

TITLE 11

RIGHT-OF-WAY USE

CHAPTER 11.04

GENERAL PROVISIONS

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11.04.010 Short Title

Chapter 11 is known as and may be referred to as the “right-of-way use code.”

(Ord. 1995 §1 (part), 2002)

11.04.020 Purpose

The purpose of this title is to regulate the use of the public right-of-way in the interest of public health, safety, welfare and convenience, and the operation and protection of public work infrastructure.

(Ord. 1995 §1 (part), 2002)

11.04.030 Territorial Application

TMC Title 11 and the procedures adopted hereunder shall be in effect throughout the City of Tukwila.

(Ord. 1995 §1 (part), 2002)

11.04.040 Definitions

As used in this title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this chapter shall have the indicated meanings.

1. *“Abutting Property”* means all property having a frontage upon the sides or margins of any public right-of-way.

2. *“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.

3. *“Applicant”* shall mean any owner or developer, or duly authorized agent of such owner or developer, who has submitted an application for a permit under this title.

4. *“Assessment Reimbursement Area”* means all real properties that will benefit from the street and/or utility system improvements.

5. *“Banner”* means a sign consisting of fabric and containing a public service message or event announcement which is hung above or across a public right-of-way.

6. *“Business Registration”* means a requirement of all telecommunications and cable providers who are not otherwise required to license or franchise with the City.

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

8. *“Cable Facilities”* – see *“Facilities.”*

9. *“Cable Operator”* shall have the same meaning as defined in the Cable Acts.

10. *“Cable Service”* shall have the same meaning as defined in the Cable Acts.

11. *“Campus”* means a development site under a single public or private ownership, upon which a structure or structures exist. By way of illustration and not limitation, a campus includes a public or private school, a multifamily development, a retirement housing facility, a nursing home facility, a continuing care retirement community, a boarding home, a hospital, a recreational facility, a business park, and a shopping center.

12. *“City”* means the City of Tukwila, Washington, in King County, and all the territory within the corporate boundaries of Tukwila, as these may change from time to time.

13. *“City Council”* means the City of Tukwila Council acting in its official capacity.

14. *“Curb”* means a cement, concrete or asphaltic concrete raised structure designed to delineate the edge of the street and to separate the vehicular area of the public right-of-way from the area provided for pedestrians.

15. *“Department”* means the City of Tukwila Public Works Department.

16. *“Deposit”* shall mean any bond, cash deposit, or other security provided by the applicant in accordance with TMC Section 11.08.110.

17. *“Developer”* means the owner and/or building permit applicant who is required – by any ordinance of the City, as the result of the review under State Environmental Policy Act, or in connection with any decision of the City Council – to construct street system and/or utility system improvements which abut the development site.

18. *“Development”* means a private improvement to real property requiring electrical and/or communication services including, but not limited to, such services being distributed to subdivisions, short plats, planned unit developments, or single-family or commercial building sites.

19. *“Development Site”* means the lot or lots upon which real property improvements are proposed to be constructed.

20. *“Director”* means the Director of the Public Works Department or designee.

21. *“Electrical or Communication Systems”* means facilities carrying electrical energy, including but not limited to, electric power, telephone, telegraph, telecommunication, fiber optics, and cable television services.

22. *“Emergency”* shall mean any unforeseen circumstances or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility or public services.

23. *“Excavation”* shall mean any work in the surface or subsurface of the public right-of-way, including, but not limited to, opening the public right-of-way for installing, servicing, repairing, or modifying any facility or facilities in or under the surface or subsurface of the public right-of-way.

24. *“Excess Capacity”* means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the right-of-way that is or will be available for use for additional telecommunications or cable facilities.

25. *“Facilities”* or *“Facility”* means the plant, equipment, and/or property, including, but not limited to, overhead and underground water, gas, electric, and telecommunication facilities and appurtenance such as cables, wires, conduits, transformers, substation, pad-mounted J-boxes, switch cabinets, ducts, pedestals, antennas, electronics, vaults, poles, meter boxes, sewers, pipes, drains, and tunnels.

26. *“FCC”* or *“Federal Communications Commission”* means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and cable operators on a national level.

27. *“Franchise”* is an agreement required with a right-of-way user who desires to construct, install, operate, maintain or otherwise locate facilities in rights-of-way.

28. *“Frontage”* means that portion of the development site abutting public right-of-way; provided, however, in the case of development sites which are not substantially rectangular, such as “pipe-stem” lots, the frontage shall be equal to the greatest linear distance of the lot which is parallel to the public right-of-way. In the case of corner lots, “frontage” means any portion of the development site abutting any public right-of-way.

29. *“Fronting”* means abutting a public right-of-way or public rights-of-way.

30. *“Grantee”* means the holder of a franchise or a right-of-way permit.

31. *“Hazardous Waste”* includes any and all such materials as defined by RCW 70A.384.005 (radioactive wastes) and RCW 70A.300.010(5), (6) and (15) (other hazardous wastes), now or as hereafter amended.

32. *“Installer”* means the person or organizations who actually and physically hangs the banner over the public right-of-way and who has the required skill and equipment to properly and safely hang the banner. The Director will maintain a list of approved installers having the required skill and equipment to properly and safely hang banners.

33. *“Maintain or Maintenance”* means mowing, trimming, pruning (but not including topping or tree removal), edging, root control, cultivation, reseeding, fertilization, spraying, control of pests, insects and rodents by nontoxic methods whenever possible, watering, weed removal, and other actions necessary to assure normal plant growth.

34. *"New Electrical or Communication Service"* means installation of service lines to a building where none existed before, and shall not include overloading, restorations and repairs.

35. *"Nonconforming Paved Street Surface"* means asphaltic concrete or cement concrete street surface that does not conform to the current "City of Tukwila Infrastructure Design and Construction Standards," but that the Director finds to be adequate for projected vehicular traffic.

36. *"Occupant"* means a person who is occupying, controlling or possessing real property, or his or her agent or representative.

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

38. *"Overhead Facilities"* means facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

39. *"Owner"* shall mean any developer or person, including the City, who owns any facility or facilities that are, or are proposed to be, installed or maintained in the public right-of-way.

40. *"Paved Street Surface"* means street surface that is either standard street surface or nonconforming paved street surface.

41. *"Permit"* means a document issued by the City granting permission to engage in an activity that involves the use of the public right-of-way.

42. *"Permittee"* shall mean the applicant to whom a permit to use the public right-of-way has been granted and thereby has agreed to fulfill the requirements of TMC Title 11.

43. *"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, but excludes the City.

44. *"Personal Wireless Services"* means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services as defined by Federal laws and regulations.

45. *"Private Use"* means use of the public right-of-way – other than as a thoroughfare for ordinary transit of vehicles, pedestrians, or equestrians – for the benefit of a particular person or entity.

46. *"Procedure"* means a procedure adopted by the Director to implement this title, or to carry out other responsibilities as may be required by this title or by other codes, ordinances, or resolutions of the City or other agencies as they may apply.

47. *"Real Property Improvements"* means:

- a. Construction of a structure on an unimproved lot;
- b. Additions, alterations, or repairs to an existing structure other than one single-family residence, where square footage is added to the structure, or the construction of accessory buildings; or

c. Construction of an additional structure or structures on a campus.

48. *"Recently Improved Street"* shall mean any street that has been reconstructed or resurfaced by the Department or any other owner or person in the preceding three-year period.

