04
DEFINITIONS AND RULES OF CONSTRUCTION

Sections:

31.04.010 Rules of construction
31.04.020 Defined terms

31.04.010 Rules of construction

(a) For the purposes of this title, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in the Kirkland Cable Ordinance, and, if not defined therein, the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

(b) 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; the masculine gender includes the feminine gender, and vice versa.

(c) The words "shall" and "will" are mandatory, and "may" is permissive.

31.04.020 Defined terms

(a) "Cable operator" shall have the meaning given that term in 47 U.S.C. § 522(5) or any successor provision.

(b) "City" means the City of Kirkland.

(c) "Complaint" means an initial or repeated customer expression of dissatisfaction, whether written or oral, or other matter that is referred beyond a customer service representative or to the city for resolution. This does not include routine inquiries and service requests.

(d) "Customer service representative" or "CSR" means any person employed by the cable operator to assist or provide service to customers, whether by answering telephone lines, answering customers' questions, or performing other customer service-related tasks.

(e) "Non-standard installation" means any installation other than a standard installation, as that term is defined in Section 31.04.020(i).

(f) "Normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include evening hours at least one night per week and/or some weekend hours.

(g) "Normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(h) "Service interruption" means the loss of picture or sound on one or more cable channels.

(i) "Standard" installation means an installation to subscriber premises that are located up to that distance from the existing distribution system specified in a franchise agreement as included in the normal charge for installation, or, if no such distance is specified in a franchise agreement, up to one hundred twenty-five feet (the "standard drop length").

(j) "Subscriber" shall mean any person who lawfully receives or will receive cable service from the cable operator.

(k) "System Outage" shall mean any Service Interruption affecting all channels.

(l) The term "written" shall include electronic documents.

Chapter 31.08
GENERAL PROVISIONS

Sections:

31.08.010 Policy

31.08.020 Cable operator duties

31.08.030 Scope of ordinance

31.08.040 Meeting standards specified by percentages of time

31.08.050 Initial grace period

31.08.010 Policy

(a) The cable operator shall be permitted to resolve citizen complaints prior to action or involvement by the city. If a complaint is not resolved by the cable operator to the citizen's satisfaction, the city may intervene.

(b) These standards are intended to be of general application; however, the cable operator shall be relieved of any obligations hereunder if it is unable to perform due to circumstances beyond its reasonable control, such as natural disasters. The cable operator may, and is encouraged to, exceed these standards for the benefit of its customers.

31.08.020 Cable operator duties

A cable operator shall satisfy the customer service standards set forth in this section and any additional or stricter requirements established by regulations of the FCC or other applicable federal, state, or local law or regulation.

31.08.030 Scope of ordinance

This title does not prevent or prohibit:

(a) The city and a cable operator from agreeing to customer service requirements that exceed the standards set forth in this title;

(b) The city from enforcing, through the end of a franchise term, pre-existing customer service requirements that exceed the standards set forth in this title or are contained in current franchise agreements;

(c) The city from enacting or enforcing any lawful customer service or consumer protection laws or regulations; or

(d) The establishment or enforcement of any law or regulation by the city concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in this title, a franchise agreement, or federal or state law.

31.08.040 Meeting standards specified by percentages of time

Where standards must be met a certain percentage of the time, as specified herein, a cable operator must adopt policies designed to meet those standards in all cases, and in no event shall intentionally violate the standards. However, the cable operator shall not be subject to penalties or liquidated damages if it unintentionally fails to meet the standards in particular cases, so long as the cable operator meets the standards the specified percentage of the time.

31.08.050 Initial grace period

Other than for violations of Chapter 31.40 and Chapter 31.44 of this title, a cable operator shall not be subject to penalties, liquidated damages, or other monetary sanctions for violations of the customer service standards set forth in this title that occur during the first six months after the operator first begins to provide cable service within the boundaries of the city, unless such violations involve fraud or willful misconduct.

Chapter 31.12***OFFICE AND TELEPHONE ACCESS AND COMPLAINTS***

Sections:

31.12.010 Local business office

31.12.020 Telephone access

31.12.030 Complaints

31.12.010 Local business office

(a) A cable operator shall maintain at least one customer service center or a bill payment location on the Eastside. Service shall be available at least nine consecutive hours Monday through Friday,

and at least four consecutive hours on Saturdays, ending no earlier than one p.m. The cable operator shall provide customers the ability to remit payment by mail or in person at the service center or bill payment location.

