0148-ORD
03/25/98

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5061

AN ORDINANCE relating to telecommunications carriers and providers; adding a new Title 6 to the Bellevue City Code; adopting Chapter 6.02 relating to general provisions for telecommunications carriers and providers; adopting Chapter 6.04 relating to agreements for the right to use City rights-of-way by telecommunications carriers and providers; and establishing an effective date.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Title 6 Telecommunications is added to the Bellevue City Code to be comprised of Chapters 6.02 and 6.04, as adopted pursuant to Sections 2 and 3 of this ordinance respectively, and such other chapters as may hereafter be added to Title 6.

Section 2. A new Chapter 6.02 Telecommunications General Provisions is added to Title 6 of the Bellevue City Code to read as follows:

CHAPTER 6.02

TELECOMMUNICATIONS GENERAL PROVISIONS

Sections	6.02.010	Purpose.
	6.02.020	Definitions.
	6.02.030	Telecommunications Right-of-Way Use Agreement Required -- Chapter 14.20 Not Applicable.
	6.02.040	Lease of City Property.
	6.02.050	Right-of-Way Use Permit Required.
	6.02.060	Application to Existing Authorizations -- No Obligations Created.
	6.02.070	Civil Penalties and Additional Relief.
	6.02.080	Title 6 Not a Limitation of Remedies.
	6.02.090	Fees and Compensation Not a Tax.

Section 6.02.010 Purpose. The purpose and intent of this Title 6 is to:

A. Implement the City's Telecommunications' Policy concerning use of City rights-of-way and City property by telecommunications carriers and providers;

B. Establish clear guidelines, standards and time frames with respect to the use of City rights-of-way by telecommunications carriers and providers;

C. Promote competition in the provision of telecommunications services;

D. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, public institutions and residents of the City;

E. Permit and manage reasonable access to City rights-of-way for telecommunications purposes on a competitively neutral basis consistent with federal and state requirements;

F. Provide for the management of the limited physical capacity of City rights-of-way;

G. Assure that the City's current and ongoing costs of allowing the presence of telecommunications facilities in City rights-of-way are reimbursed to the full extent permitted by state and federal law;

H. Assure that all telecommunications companies comply with applicable City ordinances, rules and regulations;

I. Assure 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;

K. Work cooperatively with telecommunications companies to encourage the co-location of telecommunication facilities wherever and whenever practical; and

L. Work cooperatively with telecommunications companies to coordinate and consolidate construction activities so as to minimize the number and frequency of disturbances to City streets.

Section 6.02.020 Definitions. For the purpose of Title 6, and the administration and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used indicates otherwise:

A. "Affiliate" means a person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person;

B. *"Applicant"* means any person or entity that applies for any right-of-way use authorization pursuant to this Title 6;

C. "*Authorization*" or "*Right-of-Way Use Authorization*" means a Telecommunications Right-of-Way Use Agreement and/or a Telecommunications Facilities Lease Agreement, as the case may be.

D. *"City"* means the City of Bellevue, Washington;

E. *"City property"* means and includes all real property or interests therein owned by the City, other than City rights-of-way as that term is defined herein;

F. *"Council"* means the City Council of the City of Bellevue, Washington acting in its official capacity;

G. *"Emergency"* means a condition of imminent danger to the health, safety, and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural or man-made causes, such as storms, earthquakes, riots or wars;

H. *"Excess capacity"* means the volume or capacity in any existing or future duct, conduit, fiber optic cable, manhole, handhole or other telecommunication facility within the right-of-way that is or may be made available for use for additional telecommunications facilities;

I. *"FCC"* or *"Federal Communications Commission"* means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers;

J. *"Fiber Optics"* means the technology of using optical fiber to guide and project light for use as a communications medium;

K. *"Operator"* means the person, firm or corporation to whom a Right-of-Way Use Agreement is granted pursuant to the provisions of this Title 6;

L. *"Overhead facilities"* means poles and other facilities located above the surface of the ground, including the underground supports and foundations for such facilities;

M. *"Person"* means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals, and includes their lessors, trustees and receivers;

N. *"Property of a Telecommunications carrier or provider"* means all property owned, leased, controlled, installed or otherwise used by a Telecommunications carrier or provider in the conduct of its business in the City under the authority of a Right-of-Way Use Agreement granted pursuant to this Title 6;

O. *"Public street"* means any highway, street, road, alley or other public way for motor vehicle travel within the City and under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to street purposes;

P. "Right(s)-of-Way" means all public streets and associated property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including any air rights, subsurface rights or easements related thereto;