49. *"Reimbursement Agreement"* means contracts authorized by RCW Chapter 35.91, as presently constituted or as may be subsequently amended, for utility system improvements, and may be referred to from time to time in this title as "Latecomer Agreements."

50. *"Replacement Vegetation"* means vegetation of equal species, size, quality and number to that which has been removed.

51. *"Restoration"* means all work including, but not limited to, backfilling, compacting, replacing street pavement, replacing sidewalks, or other public right-of-way to like-new condition in the manner prescribed by the Department's Infrastructure Design and Construction Manual. (See TMC Section 11.08.270 for more details.)

52. *"Right-of-Way"* means all public streets, alleys and property granted, reserved for, or dedicated to public use for streets and alleys, together with all public property granted, reserved for, or dedicated to, public use including, but not limited to, walkways, sidewalks, trails, shoulders, drainage facilities, bike ways and horse trails, whether improved or unimproved, including the air rights, subsurface rights, and easements related thereto, but does not include:

1. State highways;
2. Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;
3. Structures, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or Forest Board trust lands;
5. Lands owned or managed by the Washington State Parks and Recreation Commission; or
6. Federally granted railroad rights-of-way acquired under 43 U.S.C. 912 and related provisions of federal law that are not open for motor vehicle use.

53. *"Right-of-Way User"* means any person with any facility in the right-of-way, including but not limited to, persons who have been granted City approval via franchise or other agreement to be in the right-of-way.

54. *"Service Connection"* means a connection made to a telecommunications facility and/or cable facility for the purpose of providing telecommunications or cable services.

55. *"Service Connections"* are facilities extending from a distribution system and terminating on private property and/or for the specific purpose of servicing one (1) customer.

56. *"Sidewalk"* means that property between the curb and the abutting property, set aside and intended for the primary use of pedestrians, but may include mixed uses such as pedestrians and bicyclists, improved by paving with cement concrete or asphaltic concrete, including all driveways.

57. *“Standard Street Surface”* means street surface that is paved in accordance with the “City of Tukwila Infrastructure Design and Construction Standards.”

58. *“State”* means the State of Washington.

59. *“Stop Work Notice”* means a notice authorized by the Director or his/her designee, posted at the site of an activity that requires all work to be stopped until the City approves continuation of work.

60. *“Street”* means any street, road, boulevard, alley, lane, way or place, or any portion thereof within the City limits.

61. *“Street System Improvements”* include half street section of street pavement (including appropriate sub paving preparation), surface water drainage facilities, sidewalks where required, curbs, gutters, utility undergrounding, street lighting, right-of-way landscaping (including street trees where required), and other similar improvements.

62. *“Street System Improvements”* means such improvements as are defined in TMC Section 11.12.030.

63. *“Street Trees”* means any trees located on any street or public right-of-way.

64. *“Surface Water Drainage Facilities”* means ditches, piped and covered surface water drainage, including catch basins, and such detention, retention, and biofiltration as the Director shall require in accordance with sound engineering principles and the adopted ordinances and policies of the City.

65. *“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.

66. *“Telecommunications Carrier”* for the purposes of this chapter includes every person that directly or indirectly owns, controls, operates or manages plant, equipment, structures, or property within the City, used or to be used for the purpose of offering telecommunication service. Provided, however, this does not include lessees that solely lease bandwidth (and do not own telecommunication facilities within the City of Tukwila).

67. *“Telecommunication Facilities”* – see “Facilities.”

68. *“Telecommunication Service”* means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic or video programming information or service(s) between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

69. *“TMC”* means the Tukwila Municipal Code adopted by the City Council.

70. *“Topping”* means the severe cutting of the top of a street tree resulting in stubs beyond the branch collar in the crown or severe cutting which removes a substantial portion of the normal canopy, disfigures the street tree, and reduces the height.

71. *“Underground Facilities”* means facilities located under the surface of the ground, alone or in combination, direct

buried or in utility tunnels or conduits, excluding the underground foundations or supports for overhead facilities.

72. *“Unpaved Street Surface”* means street surface that is neither standard nor nonconforming paved street surface.

73. *“Unsafe Condition”* means any condition that the Director reasonably determines is a hazard to health, endangers the safe use of the right-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the right-of-way, or may cause damage thereto.

74. *“Utility System Improvements”* means water and/or sewer facilities as specified in RCW 35.91.020 as it now reads, or as hereafter amended.

75. *“Vegetation”* means all trees, plants, shrubs, groundcover, grass, and other vegetation.

76. *“Wire”* means a guided transmission medium, consisting of either one strand or a group of strands insulated together, which are used to power and/or send multiple transmission signals.

77. *“Washington Utilities and Transportation Commission”* or *“WUTC”* means the State administrative agency, or lawful successor, authorized under Title 80 of the Revised Code of Washington to regulate and oversee telecommunications carriers, services and telecommunications providers in the State of Washington to the extent prescribed by law.

(Ord. 2701 §2, 2023; Ord. 1995 §1 (part), 2002)

11.04.050 Powers of Director

The Director shall have the following powers:

1. Prepare and adopt procedures as needed to implement this title and to carry out the responsibilities of the Department. Such procedures do not require approval of the City Council to be implemented; however, the Council may, by motion or resolution, direct that procedures and fees be amended or modified to the satisfaction of the Council.

2. Approve the issuance of any permit applied for under the provisions of this title.

3. Deny the issuance or renewal of any permit applied for, or to revoke, suspend, or otherwise restrict any permit issued under this title.

4. Order the correction or discontinuance of any condition, activity, or use of any right-of-way that violates or is contrary to any provision of this chapter or procedures adopted under this chapter or other applicable codes or standards; or that is being conducted without a right-of-way use permit.

5. Have all powers and remedies available under State law, this title, and procedures adopted under this title for securing the correction or discontinuance of any condition contrary to this title.

6. Prioritize conflicting uses of the rights-of-way, or deny any or all such uses or proposed uses.

7. Administer and coordinate the enforcement of this title and all procedures adopted under this title.

8. Advise the City Council, Mayor, City Administrator, and other City departments on matters relating to applications for use of rights-of-way.

9. Carry out such other responsibilities as required by this title or other codes, ordinances, resolutions or procedures of the City.

10. Request the assistance of other City departments to administer and enforce this title, as necessary.

(Ord. 1995 §1 (part), 2002)

11.04.060 Appeals

A decision of the Director made in accordance with this title shall be considered determinative and final. Any appeal must be filed in Superior Court within 30 days of the date of issuance of the final determination.

(Ord. 1995 §1 (part), 2002)

11.04.070 Hazardous Conditions on Public Right-of-Way

It is unlawful for the owner and /or person occupying or having charge or control of any premises abutting upon any public right-of-way or alley in the City to construct, place, cause, create, maintain or permit to remain upon any part of such right-of-way located between the curblines or, if there is no curblines, then between the adjacent edge of the traveled portion of such right-of-way by the members of the general public, including but not limited to the following conditions:

1. Defective sidewalk surfaces including, but not limited to, broken or cracked cement, sub-toes, depressions within or between sidewalk joints.

2. Defective cement surfaces placed adjacent to the public sidewalk or defects at the juncture between such cement surfaces and public sidewalks, including stub-toes or depressions at the junction.

3. Defects in sidewalks or public ways caused or contributed to by the roots of trees or similar growth or vegetation located either on private adjoining property or on the parking strip portion of any such street right-of-way.

4. Defective conditions caused by tree limbs, foliage, brush or grass on or extending over such public sidewalks or rights-of-way.