(b) The customer service center or bill payment location must be accessible to all persons, including the elderly and persons with disabilities. Parking must be provided in a manner consistent with the Kirkland Municipal Code.

(c) The following services shall be available at the customer service center: the opportunity to pick up, exchange and return certain types of equipment, depending upon the size of the equipment; bill payment; and response to other customer inquiries and requests. Customers may pay cable bills at the bill payment location.

(d) The cable operator shall post a sign at the service center/bill payment location advising customers of its hours of operation.

31.12.020 Telephone access

(a) A cable operator shall maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week for service/repair requests. The cable operator shall have dispatchers and technicians on call twenty-four hours a day, seven days a week, including legal holidays.

(b) Qualified and trained customer service representatives will be available to respond to customer telephone and e-mail inquiries during normal business hours.

(c) After normal business hours, the access line may be answered by an answering service, an automated response unit ("ARU") or a voice response unit ("VRU"). Inquiries received after normal business hours shall be responded to by a trained company representative on the next business day.

(d) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(1) Measurement of the standard stated in Section 31.12.020(d) shall include all calls received by the cable operator at all call centers receiving calls from subscribers, whether they are answered by a live representative, answered by an ARU or VRU, or abandoned, and shall include all periods during which live representatives are available to answer calls, whether or not such periods occur during normal business hours.

(2) If a call is answered by an ARU or VRU, the standard stated in Section 31.12.020(d) shall be satisfied for a given call if the standard system includes an option to speak to a service representative, that option is presented to the caller within the first 30 seconds from the time the call is answered by the ARU, and, if that option is exercised, the caller is not required to wait more than 30 seconds to be connected to a service representative.

(e) Under normal operating conditions, a subscriber will receive a busy signal less than three (3) percent of the time.

31.12.030 Complaints

(a) The cable operator shall establish written procedures for receiving, acting upon, and resolving complaints without intervention by the city (except where necessary). Said written procedures shall describe a simple process by which any customer may submit a complaint by telephone, via the Internet, or in writing to the cable operator regarding a disputed matter, or an alleged violation of:

- (1) Any provision of these standards;
- (2) Any terms or conditions of the customer's contract with the cable operator; or
- (3) Reasonable business practices.

(b) The cable operator's complaint procedures shall be filed with the city.

(c) Complaints by any subscriber may be filed with the cable operator in writing or delivered to the cable operator orally in person or by telephone.

(d) Any complaints regarding service interruption received from subscribers by the cable operator or referred to the cable operator by the city shall be investigated by the cable operator and service restored within seventy-two (72) hours of their receipt. In the event service is not restored within seventy-two (72) hours, the subscriber shall receive a credit pursuant to Section 31.24.030(b). Any complaints not regarding service interruption received from subscribers by the cable operator or referred to the cable operator by city shall be investigated and responded to by the cable operator within two business days of their receipt.

(e) For complaints other than service interruptions, if a complaint is sent to the cable operator by city, the cable operator shall respond to city and report on the status of that complaint within twenty-four hours of the time the city delivers the complaint to the cable operator.

(f) For complaints other than service interruptions, within fifteen days after receiving a complaint from a subscriber, the cable operator shall notify the subscriber of the results of its investigation and its proposed action or credit. The cable operator shall also notify the subscriber of the subscriber's right to file a complaint with the city in the event the subscriber is dissatisfied with the cable operator's decision, and shall explain the necessary procedures for filing such complaint with the city.

(g) A cable operator shall keep a maintenance service log that will indicate the nature of each complaint, the name of the employee of the cable operator receiving the complaint, the date and time it was received, the disposition of the complaint and the time and date thereof. In said log the cable operator shall state the specific steps taken by the cable operator to remedy the complaint. This log shall be made available by the cable operator for periodic inspection by the city.

(h) The procedure for reporting and resolving complaints shall be stated in writing by the cable operator to each subscriber at the time of initial installation of cable service to the cable system, at least annually thereafter, and at any time upon request. It shall also be publicized clearly on the cable operator's Web site.

Chapter 31.16
CABLE INSTALLATION AND REPAIR STANDARDS

Sections:

- 31.16.010 General service standards
- 31.16.020 Appointments
- 31.16.030 Installation standards measured on a quarterly basis
- 31.16.040 Extension of service
- 31.16.050 Response to service request
- 31.16.060 Charges for installation and service
- 31.16.070 Cable drops
- 31.16.080 Underground and above-ground installations

31.16.010 General service standards

(a) A cable operator shall render efficient cable service, make prompt repairs, and intentionally interrupt cable service on the cable system only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected subscriber's service problems, or as provided in subsection 31.16.010(d), only after a minimum of 48 hours prior notice to subscribers and the city of the anticipated cable service interruption.