Q. *"State"* means the State of Washington Utilities and Transportation Commission unless otherwise indicated;

R. *"Telecommunications carrier"* means and includes every person that directly or indirectly owns, controls, operates or manages telecommunication facilities within the City, used or to be used for the purpose of offering and providing telecommunications service;

S. *"Telecommunications facilities"* means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, poles, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services;

T. "*Telecommunications Facilities Lease Agreement*" means a written lease agreement issued pursuant to Title 6 to use specified City property for telecommunications facilities subject to certain conditions;

U. "Telecommunications provider" means and includes every person who provides telecommunications services over or by means of telecommunications facilities without having any ownership or management control of such facilities;

V. "Telecommunications Right-of-Way Use Agreement" means a written agreement between the City and a telecommunications carrier or provider, approved pursuant to Title 6, to allow the use and occupation of specified City rights-of-way for the purpose of providing telecommunications services.;

W. *"Telecommunications service"* means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium;

X. *"Telecommunications system"* See *"Telecommunications facilities"*;

Y. *"Title"* or *"this Title"* means Title 6 of the Bellevue City Code and all chapters inclusive therein;

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

Section 6.02.030 Telecommunications Right-of-Way Use Agreement Required -- Chapter 14.20 Not Applicable. Except as otherwise provided herein, any telecommunications carrier or provider who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any City right-of-way for the purpose of providing telecommunications services shall first obtain authorization in the form of a Telecommunications Right-of-Way Use Agreement permitting the use of such rights-of-way consistent with the requirements and conditions of such Agreement. The provisions of Chapter 14.20 of the Bellevue City Code shall not be applicable to any telecommunications carrier or provider who is required to obtain a Telecommunications Right-of-Way Use Agreement pursuant to this Title 6.

Section 6.02.040 Lease of City Property. No telecommunications carrier, provider, or other entity who desires to locate telecommunication facilities or other equipment on City property shall locate such facilities or equipment on City property unless granted a Telecommunications Facilities Lease Agreement by the City. The City Council reserves unto itself the sole discretion to lease City property for telecommunications use, and no vested or other right to use City property shall be created by this Section or any provision of this Title.

Section 6.02.050 Right-of-Way Use Permit Required. Except as otherwise provided herein, the holder of a Telecommunications Right-of-Way Use Agreement or Telecommunications Facilities Lease Agreement, shall be required to obtain a Right-of-Way Use Permit from the City pursuant to Chapter 14.30 of the Bellevue City Code. No work, construction, development, excavation, or installation of any equipment or facilities shall take place within City rights-of-way until such time as the Right-of-Way Use Permit is issued.

Section 6.02.060 Application to Existing Authorizations -- No Obligations Created.

A. This Chapter shall have no effect on any existing franchise agreement, right-of-way use agreement, lease, permit, or other authorization to use or occupy City rights-of-way until:

1. The expiration of said franchise agreement, right-of-way use agreement, lease, permit, or other authorization; or

2. The amendment of an unexpired franchise agreement, right-of-way use agreement, lease, permit, or other authorization to use or occupy City right-of-way, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

B. Nothing in Title 6 shall be deemed to impose or create an obligation upon any person(s) which the City is precluded by federal, state, or other law from imposing or requiring.

Section 6.02.070 Civil Penalties and Additional Relief.

A. Civil Penalties and Costs of Restoration.

1. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the provisions of Title 6 shall be subject to a civil penalty in the manner and to the extent provided for in Chapter 1.18 of the Bellevue City Code. A monetary penalty in an amount not less than $100.00 nor more than $1,000.00 per day for each day of violation may be assessed and abatement required as provided therein.

2. In addition to any penalty which may be imposed by the City, any person violating or failing to comply with any of the provisions of Title 6 shall be liable for any and all damage to City property or rights-of-way arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

B. Additional Relief. Notwithstanding any other provision in Title 6, the City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of Title 6 when civil or criminal penalties are inadequate to effect compliance. In addition to the penalties set forth in this Section, violation of any provision of Title 6 may also result in the revocation of any right-of-way use agreement, right-of-way use permit, facilities lease, or other authorization.

Section 6.02.080 Title 6 Not a Limitation of Remedies. Nothing in Title 6 shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of Title 6.

Section 6.02.090 Fees and Compensation Not a Tax. Any fees, charges or civil penalties provided for in Title 6 or imposed by a Right-of-Way Use Agreement issued pursuant to this Title 6 and any reimbursement or other compensation required herein, whether fiduciary or in-kind, are separate from, and in addition to, any and all federal, state, local, and City taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of telecommunications services.