5. Defective conditions on the parking strip area between the curblines and the sidewalk or, if there is no curblines, then between the edge of the traveled portion of the street and the sidewalk and between the sidewalk and the abutting property line.

6. Defects resulting from accumulation of ice and snow on public sidewalks or on the right-of-way between the curblines or, if there is no curblines, then between the adjacent edge of the traveled portion of the street roadway and the abutting property line.

7. Defects consisting of foreign matter on the public sidewalks including, but not limited to, gravel, oil, grease, or any other foreign subject matter that might cause pedestrians using the sidewalk to fall, stumble or slip by reason of the existence of such foreign matter.

8. Defective handrails or fences or other similar structures within or immediately adjacent to said right-of-way area.

(Ord. 1995 §1 (part), 2002)

11.04.080 Compliance with One-Call, One-Number Locator Service

All grantees shall, before commencing with any construction in the right-of-way, comply with all regulations pertaining to the One-Call, One-Number Locator System. Grantees shall also subscribe to and maintain membership in the One-Call utility location service, and shall promptly locate all of its facilities upon request.

(Ord. 1995 §1 (part), 2002)

11.04.090 As-Built Drawings

A drawing of a completed project, in a form acceptable to the Department and conforming to generally accepted engineering practices, shall be submitted in duplicate to the Public Works Department within 30 days of project completion. No bond money, deposit, or fee shall be released until receipt of the drawings.

(Ord. 1995 §1 (part), 2002)

11.04.100 Violation – Penalty

A. The violation of or failure to comply with any provision of this title is declared to be unlawful.

B. Any violation of any provision of this title is a criminal violation as provided for in Chapter TMC 1.08.010, for which a monetary penalty may be assessed and abatement may be required as provided therein.

C. As an alternative to any other penalty provided by this title or by law, any person who violates any provision of this title shall be guilty of a misdemeanor.

D. In addition, any violation of any provision of this title is hereby declared a public nuisance and is subject to the civil enforcement provisions of TMC Chapter 8.45.

(Ord. 1995 §1 (part), 2002)

CHAPTER 11.08

PERMITS

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11.08.010 Purpose

A. The purpose of this chapter is to establish minimum rules and regulations to govern activities within the right-of-way in the City of Tukwila; and to provide for the fees, charges, warranties, and procedures required to administer the permit process. To the extent the provision of any current franchise or other written agreement conflicts with any provision of this chapter, the

applicable provision of the franchise or other written agreement shall prevail.

B. This code is enacted to protect and preserve the public health, safety, and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.

C. It is expressly the purpose of this code and any procedures adopted hereunder to provide for and promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code or any procedures adopted hereunder.

(Ord. 2682 §3, 2022)

11.08.020 Definitions

A. **“Applicant”** means a person who has submitted a complete application pursuant to the terms and conditions of this Chapter.

B. **“Blanket Activities”** means work that does not include cutting, removing, or disturbing the pavement surface including:

1. Simple service disconnects for customers;
2. Repair or replacement of standard crossarms, insulators, and/or other existing equipment on poles or bundles;
3. Replacement of blown fuses or limiters on cutouts;
4. Replacement of existing faulted, broken, or damages overhead service drops;
5. Repairs or splices to existing overhead primary and secondary wires;
6. Replacement of damaged poles with similar dimensioned stock;
7. Operation of existing overhead primary switches, i.e. the open and closing of overhead primary switches as necessary;
8. Disconnection of existing services due to non-payment;
9. Changing wire type;
10. Installation of secondary conductors;
11. Accessing existing vaults;
12. Maintaining hydrants/vaults;
13. Raising or adjusting valves;
14. Vegetation management;
15. Replacing above-ground meters;
16. Installing water sampling stations;
17. Flushing activities, and lining pipes.

C. **“City”** means the City of Tukwila.

D. **“Department”** means the City of Tukwila’s Public Works Department

E. **“Director”** means the City of Tukwila Public Works Director or designee.

F. **“Emergency”** shall mean any unforeseen circumstance or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility or public services.

G. “**Facility**” or “**Facilities**” means any plant, equipment and/or property, including but not limited to, overhead and underground water, gas, electric, and telecommunication facilities and appurtenances such as cables, wires, conduits, transformers, conduit, substation, pad-mounted J boxes, switch cabinets, ducts, pedestals, antennas, electronics, vaults, poles, meter boxes, sewers, pipes, drains, and tunnels.

H. “**Franchise Holder**” means a person that was issued a franchise agreement by the City and which franchise is not expired.

I. “**Permittee**” means a person that has applied for and received a permit pursuant to TMC Chapter 11.08.

J. “**Person**” means any individual, association, partnership, corporation or legal entity, public or private, and includes the agents, contractors, and assigns of such person, including registered agents thereof.

K. “**Preconstruction Meeting**” means a meeting between the designated City staff and the applicant’s contractor or designee prior to beginning any construction activity on the site or within the right-of-way to discuss project approval conditions and preliminary requirements.

L. “**Public Improvement**” means any capital improvement, maintenance, or repair that is undertaken by or on behalf of the City within the franchise area and is funded by the City (either directly or indirectly), including any capital improvement within the City’s adopted Transportation Improvement Plan or Capital Improvement Program.

M. “**Right-of-Way**” or “**Rights-of-Way**” means all public streets and 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 the air rights, sub-surface rights and easements related thereto.

N. “**Right-of-Way Use Permit**” means any permit issued pursuant to TMC Chapter 11.08.

O. “**Right-of-Way User**” means any person with any facility in the Right-of-Way.

(Ord. 2682 §4, 2022)

11.08.030 Administration and Enforcement

A. The Director, under the authority of the City Administrator, shall have the following administrative and enforcement powers:

1. Prepare and adopt procedures as needed to implement this chapter and to carry out the responsibilities of the Department. Such procedures do not require approval of the City Council to be initially implemented; however, the Council may take Council action directing that procedures, guidelines, fees, or other aspects of the permitting system be amended or modified to the satisfaction of the Council.

2. Administer and coordinate the enforcement of this chapter and all procedures adopted under this chapter relating to the use of rights-of-way.

3. Carry out such other responsibilities as required by this chapter or other codes, ordinances, resolutions, or procedures of the City.

4. Request the assistance of other City departments to administer and enforce this chapter, as necessary.

5. Render interpretations of this chapter or assign the responsibility for interpretation and application of specified procedures to such designees as may be deemed appropriate.

(Ord. 2682 §5, 2022)

11.08.040 Permit Required

A. It is unlawful for any person, except the Department or its agent, to perform work of any kind in the right-of-way, or to make private use of any right-of-way without obtaining a right-of-way use permit pursuant to this chapter.

B. The decision by the City to issue a permit shall include, among other factors determined by the City, the following:

1. The capacity of the right-of-way to accommodate the facilities or structures proposed to be installed in the right-of-way.

2. The capacity of the right-of-way to accommodate wire, cables, conduits, pipes or other facilities or structures of other existing users of the right-of-way, such as electrical power, telephone, gas, surface water, sewer, and water.

3. The damage or disruption, if any, of public or private facilities, improvements, or landscaping previously existing in the right-of-way.

4. The public interest in minimizing the cost and disruption of construction in the right-of-way.

C. The issuance of a permit for use of a right-of-way is subject to the use and needs of the City and the general public, whether such needs are temporary or permanent, or for public or private purposes (i.e., utility construction work in the right-of-way by private service provider), and is a grant of a temporary revocable privilege to use a portion of the right-of-way to serve and benefit the general public. The applicant shall have the burden to prove that any proposed use will enhance and further the public interest consistent and not in conflict with the use of the right-of-way by the general public and the City for other authorized uses and activities.