(b) A cable operator shall maintain sufficient staff and facilities to handle properly and adequately respond to cable system maintenance, requests for service, and complaints.

(c) A cable operator shall maintain a duty roster of qualified technicians to respond to complaints or malfunctions of the cable system at other than normal office hours.

(d) A cable operator need not give notice to subscribers for planned maintenance that does not require more than two hours' interruption of cable service to at least fifty subscribers and that occurs between the hours of 12:00 midnight and 6:00 a.m., but shall give notice to the city no less than 24 hours prior to this kind of anticipated cable service interruption.

(e) In the event of a system outage (loss of reception on all channels) resulting from cable operator equipment failure affecting ten or more customers, the cable operator shall respond in accordance with its outage response procedures, and in no event more than two hours after the tenth customer call is received, and shall remedy the problem as quickly as possible.

(f) A cable operator shall begin working to restore service within two hours after it becomes aware of a service interruption affecting five percent or more of the subscribers within the boundaries of the Franchisors.

(g) A cable operator shall maintain a written log, which if stored in computer memory is capable of access and reproduction on hardcopy, of all cable service interruptions and requests for cable service.

31.16.020 Appointments

(a) Customers requesting installation of cable service or service to an existing installation may choose an appointment window consisting of a four-hour time block between eight a.m. and six p.m. or another block of time mutually agreed upon by the customer and the cable operator. These options shall be clearly explained to the

customer at the time of scheduling. A cable operator may also offer longer appointment windows so long as it offers the subscriber the specified four-hour time blocks as well.

(b) The date set by the cable operator for an appointment shall be no more than seven calendar days from the date of the request, unless the subscriber, after being informed of the subscriber's rights under this rule, specifically requests a later date.

(c) A cable operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

(d) A cable operator may not cancel an appointment with a subscriber after 5 p.m. on the business day preceding the appointment, except for appointments scheduled within twelve hours after the initial call.

(e) A cable operator may not require that a subscriber answer a telephone call or that the subscriber otherwise confirm availability before the cable operator commences an appointment. If a cable operator unsuccessfully attempts to contact the subscriber prior to arriving at the appointment, and then fails to keep the appointment, the cable operator's failure to reach the subscriber shall not excuse it from keeping the appointment.

(f) If a cable operator's representative is running late for an appointment with a subscriber and is not able to keep the appointment as scheduled, the subscriber shall be contacted. The appointment shall be rescheduled, as necessary, at a time convenient to the subscriber. If the customer is absent when the technician arrives, the technician shall leave hardcopy written notification of timely arrival.

31.16.030 Installation standards measured on a quarterly basis

Under normal operating conditions, each of the following standards shall be met by a cable operator no less than 95% of the time, measured on a quarterly basis:

(a) A cable operator shall complete a standard installation within seven business days after receipt of a request, excluding time required to obtain necessary permits, in all areas where trunk and feeder cable as been activated for cable service, provided, however, that if installation requires that fiber be terminated on the subscriber's premises and such termination has not yet been installed, a cable operator shall have seven days to install such termination, and the seven-day period for installation of cable service shall commence only after such termination is installed or the seven-day period for such termination has elapsed, whichever occurs first.

(b) Excluding conditions beyond the control of the cable operator, the cable operator will begin working on a service interruption promptly and in no event later than 24 hours after the interruption becomes known. The cable operator shall use its best efforts to correct service interruptions resulting from cable operator equipment failure by the end of the next day, but in no event longer than forty-eight hours. Work on other requests for service shall be commenced by the next business day after notification of the problem, and the work shall be completed within three business days from the date of the initial request. If for reasons beyond the cable operator's control the work cannot be completed in the required time even with the exercise of all due diligence, the cable operator shall complete the

work in the shortest time possible. A cable operator's failure to hire sufficient staff or to train its staff properly does not justify a cable operator's failure to comply with the required time period.

(c) If a customer experiences poor signal quality (whether it relates to a visual or audio problem) which is attributable to the cable operator's equipment, the cable operator shall respond and repair the problem no later than the day following the customer call, provided that the customer is available and the repair can be made within the allotted time. At the customer's request, the cable operator shall repair the problem at a later time that is convenient for the customer.

31.16.040 Extension of service

(a) A cable operator shall complete a non-standard installation within 60 days if the distribution system need not be extended for one-half mile or more to provide cable service, or within six months if an extension of the distribution system for one-half mile or more is required, excluding time required to obtain necessary permits.