Section 3. A new Chapter 6.04 Telecommunications Right-of-Way Use Agreement is added to Title 6 of the Bellevue City Code to read as follows:

CHAPTER 6.04

TELECOMMUNICATIONS RIGHT-OF-WAY USE AGREEMENT

Sections 6.04.010 Telecommunications Right-of-Way Use Agreement.
6.04.020 Application.
6.04.030 Director's Recommendation.
6.04.040 Review by City Council.
6.04.050 Written Agreement/No Construction Until Issued.
6.04.060 Nonexclusive Authorization.
6.04.070 Extent of Authorization.
6.04.080 Term of Agreement.
6.04.090 Authorization to Use Additional Rights-of-Way.
6.04.100 Renewal of Agreement.
6.04.110 Renewal Factors.
6.04.120 Obligation to Cure as a Condition of Renewal.
6.04.130 Amendment of Agreement.
6.04.140 Recovery of City Costs.

Section 6.04.010 Telecommunications Right-of-Way Use Agreement. A Telecommunications Right-of-Way Use Agreement shall be required of any telecommunications carrier or provider who desires to occupy or otherwise use City rights-of-way for the purpose of providing telecommunications services.

Section 6.04.020 Application. Any person that desires to obtain a Telecommunications Right-of-Way Use Agreement shall file an application with the Director of Transportation, or other person designated by the City Manager. Such application shall include the following information, unless expressly waived by the City:

A. The identity of the applicant, including all affiliates of the applicant;

B. A description of the telecommunications services that are or will be offered or provided by the applicant over and through its telecommunications facilities;

C. A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services;

D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, all in sufficient detail to identify:

(1) The proposed location and route requested for applicant's telecommunications facilities;

(2) The location of all existing overhead and underground public utilities, telecommunication facilities, cable, water, sewer, drainage and other facilities in the right-of-way along the proposed route;

(3) The location(s), if any, of interconnections with the telecommunications facilities of other telecommunications providers and carriers; and

(4) The specific structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

E. If applicant is proposing an underground installation in existing ducts or conduits within the right-of-way, information in sufficient detail to identify:

(1) The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;

(2) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities; and

(3) Evidence of ownership or a right to use such ducts or conduits.

F. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the right-of-way:

(1) The location proposed for the new ducts or conduits; and

(2) The excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

G. A preliminary construction schedule and completion date;

H. Upon request from the City, financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove its telecommunication facilities;

I. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application;

J. Information to establish that the applicant has obtained all other governmental approvals and permits necessary to construct and operate the telecommunications facilities, and to offer or provide the telecommunications services, including but not limited to necessary approvals and/or licenses from the Washington Utilities and Transportation Commission; and

K. Any other information the City Manager or his designee determines would be relevant in considering the application.

Section 6.04.030 Director's Recommendation. Within 120 days after receiving a complete application under Section 6.04.020, the Transportation Director, or other person designated by the City Manager, shall issue a written recommendation to the City Council recommending that such application be: approved; approved with conditions; or denied. The Director's recommendation shall be based upon review and consideration of the following factors:

A. The financial and technical ability of the applicant;

B. The legal capability/rights of the applicant including but not limited to whether the applicant has received necessary authorization and/or licenses from the Washington Utilities and Transportation Commission;

C. The capacity of the rights-of-way to accommodate the applicant's proposed facilities;

D. The capacity of the rights-of-way to accommodate additional utility, cable, and telecommunications facilities if the authorization is granted;

E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the authorization is granted;

F. The public interest in minimizing the cost and disruption to the City, its residents and businesses caused by the proposed construction within the rights-of-way;

G. The services that applicant will provide to the community and region;

H. The effect, if any, on the public health, safety and welfare if the authorization is granted;

I. The availability of alternate routes and/or locations for the proposed facilities;

J. Consideration of applicable federal and state telecommunications laws, regulations (including but not limited to WUTC rules and regulations) and policies; and

K. Such other factors as may be relevant in considering whether approval of the authorization to use City right-of-way will serve the community interest.

Section 6.04.040 Review by City Council.

The City Council shall, after considering the Director's recommendation and all other materials submitted to the Council, determine based on the criteria set forth in Section 6.04.030 whether to: approve the application; approve the application with conditions; deny the application; or direct staff to bring back further information for the Council's consideration.

The City Council may adopt written procedures to assist the Council in its consideration of such applications.

Section 6.04.050 Written Agreement/No Construction Until Issued. No authorization shall be deemed to have been approved or granted hereunder until the applicant and the City have executed a written Right-of-Way Use Agreement consistent with the Council's authorization and no construction may begin without the issuance by the City of a Right-of-Way Use Permit.