(Ord. 2682 §6, 2022; Ord. 1995 §1 (part), 2002)

11.08.050 Right-Of-Way Use Permits

A. The following classes of right-of-way use permits are hereby established:

1. **Public Works Permit.** These permits may be issued to applicants who do not hold a current franchise with the City.

2. **Public Works Franchise Permit.** These permits may be issued to applicants who do not hold a current franchise with the City.

3. **Annual Blanket Activities Permit.** These permits may be issued to franchise holders on an annual basis to undertake blanket activities as defined by this chapter.

(Ord. 2682 §7, 2022; Ord. 1995 §1 (part), 2002)

11.08.060 Application Contents

A. To obtain a right-of-way use permit, the applicant shall submit, in the format and manner specified by the Director, an application to the City.

B. Every application shall contain, as applicable:

1. The name, address, telephone number, and email address of the applicant. Where an applicant is not the owner of the facility to be installed, maintained or repaired in the right-of-way, the application shall also include the name, address, telephone number, and email address of the owner. Where the applicant is not the owner of the facility or facilities to be installed, maintained, or repaired, the applicant must demonstrate in a form and manner specified by the Director their authorization to act on behalf of the owner.

2. A description of the location, including the address and GPS coordinates, nature and extent of the work proposed.

3. A site plan showing the location of the proposed work.

4. If the applicant holds a franchise, easement, encroachment permit, license or other legal instrument with the City that authorizes the applicant or owner to use or occupy the right-of-way for the purpose described in the application, the applicant shall attach a copy of that document to the application.

5. The proposed start date and duration of the work, which shall include the restoration of the right-of-way physically disturbed by the work.

6. Written acknowledgment that the applicant will comply with all terms and conditions of this title, the orders, regulations, and standard plans and specifications as promulgated by the Director; and that the applicant is not subject to any outstanding assessments, fees or penalties that have been finally determined by the City or a court of competent jurisdiction.

7. A current business license through the Washington State Department of Revenue with an endorsement for the City of Tukwila.

8. Evidence of insurance as required by TMC Section 11.08.150.

9. A financial guarantee as required by TMC Section 11.08.160.

10. A traffic control plan to be approved by the Director.

11. Any other information that may be reasonably required by the Director.

12. An estimate of the value of the project. The Director may also require an applicant to submit separate cost estimates for each item of improvement.

13. An application fee as required by TMC Section 11.08.110.

C. The Director may allow an applicant to maintain documents complying with TMC Sections 11.08.060.B, subparagraphs 4, 8, 9 and 10 on file with the Department, rather than requiring submission of such documents with each separate application.

(Ord. 2682 §8, 2022; Ord. 1995 §1 (part), 2002)

11.08.070 Preconstruction Meeting Required

A preconstruction meeting may be required at the Director's discretion.

(Ord. 2682 §9, 2022)

11.08.080 Permit Approval and Conditions

A. If the Director finds that the application conforms to the requirements and procedures of this chapter and and title, that the proposed use of such right-of-way will not unduly interfere with the rights and safety of the public, and if the application has not been disapproved by another department with authority, the Director may approve the permit, and may impose such conditions thereon as are reasonably necessary to protect the public health, welfare and safety, and to mitigate any impacts resulting from the use. Such conditions may include but are not limited to:

1. Compliance with all applicable provisions of TMC Title 11;

2. Compliance with applicable provisions of the Infrastructure Design and Construction Standards Manual;

3. Limitations on the hour, the day and the period of the year in which the work may be performed;

4. Requirement of a traffic control supervisor onsite during approved working hours;

5. Installation and maintenance of temporary erosion control measures, as applicable;

6. Pre-construction storm drainage patterns shall be met during and after construction; and

7. Compliance with all applicable provisions of TMC Chapters 8.45 and 14.30.

B. Additionally, if at any time conditions unforeseen at the time of issuance of the permit are discovered which could, in the opinion of the Director, cause unforeseen damage to public or private property or a hazard to life or property or become a public nuisance, the Director may stop any further work under the permit until the permit conditions have been modified by the Director in such a manner as to protect from or eliminate the potential damages, hazards or nuisances enumerated in this chapter.

(Ord. 2682 §10, 2022; Ord. 1995 §1 (part), 2002)

11.08.090 No Permit Transfer or Assignment

Permits issued pursuant to this chapter shall not be transferable or assignable unless prior written consent is received from the City, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the work to be performed under a permit provided; however, the holder of the permit shall be and remains responsible for the performance of the work under the permit, and responsible for all bonding, insurance and other requirements of this title and under said permit.

(Ord. 2682 §11, 2022; Ord. 1995 §1 (part), 2002)

11.08.100 Emergency Work

A. In the event that an emergency necessitates work in the right-of-way for the protection of public or private property, a person may conduct the work after the person performing the work has notified the City's Police and Fire Departments of such work and an application for a permit as provided in this chapter shall be made on the next succeeding business day whether or not the emergency work has been completed.

B. The person commencing and conducting such emergency work shall take all necessary safety precautions for the protection of the public, the direction and control of traffic, and shall insure that work is accomplished according to City standards, regulations, the Manual on Uniform Traffic Control Devices, and other applicable laws, regulations or generally recognized practices in the industry.

C. Nothing contained in this chapter shall be construed to prevent any person from taking any action necessary for the preservation of life or property or for the restoration of interrupted service when such necessity arises during days or times when the City is closed.

(Ord. 2682 §12, 2022; Ord. 1995 §1 (part), 2002)

11.08.110 Permit Fees and Charges

A. The permit and inspection fees for any permit issued pursuant to this chapter shall be set forth in a fee schedule to be adopted by motion or resolution of the Tukwila City Council and as amended from time to time.

B. As applicable, additional fees may be imposed as follows:

1. A fee associated with the issuance of the permit and the required inspection of the construction (Permit Issuance and Inspection Fee), which is determined from the value of the construction;

2. A Grading Plan Review fee.

3. A pavement mitigation fee associated with the loss of pavement life from any proposed excavation in the right-of-way, the fee amount determined from the square footage of excavation being performed and the age of the pavement;

4. Each revision review, shall be charged as a separate fee in accordance with the fee schedule adopted by resolution of the City Council. These fees will be added to the balance due and be payable prior to issuance or final of the permit.

(Ord. 2682 §13, 2022; Ord. 1995 §1 (part), 2002)

11.08.120 Permit Exception

Permits under this chapter shall not be required for public use; i.e., persons using the right-of-way as pedestrians or while operating motor and non-motorized vehicles for routine purposes such as travel, commuting, or personal business.

(Ord. 2682 §14, 2022; Ord. 1995 §1 (part), 2002)

11.08.130 Revocation or Suspension of Permits

A. The Director may revoke or suspend any permit issued under this chapter whenever:

1. The activity or work does not proceed in accordance with the permit as approved, in accordance with conditions of approval, or is not in compliance with the requirements of this chapter or procedures, or other City ordinances, or State laws;

2. The City has been denied access to investigate and inspect how the right-of-way is being used;

3. The permittee has misrepresented a material fact in applying for a permit (a material fact is a fact which, had the truth been known at the time of the issuance of the permit, the permit would not have been granted);

4. The City believes the permitted activity is, or will be, endangering the public, adjoining property, the street, or infrastructure in the street.

B. Upon suspension or revocation of a permit, all use of the right-of-way shall cease, except as authorized by the Director.