(b) If a potential subscriber or the city requests an estimate of the cost of line extension to a location, a cable operator shall provide such a good-faith estimate within thirty (30) days from the date of such request.

31.16.050 Response to service request

(a) A cable operator has responded to a request for service under the provisions of this section when a technician arrives at the service location and begins work on the problem, or, if a technician's presence at the service location is not necessary to diagnose and cure the problem, when the cable operator has begun work on the problem elsewhere.

(b) If a subscriber is not home when the technician arrives, response is considered to have taken place if the technician leaves hardcopy written notification of the technician's arrival.

31.16.060 Charges for installation and service

(a) Except as federal law may otherwise provide, a cable operator may not charge a subscriber any cost other than its standard installation rate for a standard installation of a single outlet, unless the cable operator demonstrates to the city's satisfaction that extraordinary circumstances justify a higher charge.

(b) Except as federal law may otherwise provide, a cable operator may not charge a subscriber for a service call unless the service request can be demonstrated (1) both to have been repeated and not to have been based on a problem originating with the cable system, or (2) to involve subscriber negligence or misuse of equipment.

31.16.070 Cable drops

(a) Except as applicable law otherwise may require, if a drop exceeds the standard drop length, a cable operator may charge a subscriber for a cable operator's actual costs of labor and materials associated with installing the drop beyond the standard drop length if the drop length in excess of the standard drop length is necessary due to engineering requirements.

(b) If a customer requests a nonstandard residential installation, or the cable operator determines that a nonstandard

residential installation is required, the cable operator shall provide the customer in advance with a cost estimate and an estimated date of completion.

(c) The subscriber's preference for the point of entry into the residence shall be observed whenever feasible.

(d) Runs in building interiors shall be as unobtrusive as possible.

(e) A cable operator shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by the installation. The restoration shall be undertaken as soon as possible after the damage was incurred and shall be completed within no more than 30 days after the damage is incurred, subject to reasonable landscaping limitations.

31.16.080 Underground and above-ground installations

(a) In locations where a cable operator's system is underground, drops shall be placed underground as well.

(b) Except as federal law may otherwise require, in an area where a cable operator would be entitled to install a drop above ground, the cable operator, if requested by the homeowner, shall install the drop underground but may charge the homeowner the difference between the actual cost of labor and materials for the above-ground installation and the actual cost of labor and materials for the underground installation.

(c) Absent unusual circumstances, all underground cable drops from the curb to the home shall be buried at a depth of no less than twelve inches, and within a reasonable period of time from the initial installation, or at a time mutually agreed upon between the cable operator and the customer. In all instances, the cable operator must comply with the state's One Call requirements.

Chapter 31.20 COMMUNICATIONS WITH SUBSCRIBERS

Sections:

31.20.010 Written communications to subscribers

31.20.020 Annual notice to subscribers

31.20.030 Notification of changes

31.20.040 Telephone communication with customer service representatives

31.20.050 In-person communication with subscribers

31.20.060 Internet presence

31.20.070 Customer contract

31.20.010 Written communications to subscribers

The cable operator must take appropriate steps to ensure that all written cable operator promotional materials, announcements and advertising of cable service to subscribers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, the cable operator will take appropriate steps to ensure that prices and terms

are clearly and accurately disclosed to potential subscribers in advance of taking the order.

31.20.020 Annual notice to subscribers

At the time service is installed to a subscriber and at least once annually afterwards, and at any time on request, the cable operator shall provide each subscriber and the city with hardcopy written information (or, if the subscriber affirmatively requests the information in electronic form, electronic written information) concerning:

- (a) Products and services offered;
- (b) Prices, including a schedule of rates and charges, and options for programming services and conditions of subscription to programming and other services;
- (c) Installation and service maintenance policies, delinquent subscriber reconnect and disconnect procedures, and any other of its policies applicable to subscribers;
- (d) Written instructions on how to use the cable services and for placing a service call;
- (e) Channel positions of programming carried on the cable system;
- (f) The cable operator's billing, collection, disconnection and reconnections procedures and late charge procedures;
- (g) The procedures for making inquiries or complaints, including the name, address, local telephone number, and e-mail address of the employee or agent to whom inquiries or complaints are to be addressed;
- (h) The city official responsible for regulating the franchise, including the name, telephone number, and e-mail address of the official;
- (i) The cable operator's business hours, legal holidays, and procedures for responding to inquiries after normal business hours, including Days, times of operation, and location of the customer service location and bill payment center.
- (j) A copy of the service contract applicable to the subscriber, if any; and
- (k) A written notice regarding subscriber's privacy rights pursuant to 47 U.S.C. § 551.
- (l) Use and availability of parental control/lock-out devices and the cost, if any, for the use of such devices; and
- (m) Special services or equipment available for subscribers with disabilities and explanations for how to obtain and use them.