Section 6.04.060 Nonexclusive Authorization. No authorization granted under this Chapter shall confer any exclusive right, privilege, license or franchise to occupy or use City rights-of-way for telecommunications purposes or any other purpose.

Section 6.04.070 Extent of Authorization. No authorization granted under this Chapter shall convey any right, title or interest in City right-of-way, but shall be deemed an authorization only to use and occupy those rights-of-way specifically

enumerated in the authorization for the limited purposes and for the term stated in the authorization. No authorization shall be construed as a warranty of title.

Section 6.04.080 Term of Agreement. Unless otherwise specifically authorized by the City Council, no Telecommunications Right-of-Way Use Agreement authorized hereunder shall remain in effect for a term of more than five (5) years, subject to renewal pursuant to Section 6.04.100. Nothing herein shall prohibit a holder of a Right-of-Way Use Agreement from filing a new application for a Telecommunications Right-of-Way Use Agreement after the termination of the existing agreement.

Section 6.04.090 Authorization to Use Additional Rights-of-Way. Any telecommunications carrier or provider who desires to extend or locate its telecommunications facilities in City rights-of-way which are in addition to those rights-of-way specified in an existing Right-of-Way Use Agreement may file a request with the Transportation Director, or other person designated by the City Manager, to authorize the use by such carrier or provider of additional specified City rights-of-way.

The Director shall review the request based on consideration of the factors set forth in Section 6.04.030 and may approve the request, approve the request with conditions, or deny the request. In the event the Director approves the request, the list of specified City rights-of-way in the Right-of-Way Use Agreement shall be amended accordingly without further action of the City Council. In the event that the Director denies the request, such telecommunications carrier or provider shall have no right of review by the City Council but shall not be precluded from filing a new application for a Right-of-Way Use Agreement consistent with the provisions of this Chapter 6.04.

Section 6.04.100 Renewal of Telecommunications Right-of-Way Use Agreement. Any person who desires to renew its authorization under a Telecommunications Right-of-Way Use Agreement for an additional five year term shall, not more than 180 days nor less than 90 days before expiration of the initial five year term, file a renewal application with the Transportation Director, or other person designated by the City Manager, which shall include the following:

A. The information required by Section 6.04.020;

B. Any information required by the existing Right-of-Way Use Agreement between the City and the applicant;

Section 6.04.110 Renewal Factors. Within 90 days after receiving a complete application for a five year renewal of a Telecommunications Right-of-Way Use Agreement pursuant to Section 6.04.100, the Transportation Director, or other person designated by the City Manager, shall issue a written determination

approving, approving with conditions, or denying the renewal application. If the renewal application is denied, the written determination shall include the reason(s) for denial. The decision to approve or deny a renewal application shall be based on consideration of the factors set forth in Section 6.04.030 as well as the following factors:

A. The continuing capacity of the rights-of-way to accommodate the applicant's existing facilities; and

B. The applicant's compliance with the requirements of Title 6 and the Right-of-Way Use Agreement as well as any other applicable City codes and requirements.

Section 6.04.120 Obligation to Cure as a Condition of Renewal. No Right-of-Way Use Agreement shall be renewed until any ongoing violations or defaults in the holder's performance under the Agreement, or of any requirements of Title 6, have been cured, or a plan detailing the corrective action to be taken by the holder has been approved by the City.

Section 6.04.130 Amendment of Agreement. Nothing contained herein shall prohibit or limit the City and the holder of a Telecommunications Right-of-Way Use Agreement from modifying the terms and conditions of such authorization by mutual agreement. The City Manager, or his designee, shall be authorized to execute such amendment.

Section 6.04.140 Recovery of City Costs.

A. Application processing costs. All holders of a Right-of-Way Use Agreement shall, within 30 days after receipt of written notice itemizing City costs, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with the issuance of any Right-of-Way Use Agreement or any amendment or renewal thereof.

B. Emergency cost reimbursement. All holders of a Right-of-Way Use Agreement shall, within 30 days after written demand by the City, reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving or in any way related to the presence of the holder's telecommunications facilities in City rights-of-way.

C. Other cost reimbursement. All holders of a Right-of-Way Use Agreement shall, within thirty (30) days after written demand by the City, reimburse the City for the holder's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility

as a result of the construction or the presence in the right-of-way of the holder's telecommunications facilities.

Section 4. This ordinance shall take effect and be in force thirty days after its passage.

PASSED by the City Council this 30th day of March, 1998, and signed in authentication of its passage this 30th day of March, 1998.

(SEAL)

Mike Creighton, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Richard L. Kirkby, Assistant City Attorney

Attest:

Myrna L. Basich, City Clerk

Published April 3, 1998