C. Continued activity following revocation or suspension under this section shall be subject to the enforcement provisions in TMC Chapter 8.45.

(Ord. 2682 §15, 2022; Ord. 1995 §1 (part), 2002)

11.08.140 Renewal of Permits

Each permit shall be of a duration as specified on the permit. A permit may be renewed at the discretion of the Director, if requested by the permit holder before expiration of the permit; provided, however, that the use or activity is progressing in a satisfactory manner as reasonably determined by the Director.

(Ord. 2682 §16, 2022; Ord. 1995 §1 (part), 2002)

11.08.150 Insurance

A. Unless the Director determines that there is not a probability of injury, damage, or expense to the City arising from an applicant's proposed use of the right-of-way or public place, or the applicant holds a current franchise with the City, the applicant shall obtain and maintain in full force and effect, throughout the term of the permit, or as long as the permittee has facilities in the right-of-way, an insurance policy issued by an insurance company satisfactory to the Director, insuring both the applicant and the City against claims for injuries to persons, death or damages to property that may arise from, or in connection with, the exercise of the rights, privileges and authority granted to the applicant under this chapter:

1. Commercial general liability insurance written on an occurrence basis. The insurance policy shall be endorsed to provide a per project general aggregate and there shall be no exclusive for liability arising from explosion, collapse, or underground property damage. The policy shall have limits not less than:

a. \$3,000,000 for bodily injury, property damage, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract;

b. \$6,000,000 general aggregate, per project aggregate and products-completed operations aggregate.

2. Business automobile liability insurance with limits not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned, and hired auto coverage, as applicable.

3. Pollution liability insurance, on an occurrence form, with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, and \$2,000,000 in the aggregate.

4. Worker's compensation within statutory limits and employer's liability insurance, with limits of not less than \$1,000,000.

5. Excess or umbrella liability policy shall be excess over and at least as broad in coverage as the commercial general liability and automobile liability insurance, with limits not less than \$5,000,000 per occurrence and annual aggregate.

6. Said policy or policies shall include the City and its officers, officials (appointed and elected), employees, and agents jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no insurance affected by the City will be called on to contribute to a loss covered there under, and shall provide for severability of interests.

7. Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

8. The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy

9. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.

10. Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested sent to the City.

11. Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers, officials (appointed and elected), employees, and agents against any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of permit work done by permittee, his/her subcontractor or agent, whether or not the work has been completed and whether or not the right-of-way has been opened to public travel.

12. Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers, officials (appointed and elected), employees, and agents against any claim or loss, damage or expense sustained by any person occurring by reason of doing any work pursuant to the permit including, but not limited to, falling objects or failure to maintain proper barricades and/or lights as required from the time work begins until the work is completed and the right-of-way is opened for public use.

B. The permittee shall furnish the City with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the permittee shall be prepared to provide such copies prior to the issuance of the permit.

C. If any of the required policies are, or at any time become, unsatisfactory to the City as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the City, the permittee shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver and maintain such insurance as provided herein, the City may declare the permit to be in default and pursue any and all remedies the City may have at law or in equity, including those actions outlined in this chapter.

D. The permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.

E. A property owner performing work adjacent to his/her residence may submit proof of a homeowner's insurance policy in lieu of the insurance requirements of this section.

(Ord. 2682 §17, 2022; Ord. 1995 §1 (part), 2002)

11.08.160 Deposits, Fees and Bonds

A. Before a permit pursuant to the provisions of this chapter may be issued, the applicant may be required, unless otherwise provided in a current franchise, to execute to the City a financial guarantee in a form as approved by the City for the proper protection of the City and conditioned that obligors of the financial guarantee will pay to the City the costs and expenses incurred by the City should the person obtaining the permit fail, neglect or refuse to properly complete the work authorized by the permit within the time limit specified by said permit. Such financial guarantees are as follows:

1. **Performance Financial Guarantee** – In a sum as shall be designated by the Director (but not less than 150% of the estimated cost of the improvements within the right-of-way). This financial guarantee shall be released upon acceptance of the work and the receipt of a maintenance financial guarantee. Otherwise, it will be released under the same time frame as outlined in TMC Section 11.08.160.A.2.

2. **Right-of-Way Occupation Financial Guarantee** – In a sum of not less than \$5,000. Permits allowing right-of-way obstructions, not including the take up, breaking, excavating, tunneling, undermining, or cutting in any right-of-way in the City, may be allowed to provide a financial guarantee pursuant to this subsection. The Director may release the financial guarantee, without requiring a subsequent maintenance financial guarantee per TMC Section 11.08.160.A.3, once the work has been accepted

as complete by a city inspector and the permit is finalized and closed.

3. **Maintenance Financial Guarantee – In a sum as shall be designated by the Director (but not less than \$5,000 or 10% of the estimated cost of the improvements within the right-of-way, whichever is greater).** This financial guarantee will be in force for 2 years after the City accepts the work if no repair work is identified within that 2-year period. If the City identifies any repair work, the financial guarantee will extend to either 1 year after the repair is accepted by the City or the end of the original 2-year time period, whichever is longer. At the Director's discretion, this maintenance financial guarantee may be waived if the Director documents in writing a decision that a financial guarantee is not necessary to protect the interests of the City.

4. The amount of the financial guarantees required above may be increased or decreased at the discretion of the Director whenever it appears that the amount and cost of the work to be performed may vary from the amount of the security otherwise required under this chapter.

B. Public utilities holding a current City franchise shall not be required to file any right-of-way financial guarantee if such requirement is expressly waived in the franchise documents, however public utilities franchisees shall guarantee workmanship and materials through a maintenance financial guarantee.

C. The security required by this section shall be conditioned as follows:

1. That the permittee shall fully comply with the requirements of the City ordinances and regulations, specifications and standards promulgated by the Department relative to work in the right-of-way, and respond to the City in damages for failure to conform therewith;

2. That after work is commenced, the permittee shall proceed with diligence and shall promptly complete such work and restore the right-of-way to City standards, so as not to obstruct the public place or travel thereon more than is reasonably necessary;

3. That unless authorized by the Director on the permit, all paving, resurfacing or replacement of street facilities on principal arterial, major or collector streets shall be done in conformance with the regulations contained herein within three calendar days, and within seven calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to City standards. In winter, a temporary patch must be provided. In all excavations, restoration or pavement surfaces shall be made immediately after backfilling is completed or concrete is cured. If work is expected to exceed the above duration, the permittee shall submit a detailed construction schedule for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.

D. In lieu of a financial guarantee to cover particular work, an applicant may maintain with the City a general bond in the sum of \$100,000 conditioned and used for the same purpose as the financial guarantee described in TMC Section 11.08.160.A and

covering all work to be done rather than any particular work, provided, however, that the total work being performed shall not exceed a cumulative total of \$100,000. The applicant shall track and submit with each new permit the applicant's approved permits that are covered by this financial guarantee and include: permit number, date of approval, and date work is complete.

(Ord. 2682 §18, 2022; Ord. 1995 §1 (part), 2002)

11.08.170 Hold Harmless

Unless the permittee holds a current franchise with the City, as a condition to the issuance of any permit under this chapter, the permittee shall be required to execute a written agreement to forever hold and save the City free and harmless from any and all claims, actions or damages of every kind and description that may accrue to or be suffered by any person by reason of the use of such public place or the construction, existence, maintenance, use or occupation of any such structure, services, fixtures, equipment and/or facilities on or in a public place pursuant to this chapter. In addition, such agreement shall contain a provision that the permit is wholly of a temporary nature, and that it vests no permanent right whatsoever.