31.20.030 Notification of changes

(a) A cable operator shall provide to all subscribers and to the city at least 30 days' hardcopy written notice before the implementation of any change in rates, programming services, channel positions, business hours, legal holidays, or procedures for responding to inquiries after normal business hours, unless such change is beyond the control of the cable operator, in which case the cable operator shall provide the maximum possible notice up to the 30 days specified herein.

(b) In addition to the requirement of Section 31.20.030(a), a cable operator shall give at least 30 days' hardcopy written notice to subscribers and to the city before implementing any rate or service change. Such notice shall state the precise amount of any rate change

and briefly explain in readily understandable fashion the cause of the rate change (*e.g.*, inflation, change in external costs, addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purpose of the carriage of digital broadcast signals, the operator need only identify for subscribers the television signal added and not whether that signal may be multiplexed during certain dayparts.

(c) At least five working days before distributing a subscriber notice, unless waived by the city, the cable operator shall provide to the city the specific points to be contained in a subscriber notice and the text of the subscriber notice, if available. If the text is not available, it shall be provided to the city as soon as it is available.

(d) A cable operator shall file with the city copies of all notices provided to subscribers.

31.20.040 Telephone communication with customer service representatives

(a) All CSRs shall identify themselves to callers immediately following the greeting during each telephone contact with the public. Each CSR, technician or employee of the cable operator in each contact with a subscriber shall state the estimated cost of the service, repair, or installation prior to delivery of the service or before any work is performed, and shall provide the subscriber with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work is to be performed.

(b) A customer service representative shall have the authority to provide credits, waive fees, schedule service appointments and change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the subscriber within twenty-four hours and attempt to resolve the problem within seventy-two hours or within such other time frame as is acceptable to the subscriber and the cable operator.

31.20.050 In-person communication with subscribers

(a) All officers, agents, and employees of the cable operator or its contractors or subcontractors who are in personal contact with subscribers shall wear on their outer clothing identification cards bearing their name and photograph. The cable operator shall make all reasonable efforts to account for all identification cards at all times.

(b) Every vehicle of the cable operator shall be visually identified to the public as working for the cable operator. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor or subcontractor, and shall be further identified as contracting or subcontracting for the cable operator.

31.20.060 Internet presence

A cable operator shall maintain an Internet web presence. Except for normal and regularly scheduled maintenance, the web site shall be available twenty-four hours and seven days a week under normal operating conditions. The following services shall be available on the web site: the ability to sign up for and/or disconnect service; and receive responses to other subscriber inquiries and requests.

31.20.070 Customer contract

The cable operator shall not enter into a contract with any subscriber that is in any way inconsistent with the terms of these customer service standards or the cable operator's franchise with the city.

Chapter 31.24
BILLING

Sections:

- 31.24.010 General standards
- 31.24.020 Refunds
- 31.24.030 Credits
- 31.24.040 Payment information; late fees
- 31.24.050 Deposits
- 31.24.060 Billing inquiries

31.24.010 General standards

- (a) Bills shall be clear, concise, and understandable.
- (b) Bills shall fully itemize cable services, equipment, and any other items for which a cable operator charges a subscriber, including basic and premium service charges and equipment charges.
- (c) Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
- (d) The first billing statement after a new installation or service change will be prorated as appropriate and will reflect any deposit.

31.24.020 Refunds

Refund checks to subscribers shall be issued promptly, but no later than:

- (a) The earlier of the subscriber's next available billing cycle or 30 days following resolution of the refund request; or
- (b) The return of all equipment supplied by the cable operator if cable service is terminated.

31.24.030 Credits

- (a) Credits for cable service shall be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.
- (b) The account of any subscriber shall be credited a prorated share of the monthly charge for cable service, upon the reasonably prompt request of a subscriber, or without a subscriber's request if the cable operator is aware of an outage and can identify the affected subscribers, if the subscriber is without cable service for a period that exceeds 12 hours during any 24-hour period, or cable service is substantially impaired for any reason for a period that exceeds 12 hours during any 24-hour period.
- (c) The provisions of the preceding paragraph 31.24.030(b) do not apply if it can be documented that a subscriber seeks a refund for an outage or impairment that the subscriber caused, or a planned outage occurred between the hours of 12:00 midnight and 6:00 a.m. and the subscriber had prior notice.

