

Chapter 6.02 GENERAL PROVISIONS

Sections:

6.02.005 Authority.

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 not a limitation of remedies.

6.02.090 Fees and compensation not a tax.

6.02.005 Authority.

The City derives the authority for this article from [Chapter 35.99 of the Revised Code of Washington](#). This Chapter, and any rules, regulations, specifications and agreements adopted pursuant to this Chapter, comply with all applicable federal and state laws.

6.02.010 Purpose.

The purpose and intent of this title 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;

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- 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 telecommunications 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.

6.02.015 Applicability

The location and siting of telecommunication facilities that make use of city rights-of-way and city property shall comply with the terms of this Title.

A. Small Wireless Facilities (SWF) co-located on City Poles and Utility Poles within City rights-of-way shall be exclusively regulated pursuant to the terms of this Title.

B. Wireless Communication Facilities (WCF) shall be regulated pursuant to the terms of this Title and applicable provisions of the Land Use Code contained in Title 20 of the Bellevue City Code (BCC).

6.02.020 Definitions.

For the purpose of this title, 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.—“Addendum” means the document in a form approved by the City that, when fully executed by both parties, is subject and subordinate to the provisions of a Right-of-Way Use Agreement or Master License Agreement and authorizes the Company to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace specific Small Wireless Facility components in the rights-of-way and on city poles in the rights-of-way;

“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;

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;

“City Facilities” means collectively city poles and portions of the right-of-way required for Ground-Based SWF Equipment, which support Small Wireless Facility components. “City Facility(ies)” may refer to such facilities in the singular or plural, or replacement facilities that are not city poles, as appropriate to the context in which used;

“City Poles” means City-owned or controlled streetlights or other poles located within the ROW. In no event shall “City Poles” include poles located at signalized intersections or which include or contain traffic signal system operation and control equipment;

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;

“Co-location” means the attachment of telecommunication facilities to city poles or utility poles located within the right-of-way;

F.—“Council” means the city council of the city of Bellevue, Washington acting in its official capacity;

“Design Standards” means the aesthetic, placement and safety standards applicable to SWF components deployed in the ROW contained in Chapter 6.08 of the Code;

“Eligible Facilities Request” shall have the meaning as set forth in 47 C.F.R. Section 1.40001(b)(3), or any successor provision;

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 manmade 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 telecommunications 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;

“Ground-based” means utility and telecommunications facilities located on the surface of the ground with some or all of the facility located above grade;

“Master License Agreement” means the agreement for the installation of SWFs on City Poles (or replacement poles) and related Ground-Based SWF Equipment, in the form approved by the Bellevue City Council and as may be amended, and fully executed by the City and a provider of telecommunications services;

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;

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;

“Personal Wireless Service” shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i);

“Pre-approved Design” means a deployment of antenna(s) and equipment that the City has determined through the Optional Pre-Approved Design Process is equivalent or less intrusive than strict application of the Design Standards;

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;

Q.—“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;

“Purpose-built Pole” means any structure built for the sole or primary purpose of supporting a SWF. This definition does not include city poles or utility poles;

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;

“Small Wireless Facility (SWF)” shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

(1) The facility—

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or

(iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b);

“SWF Antenna” is a component of the SWF that refers collectively to the rod, panel, disc, or similar device, together with the mounting hardware that attaches the antenna to the pole, that provides data/telecommunications services per the BCC including 6.02.020 and 6.04.010;

“SWF Equipment” is a component of the SWF that refers collectively to all cabinets, utilities, fiber optic cables, wires, power, radio and other mechanical and technical equipment associated with an antenna together with any shroud, cabinet or vault in which the equipment is contained, but does not include the SWF antenna itself or the pole to which it is attached;

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 telecommunications 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 this title 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 (RUA)” means a written agreement between the city and a telecommunications carrier or provider, approved pursuant to this title, 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 BCC Title 6 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;

“Undergrounded Area” means those areas where there are no existing electrical facilities in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by a permitted Franchise Electric utility in accordance with BCC 14.20 and do not include transmission facilities;

“Unified Enclosure” means a pole-mounted portion of a SWF providing concealment of both antenna(s) and equipment within a single enclosure;

“Utility Pole” means a structure in the right-of-way designed to support electric, telephone, data, telecommunications, cable services and similar utility lines. A purpose-built pole or a city pole is not a utility pole;

“Wireless Communication Facility” (WCF) means an unstaffed facility (that does not otherwise meet the definitions of a SWF) for the transmission and/or reception of wireless communications services, usually consisting of, but not limited to, an antenna array, transmission cables, equipment, an equipment housing structure, and a support structure used to achieve the necessary elevation as the term WCF is now defined in the Land Use Code or therein after amended.

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 BCC 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.

6.02.040 Lease of city property.

No telecommunications carrier, provider, or other entity who desires to locate telecommunications facilities or other equipment on city property shall locate such facilities or equipment on city property unless granted a telecommunications facilities lease [or similar](#) 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.

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 BCC. 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.

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 this title 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.

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 this title shall be subject to a civil penalty in the manner and to the extent provided for in Chapter 1.18 BCC. A monetary penalty in an amount not less than \$100.00 nor more than \$1,000 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 this title 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 this title, 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 this title 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 this title may also result in the revocation of any right-of-way use agreement, right-of-way use permit, facilities lease, or other authorization.

6.02.080 Title not a limitation of remedies.

Nothing in this title shall be construed as limiting any remedies that the city may have, at law or in equity, for enforcement of this title.

6.02.090 Fees and compensation not a tax.

Any fees, charges or civil penalties provided for in this title or imposed by a right-of-way use agreement issued pursuant to this title 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.

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