(Ord. 2682 §19, 2022; Ord. 1995 §1 (part), 2002)

11.08.180 Compliance with Specifications, Standards, and Traffic-Control Regulations

A. The work performed in the right-of-way shall conform to the requirements of the Department's Infrastructure Design and Construction Standards, Manual on Uniform Traffic Control Devices, King County Surface Water Design Manual, Part VIII, "Regulations for Use of Public Streets and Projections over Public Property," International Building Code, and the Tukwila Municipal Code as currently exists and as hereafter amended.

B. When a job is left unattended, before completion of the work, signage with minimum two-inch high letters shall be attached to a barricade or otherwise posted and maintained at the site, indicating the permittee's name, or company name, telephone number, and after-hours telephone number.

(Ord. 2682 §20, 2022; Ord. 1995 §1 (part), 2002)

11.08.190 Inspections

As a condition of issuance of any permit or authorization that requires approval of the Department, each permittee shall be required to consent to inspections by the Department or any other City department. Additionally, the permittee is obligated to request a final inspection to close out the permit.

(Ord. 2682 §21, 2022; Ord. 1995 §1 (part), 2002)

11.08.200 Violations and Unsafe Conditions

A. Whenever the Director determines that any condition on any right-of-way is in violation of (i) this chapter, or (ii) procedures adopted under this chapter or other applicable codes or standards, the Director may order the correction or discontinuance pursuant to this section.

B. The Director is authorized to use any or all of the following methods in ordering correction or discontinuance:

1. Service of oral or written directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition;

2. Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within five days of notice, or such other reasonable period the Director may determine;

3. Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work;

4. Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed or notices served;

5. Service of notice and order or service of a criminal citation to appear by a law enforcement officer upon the permittee or other responsible person who is in violation of this chapter or other City ordinances.

C. Any object that shall occupy any right-of-way without a permit is declared a nuisance. The Director may attach a notice to any such object stating that if it is not removed from the right-of-way within 24 hours of the date and time stated on the notice, the object may be taken into custody and stored at the owner's expense. The notice shall provide an address and telephone number where additional information may be obtained. If the object is a hazard to public safety, the Director may remove it summarily. Notice of such removal shall be thereafter given to the owner, if known. This section shall not apply to motor vehicles.

D. All expenses incurred by the City in abating any violation or condition shall constitute a civil debt owing to the City jointly and severally by such persons who have been given notice or who own the object or who placed it in the right-of-way, which debt shall be collectible in the same manner as any other civil debt.

E. The City shall also have all powers and remedies whether legal or equitable that may be available under law or ordinance including but not limited to TMC Chapter 8.45, TMC Chapter 11.08, and procedures adopted under this chapter for securing the correction or discontinuance of any conditions specified by the City.

(Ord. 2682 §22, 2022; Ord. 1995 §1 (part), 2002)

11.08.210 Warning and Safety Devices

A. Warning lights, safety devices, signs, and barricades shall be provided on all rights-of-way when there might be an obstruction or hazard to vehicular or pedestrian traffic. All obstructions on rights-of-way shall have sufficient barricades and signs posted in such a manner as to indicate plainly the danger involved. Warning and safety devices may be removed when the work for which the right-of-way use permit has been granted is complete and the right-of-way restored to the conditions directed by the Department.

B. As a condition of the issuance of any permit issued pursuant to this chapter, the Director may require an applicant to submit a traffic control plan showing any proposed detour routing and location and the type of warning lights, safety devices, signs, and barricades intended to protect vehicular or pedestrian traffic at the site for which the right-of-way use permit is requested. If a traffic control plan is required, no permit shall be issued until after the traffic control plan is approved.

C. Any permit issued pursuant to this chapter that requires a partial lane or street closure may require a traffic control supervisor; certified flag person, properly attired; or an off-duty police officer for the purpose of traffic control during construction.

D. All decisions of the Director shall be final in all matters pertaining to the number, type, locations, installation and maintenance of warning and safety devices in the right-of-way during any actual work or activity for which a duly authorized permit has been issued pursuant to this chapter.

(Ord. 2682 §24, 2022; Ord. 1995 §1 (part), 2002)

11.08.220 Clearance for Fire Equipment

Unless when specifically authorized by the Director, all excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free from obstructions at all times.

(Ord. 2682 §25, 2022; Ord. 1995 §1 (part), 2002)

11.08.230 Protection of Adjoining Property – Access

Right-of-way users shall at all times, and at the right-of-way user's expense, preserve and protect from injury adjoining property by complying with such measures as the Director may deem reasonably suitable for such purposes. Right-of-way users shall at all times maintain access to all property adjoining the excavation or work site.

(Ord. 2682 §26, 2022; Ord. 1995 §1 (part), 2002)

11.08.240 Preservation of Monuments

Right-of-way users shall not disturb any survey monuments or markers found on the line of excavation work until ordered to do so by the Director. All street monuments, property corners, benchmarks, and other monuments disturbed during the progress of the work shall be replaced by a licensed surveyor, at the expense of the right-of-way user, to the satisfaction of the Director.

(Ord. 2682 §27, 2022; Ord. 1995 §1 (part), 2002)

11.08.250 Protection from Pollution

Right-of-way users shall comply with all State laws, City ordinances, and procedures adopted hereunder by the Director to protect the public from air and water pollution. Right-of-way users shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work, and shall replace the same in as good or better condition as the right-of-way user found them. Right-of-way users shall not obstruct the gutter of any street, but shall use all proper measures to provide for the free passage of surface water. Right-of-way users shall make provision to take care of all surplus water, muck, silt, or other runoff pumped from excavations or resulting from sluicing or other operations, and shall be responsible for any damage resulting from their failure to so provide.

(Ord. 2682 §28, 2022; Ord. 1995 §1 (part), 2002)

11.08.260 Impact of Work on Existing Improvements

A. If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel, convenient for users, and consistent with City standards.

B. Each right-of-way user shall cover an open excavation with non-skid steel plates ramped to the elevation of the contiguous street, pavement, or other right-of-way, or otherwise protected in accordance with City standards.

C. All excavated material that is piled adjacent to any excavation shall be maintained in such a manner so as not to endanger those working in the excavation, pedestrians, or users of the right-of-way. When the confines of the area being excavated are too small to permit the piling of excavated material next to the excavation, the Director shall have the authority to require the right-of-way user to haul the excavated material to a storage site and then return the excavated material to the excavation at the time of backfilling. It is the responsibility of the right-of-way user to secure the necessary permission and make all arrangements for any required storage and disposal of excavated material.

D. At any time a right-of-way user disturbs the yard, residence or the real or personal property of a private property owner or the City, such right-of-way user shall insure, at the right-of-way user's expense, that such property is returned, replaced and/or restored to a condition that is comparable to or better than the condition that existed prior to the commencement of the work, as determined by the private property owner or the City.

E. Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the Director prior to the blockage of the channel.

(Ord. 2682 §29, 2022; Ord. 1995 §1 (part), 2002)

11.08.270 Restoration of the Public Right-Of-Way

A. **Restoration.** If work is undertaken in the right-of-way, the right-of-way user shall restore the right-of-way in the manner prescribed by the orders, regulations, and City standards.

B. Backfilling in a right-of-way excavated pursuant to a permit issued under the provisions of this chapter shall be compacted to a degree equivalent to that of the undisturbed ground in which the excavation was begun, unless the Director determines a greater degree of compaction is necessary to produce a satisfactory result. All backfilling shall be accomplished according to City standards and specifications. All backfills shall be inspected and approved by the Director prior to any overlaying or patching.