31.24.040 Payment information; late fees

(a) A cable operator's billing statement shall show a specific payment due date not earlier than the midpoint of the period for which the cable service being billed is rendered, *e.g.*, the fifteenth day of a 30-day billing cycle.

(b) If a balance due is not received by thirty days after the end of the period for which the cable service being billed is rendered, the cable operator may assess a late fee in accordance with state and local law and judicial decisions.

(c) Any late fee shall appear on the following month's billing statement.

(d) A subscriber may not be charged a late fee or otherwise penalized for any failure by a cable operator, including a failure to timely or correctly bill the subscriber or a failure to properly credit the subscriber for a payment timely made.

31.24.050 Deposits

(a) A cable operator may require a reasonable, non-discriminatory deposit on equipment provided to subscribers, in addition to any allowable monthly rental fees.

(b) A subscriber deposit shall bear interest in accordance with applicable law or at the going rate, which may not be less than the interest rate then chargeable for unpaid federal income taxes (26 U.S.C. § 6621). All deposits, with interest, shall be returned to the subscriber within 30 days after return of the equipment.

31.24.060 Billing inquiries

If a subscriber requests a written response to a written billing inquiry, the cable operator shall respond in writing (in hardcopy if the subscriber so requests it or if the subscriber's request is in hardcopy) within 30 days of receipt.

Chapter 31.28
DISCONNECTION AND RECONNECTION

Sections:

31.28.010 Termination of cable service by subscriber

31.28.020 Cable operator duties

31.28.030 Return of equipment

31.28.040 Disconnection of cable service by operator

31.28.050 Reconnection of cable service

31.28.010 Termination of cable service by subscriber

(a) A subscriber may terminate or downgrade cable service at any time.

(b) Except as federal law may otherwise require, there will be no charge for disconnection. Any downgrade charges will conform to applicable law.

31.28.020 Cable operator duties

A cable operator will disconnect or downgrade any cable service for a subscriber who so requests within seven business days. No period of

notice before voluntary termination or downgrade of service may be required of subscribers by the cable operator, and the subscriber shall not be required to pay for the time which elapses from notification to actual disconnection.

31.28.030 Return of equipment

(a) A subscriber may be asked, but not required, to disconnect a cable operator's equipment and return it to the business office.

(b) If a cable operator fails to remove its property from a subscriber's premises within 60 days of the termination of cable service, the property shall be deemed abandoned unless the subscriber is responsible for the cable operator's failure to remove the property.

31.28.040 Disconnection of cable service by operator

(a) If a subscriber fails to pay a monthly subscriber fee or other fee or charge, a cable operator may disconnect the subscriber's cable service. However, the disconnection may not occur until after 35 days from the beginning of the period for which the cable service being billed is rendered, plus at least 10 days' advance hardcopy written notice to the subscriber of the intent to disconnect, given after the 35 days have elapsed. However, if the subscriber pays all amounts due, including any late charges, before the date scheduled for disconnection, the cable operator may not disconnect cable service.

(b) A cable operator may immediately disconnect a subscriber if the subscriber is damaging or destroying the cable operator's cable system or equipment. After disconnection, the cable operator shall restore cable service if the subscriber provides adequate assurance that the subscriber has ceased the practices that led to disconnection and paid all proper fees and charges, including any reconnect fees and amounts owed the cable operator for damage to its cable system or equipment.

(c) A cable operator may disconnect a subscriber who causes signal leakage in excess of federal limits. Disconnection may be effected either:

(1) After five days' hardcopy written notice to the subscriber, if the subscriber fails to take steps to correct the problem; or

(2) Without notice if signal leakage is detected originating from the subscriber's premises in excess of federal limits, provided that the cable operator shall immediately notify the subscriber of the problem and, once the problem is corrected, reconnect the subscriber.

31.28.050 Reconnection of cable service

(a) A cable operator shall reconnect cable service to a subscriber who wishes to have the subscriber's cable service restored if the subscriber first satisfies any previously owed obligations.

(b) The cable operator shall complete such reconnection within forty-eight hours.