C. The right-of-way user shall restore the surface of any right-of-way to City standards, and replace any removed or damaged pavement with the same type and depth of pavement as that which is adjoining, including the gravel base material. All restoration shall be accomplished within the time limits set forth in the permit.

(Ord. 2682 §30, 2022; Ord. 1995 §1 (part), 2002)

11.08.280 Recently Improved Streets

The City shall not issue any permit to excavate in any recently improved street as defined at TMC Chapter 11.04; provided, however, that the Director may grant a waiver for good cause. The Director is specifically authorized to grant a waiver for an excavation that facilitates deployment of new technology as directed pursuant to official City policy. The Director may place additional conditions on a permit subject to a waiver. The Director's decision regarding a waiver shall be final.

(Ord. 2682 §31, 2022; Ord. 1995 §1 (part), 2002)

11.08.290 Coordination of Construction and Notification

A. At the time of submitting an application for a permit, the applicant shall notify all other entities known to be using or proposing to use the same right-of-way as the applicant's proposed construction, and the proposed timing of such construction. Any such entity notified may, within seven days of such notification, request a reasonable delay in the commencement of such proposed construction for the purpose of coordinating other right-of-way construction with that proposed by the applicant.

B. The Director shall coordinate the approval of permits with City street improvements and maintenance and may defer or delay the commencement date for the applicant's right-of-way construction, until such time as such official deems proper. In all cases, any work of the City, its contractors, or employees for municipal purposes shall have precedence over all work of every other kind.

C. Before commencing construction, the permittee shall provide notice to all adjoining properties that access onto the roadway work location, or are within 200 linear feet from the roadway work location. Notification shall be done no less than 3 days prior to the work commencing and shall be in the form of signage, door hangers, or door-to-door distribution of flyers. Notifications shall include contact information for the applicant or contractor doing the work.

(Ord. 2682 §32, 2022; Ord. 1995 §1 (part), 2002)

11.08.300 Relocation

A. Unless otherwise provided for in a current franchise, the Director may direct any right-of-way user owning or maintaining facilities in the right-of-way to alter, modify, or relocate such facilities or as may be required herein.

B. Within 30 days following written notice from the Director, the right-of-way user shall provide a schedule to the City indicating the estimated completion date for temporarily or permanently removing, relocating, changing, or altering (collectively the “relocation work”) the position of any facilities within the right-of-way whenever the Director shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:

1. A public improvement; or
2. The construction, repair, maintenance, or installation of any improvement in or upon the right-of-way as required by development approval; or
3. The operations of the City or other governmental entity in or upon the right-of-way.

C. The right-of-way user owning or maintaining the facilities shall, at their own cost and expense, promptly protect or promptly alter or relocate such facilities, or part thereof, within 90 days following the original notice by the Director, unless a different duration is specifically authorized by the Director.

D. In the event that the right-of-way user refuses or neglects to conform to the directive of the City, the City shall have the right to break through, remove, alter or relocate such part of the facilities without liability to the right-of-way user. The right-of-way user shall pay to the City all costs incurred by the City in connection with such work performed by the City, including, but not limited to, design, engineering, construction, materials, insurance, court costs, and attorney fees. Upon the right-of-way user's failure to accomplish such work or reimburse the City of such costs, and after 3 working days' notice, all other permits held by the right-of-way user may be suspended, except in only an emergency, until such time as the work required under this section is completed or the City has been reimbursed for work performed.

E. The City may, at any time, in case of fire, disaster or other emergency as determined by the City, cut or move any parts of the system and appurtenances on, over or under the right-of-way, in which event the City shall not be liable therefore to the right-of-way user.

(Ord. 2682 §33, 2022; Ord. 1995 §1 (part), 2002)

11.08.310 Abandonment and Removal of Facilities

A. Any right-of-way user that intends to discontinue use of any facilities within the rights-of-way shall notify the Director, in writing, of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use (the date shall not be less than 30 days from the date such notice is submitted), and the method of removal and restoration of the rights-of-way. The right-of-way user may not remove, destroy, or permanently disable any such facilities during said 30-day period without written approval of the Director. After 60 days from the date of such written approval from the Director, the right-of-way user shall remove and dispose of such facilities as set forth in the notice unless additional time is requested from and approved by the Director. The Director may place conditions upon the removal and restoration in order to protect public health and safety and the rights-of-way.

B. At the discretion of the City, and upon written notice from the Director within 30 days of the notice of abandonment, the right-of-way user may abandon the facilities in place, and shall further convey full title and ownership of such abandoned facilities to the City. The consideration for the conveyance is the City's permission to abandon the facilities in place. The right-of-way user is responsible for all obligations as owner of the facilities, or other liabilities associated therewith, until conveyance to the City is completed. Conveyance of the abandoned facilities shall also automatically include all record information, including GIS data as available, or as agreed upon with the Director.

(Ord. 2682 §34, 2022; Ord. 1995 §1 (part), 2002)

11.08.320 Record Drawings

Upon request by the City, a right-of-way user shall, within 10 business days, submit to the City, at no cost to the City, the right-of-way user's most current and accurate record drawings in use by the right-of-way user showing the location specified by the City in its request before final permit approval. Record drawings shall show all facilities including but not limited to power poles, guy poles and anchors, overhead transformers, pad-mounted transformers, submersible transformers, conduit, substation (with its name) pedestals, pad-mounted J boxes, vaults, switch cabinets, and meter boxes.

(Ord. 2682 §35, 2022)

11.08.330 Joint Excavation

A. If an applicant submits a permit application to excavate for installation of its facilities, the City may request in writing that such applicant provide an opportunity to install City facilities within the excavation; provided, that:

1. Such joint use shall not unreasonably delay the work of the applicant's excavation; and

2. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

B. To the extent reasonably possible, the applicant shall, at the direction of the City, cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way as well as to minimize traffic-related impacts.

(Ord. 2682 §36, 2022)

11.08.340 Additional Ducts or Conduits

Any right-of-way user shall upon written request of the City, provide the City with additional duct or conduit space over and above the conduit or conduits planned to be constructed for the right-of-way user. Such additional ducts or conduits shall be of a size and configuration specified by the City and shall be dedicated to the City. The City shall have the right to use the ducts and conduits for any purpose including, but not limited to, leasing them to other entities. Except as otherwise applicable under RCW 35.99.070, the incremental costs of adding the specified ducts and conduits for the City shall be borne by the City.

(Ord. 2682 §37, 2022)

11.08.350 Undergrounding

A. Subject to and in accordance with any applicable rates and tariffs on file with the Washington Utilities and Transportation Commission (WUTC) (or such other regulatory agency having jurisdiction), the right-of-way user shall cooperate with the City in promoting a policy of undergrounding facilities within the right-of-way.

B. If the City directs the right-of-way user to underground its facilities, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable rates and tariffs on file with the WUTC (or such other regulatory agency having jurisdiction).

C. In the event that the City undertakes any public improvement that would otherwise require, at the discretion of the Director, the relocation of the right-of-way user's aboveground facilities, the Director may, by written notice to the right-of-way user, direct that any such facilities be converted to underground facilities. Any such conversion shall be done subject to and in accordance with applicable schedules and tariffs on file with the WUTC (or such other regulatory agency having jurisdiction).

D. All new facilities installed within the City during the term of any permit or franchise shall be located underground to the extent technologically feasible as determined at the discretion of the Director.