Chapter 31.32
CHANGES IN CABLE SERVICE

Sections:

- 31.32.010 Notice of change of service
- 31.32.020 Charges for authorized cable services only
- 31.32.030 Requirement to purchase cable service other than basic service

31.32.010 Notice of change of service

When a cable operator substantially alters the cable service it provides to a class of subscribers, the cable operator shall provide each subscriber notice as required in Section 31.20.030, explain the substance and full effect of the alteration, and provide the subscriber with the right to choose to receive any combination of cable services offered by the cable operator.

31.32.020 Charges for authorized cable services only

A cable operator may not charge for any cable service or product that the subscriber has not affirmatively indicated the subscriber wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

31.32.030 Requirement to Purchase Cable Service Other than Basic Service

Subject to federal law, a cable operator that is not subject to effective competition may not require a subscriber to purchase a cable service other than basic service as a condition of purchasing premium or pay-per-view programming.

Chapter 31.36
PARENTAL CONTROL

Section:

- 31.36.010 Parental control

31.36.010 Parental control

Upon the request of a subscriber, a cable operator shall make available to each subscriber, either for rent or for purchase or both, the option of blocking the video and audio portion of any channel or channels of programming entering the subscriber's home. The control option shall be made available to all subscribers requesting it at the time that cable service is provided or within a reasonable time thereafter.

Chapter 31.40
RIGHTS OF INDIVIDUALS

Sections:

- 31.40.010 Discrimination prohibited
- 31.40.020 Privacy

31.40.010 Discrimination Prohibited

(a) In connection with rates, charges, facilities, rules, regulations and in all of a cable operator's services, programs or activities, and all of a cable operator's hiring and employment in the city, there shall be no discrimination by a cable operator or by a cable operator's employees, agents, contractors, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, creed, national origin, sexual orientation, marital status or the presence of any disability, including sensory, mental or physical handicaps (unless based upon a bona fide occupational qualification). This requirement shall include, but not be limited to, the following practices: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) Cable service shall not be denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

(c) A cable operator shall not violate any applicable federal, state or local law or regulation regarding nondiscrimination.

(d) Nothing in this section shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification would be entitled, or to prevent a cable operator from waiving or modifying connection and/or service charges on a nondiscriminatory basis during promotional campaigns.

31.40.020 Privacy

(a) A cable operator shall at all times protect the privacy rights of all subscribers under all applicable law, including, but not limited to, Section 631 of the Cable Act, 47 U.S.C. § 551.

(b) The cable operator shall not monitor cable television signals to determine the individual viewing patterns or practices of any subscriber without prior hardcopy written consent from that subscriber.

(c) A subscriber's "prior written or electronic consent" for purposes of Section 31.40.020(b) and 47 U.S.C. § 551 shall be obtained by a cable operator pursuant to a separate document with a prominent statement that the subscriber is providing such consent in full knowledge of the provisions of 47 U.S.C. § 551. Such written permission shall be for a limited period of time not to exceed one (1) year, which shall be renewable in writing at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the subscriber, without penalty of any kind, by delivering to the cable operator in writing, by mail or otherwise, the subscriber's decision to revoke the authorization. Any revocation shall be effective upon receipt by the cable operator.

(d) A subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A subscriber shall be provided reasonable opportunity to correct any error in such information.

Chapter 31.44
ANTI-COMPETITIVE ACTIONS

Sections:

31.44.010 Anti-competitive actions

31.44.010 Anti-competitive actions

A cable operator may not engage in unlawful acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service within the boundaries of the city.

Chapter 31.48
ENFORCEMENT

Sections:

31.48.010 Verification of compliance

31.48.020 Noncompliance with standards

31.48.030 Enforcement procedures

31.48.010 Verification of compliance

If the city has reason to believe that a cable operator may not be in compliance with the standards established in this title, the city, on reasonable notice, may require the cable operator to demonstrate compliance with the standards required in this title. The cable operator shall provide sufficient detail to permit the City to verify the extent of compliance.

31.48.020 Noncompliance with standards

The cable operator's noncompliance with any provision of these standards may be deemed by the city a franchise violation.

31.48.030 Enforcement procedures

(a) If the city determines that a cable operator has failed to perform any obligation under this title or has failed to perform in a timely manner, the city may make a written demand on the cable operator that it remedy the violation. If the violation is not remedied or in the process of being remedied to the satisfaction of the city within a reasonable time period following the demand, the city may:

(1) issue a civil citation for a civil infraction and impose a penalty not to exceed one thousand dollars (\$1000.00);

(2) assess against the cable operator any monetary damages provided for such violation in its franchise agreement;

(3) assess and withdraw the amounts specified above from the cable operator's performance bond or other applicable security instrument;

(4) revoke the cable operator's cable franchise as provided in its franchise agreement; or

(5) pursue any legal or equitable remedy available under any applicable law or under the cable operator's franchise agreement.

(b) The following penalty amounts shall apply, in place of the amount specified in Section 31.48.030(a)(1), in assessing civil

penalties for customer service standards that are measured on a quarterly basis:

(1) For the first calendar quarter in which a cable operator does not meet the prescribed standard (a "noncompliant quarter"), the cable operator will be subject to a civil penalty in the amount of \$1,500.

(2) For a second consecutive noncompliant quarter, a cable operator shall be subject to a civil penalty in the amount of \$2,000.

(3) For each consecutive noncompliant quarter beyond the second, a cable operator shall be subject to a civil penalty in the amount of \$4,000.

(c) Remedies available to the city for franchise violations under this title and under the franchise agreement shall be construed, except as otherwise provided in this title, as cumulative and not alternative.

(d) If civil penalties are assessed against a cable operator under this section, the cable operator is not subject to liquidated damages payable to the city for the same violation. If liquidated damages payable to city are assessed against a cable operator, the cable operator is not subject to civil penalties under this section for the same violation. If the city seeks actual damages for any violation, any civil penalties or liquidated damages recovered by the city for the same violation, including civil penalties or liquidated damages for partial time periods included in a longer time period for which actual damages are sought, shall be offset against any actual damages recovered by the city.

(e) A cable operator shall pay civil penalties or liquidated damages within 30 days after receipt of notice from the city.

(f) The filing of an appeal to any regulatory body or court does not stay or release the obligations of a cable operator under the franchise agreement and applicable law.

(g) An assessment of liquidated damages or civil penalties does not constitute a waiver by the city or the franchisors of any other right or remedy they may have under the franchise or applicable law, including the right to recover from the cable operator any additional damages, losses, costs, and expenses, including actual attorney fees, that were incurred by the franchisors or the city by reason of or arising out of the violation. However, the city's election of liquidated damages under the franchise agreement shall take the place of any right to obtain actual damages over and above the payment of any amounts otherwise due. This provision may not be construed to prevent the city from electing to seek actual damages for a continuing violation if it has imposed civil penalties or liquidated damages for an earlier partial time period for the same violation, subject to the offset specified in subsection (d) of this section.

Chapter 31.52
MISCELLANEOUS PROVISIONS

Sections:

31.52.010 Services for customers with disabilities

31.52.020 Notice/work

31.52.030 Captions
 31.52.040 Severability
 31.52.050 Costs

31.52.010 Services for customers with disabilities

(a) For any subscriber with a disability or who is otherwise mobility-impaired the cable operator shall at no charge deliver and pick up converters and other cable operator equipment at the subscriber's home. In the case of a malfunctioning converter or such other equipment, the technician shall provide another converter or such other equipment, hook it up and ensure that it is working properly, and shall return the defective converter or such other equipment to the cable operator.

(b) A cable operator shall work cooperatively with any services that allow hearing-impaired subscribers to contact the cable operator by telephone.

31.52.020 Notice/work

Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the cable operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed. In the case of an emergency, however, the cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property. Any work on private property shall be conducted in accordance with an agreement between the cable operator and the property owner. If damage is caused by any cable operator activity, the cable operator shall reimburse the property owner one hundred percent of the cost of the damage or replace or repair the damaged property to as good a condition as before the cable operator's activity commenced. Affected property owners shall be notified in advance of major construction or installation projects in adjacent rights-of-way.

31.52.030 Captions

The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of this title.

31.52.040 Severability

If any section, subsection, sentence, clause, phrase or portion of this title is for any reason held invalid or unenforceable by any court or agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

31.52.050 Costs

Except where otherwise expressly stated herein, all costs incurred by a cable operator in connection with any provision of this title shall be borne by the cable operator.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the

ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____, 2009.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4207

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE
CONSUMER PROTECTION WITHIN THE CITY OF KIRKLAND.

SECTION 1. Adopts a new Title 31 of the Kirkland Municipal
Code relating to cable consumer protection within the City of Kirkland.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by
summary, which summary is approved by the City Council pursuant to
Section 1.08.017 Kirkland Municipal Code and establishes the effective
date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to
any person upon request made to the City Clerk for the City of
Kirkland. The Ordinance was passed by the Kirkland City Council at its
meeting on the _____ day of _____, 2009.

I certify that the foregoing is a summary of Ordinance
_____ approved by the Kirkland City Council for summary
publication.

City Clerk