(Ord. 2682 §38, 2022)

11.08.360 Hazardous Substances

Right-of-way users shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and the right-of-way user shall not allow any of its agents, contractors, or any person under its control to do the same.

(Ord. 2682 §39, 2022)

11.08.370 Utility Locates

Prior to doing any work in the rights-of-way, right-of-way users shall follow established procedures, including contacting the Utility Notification Center in Washington and complying with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request by the City or a third party, the right-of-way user shall promptly locate its facilities in order for them to be surveyed or as required by Chapter 19.122 RCW. The right-of-way user shall provide enough detail to verify the vertical (depth) and horizontal location of its facilities. The City shall not be liable for any damages to the right-of-way user's facilities or for interruptions in service to right-of-way user's customers that are a direct result of the right-of-way user's failure to locate its facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

(Ord. 2682 §40, 2022)

11.08.380 Moving of Building(s) and/or Equipment

Right-of-way users shall, upon 7 days' notice, disconnect or move their facilities to allow for the moving of building(s) and/or equipment across or along any such street, alley or other public place; provided, that the advance notice may be reduced to 24 hours if the facilities are below the minimum clearance set by law or regulation or in the case of an emergency. The cost of the right-of-way user moving their facilities shall be borne as follows: (i) by the right-of-way user if the facilities are below the minimum vertical clearance required by State statutes, City ordinance, or rules of the Director; above the surface of the right-of-way, and no adjustment would be necessary if the minimum clearance had been maintained; and (ii) by the person desiring to move the building(s) and/or equipment under other circumstances.

(Ord. 2682 §41, 2022)

11.08.390 Tree Trimming

Any right-of-way user required by State statute or regulation to trim or remove trees that may interfere with their facilities shall first obtain a permit and ensure that the work is accomplished in accordance with TMC Chapter 11.20, "Right-of-Way Vegetation," and TMC Section 18.52.100, "Maintenance and Pruning," as applicable.

(Ord. 2682 §42, 2022)

CHAPTER 11.12**REQUIRED IMPROVEMENTS FOR
NEW BUILDINGS AND DEVELOPMENTS****Sections:**

- 11.12.010 Purpose of Provisions
- 11.12.020 Statute Adopted by Reference
- 11.12.030 Street Frontage Improvements
- 11.12.040 Dedication of Right-of-Way
- 11.12.050 Easements and Other Dedications
- 11.12.060 Sites Shall be Served by Paved Streets
- 11.12.070 Special Provisions – Additions, Alterations, or Repairs to Existing Structures
- 11.12.080 Special Provisions – Single-Family Residence
- 11.12.090 Inspections
- 11.12.100 Landscaping in Right-of-Way, Easements, and Access Tracts
- 11.12.110 Street Lighting
- 11.12.120 Private Streets
- 11.12.130 Acceptance of Dedicated Private Streets as Public Streets
- 11.12.140 Americans with Disabilities Act
- 11.12.150 Nonmotorized Facilities
- 11.12.160 Traffic Signals
- 11.12.170 Street Ends

11.12.010 Purpose of Provisions

The purpose of this section is to implement regulations in connection with the development and improvement of land, and to facilitate adequate provision for water, sewer, surface water drainage, curbs, gutters, sidewalks, driveways, street and other public improvements by requiring the construction and dedication of such improvements at the time of the construction of industrial, commercial, or residential buildings or developments. The requirements set forth in this chapter are intended to supplement the requirements of RCW Chapter 58.17 and Title 17 of the Tukwila Municipal Code relating to subdivision of land.

(Ord. 1995 §1 (part), 2002)

11.12.020 Statute Adopted by Reference

For purposes of this chapter, those factors set forth in RCW 58.17.110 as it currently exists and as hereafter amended are adopted by reference as constituting the conditions to be considered in the approval or disapproval of any building or development permit.

(Ord. 1995 §1 (part), 2002)

11.12.030 Street Frontage Improvements

(See TMC Title 17 for further detail)

A. The installation of street frontage improvements is required prior to issuance of a certificate of occupancy for new construction, other than single-family homes, or prior to final approval for subdivisions and 5–9 lot short plats and Planned Residential Developments. For additions and remodels to existing buildings, see TMC Section 11.12.070.

B. Complete street frontage improvements shall be installed along the entire frontage of the property at the sole cost of the permittee as directed by the Director. Street frontage improvements may include curb, gutter, sidewalk, storm drainage, street lighting, traffic signal equipment, utility installation or relocation, landscaping strip, street trees and landscaping, irrigation, street widening, and channelization. Beyond the property frontage, the permittee shall provide ramps from the new sidewalk or walkway to the existing shoulder, and pavement and channelization tapering back to the existing pavement and channelization as needed for safety.

C. When (due to site topography, city plans for improvement projects, or other similar reasons) the Director determines that street frontage improvements cannot or should not be constructed at the time of building construction, the property owner shall, prior to issuance of the building permit, at the direction and discretion of the Director:

1. Enter into an agreement to pay to the City an amount equal to the property owner's cost of installing the required improvements. At the direction and discretion of the Director, the property owner shall be required to provide a bond or other financial security for its payment obligation. The property owner shall provide documentation satisfactory to the Director that establishes the cost of the materials, labor, and quantities; or

2. Record an agreement which provides for these improvements to be installed by the property owner by a date acceptable to the Director; or

3. Record an agreement to not protest a local improvement district to improve the street frontage.

D. If, at a time subsequent to the issuance of a building permit, a local improvement district is established that includes the property for which the building permit was issued, the property may be considered in the compilation of the local improvement district assessment with the appropriate amount of costs of construction expended by the developer.

E. The Director under either of the following conditions may waive the requirement for installation of frontage improvements:

1. If adjacent street frontage improvements are unlikely to be installed in the foreseeable future; or

2. If the installation of the required improvement would cause significant adverse environmental impacts.

(Ord. 2470 §1, 2015; Ord. 1995 §1 (part), 2002)

11.12.040 Dedication of Right-of-Way

A. The City may require the dedication of right-of-way in order to incorporate transportation improvements that are reasonably necessary to mitigate the direct impacts of the development. The property owner may be required to dedicate right-of-way to accommodate:

1. Motorized and nonmotorized transportation, landscaping, utility, street lighting, traffic control devices, and buffer requirements;
2. Street frontage improvements where the existing right-of-way is not adequate; or
3. The extension of existing or future public street improvements.

B. The Director may grant some reduction in the minimum right-of-way requirements where it can be demonstrated that sufficient area has been provided for all frontage improvements, including utilities, within the right-of-way.

C. The owner of a subdivision may be required to dedicate right-of-way, as a condition of approval of the subdivision, where existing right-of-way for public streets is not adequate to incorporate necessary frontage improvements for public safety and to provide compatibility with the area’s circulation system.

D. The owner of a short subdivision may be required to dedicate right-of-way, as a condition of approval of the short subdivision, where such dedication is necessary to mitigate the direct impacts of the short subdivision and:

1. The short subdivision abuts an existing substandard public street and the additional right-of-way is necessary to incorporate future frontage improvements for public safety; or
2. Right-of-way is needed for the extension of existing public street improvements necessary for public safety; or
3. Right-of-way is needed to provide future street improvements necessary for public safety for planned new public streets.

(Ord. 1995 §1 (part), 2002)

11.12.050 Easements and Other Dedications

A. Easements and other dedications for all public streets and utilities needed to serve the proposed development consistent with the provisions of the Comprehensive Plan and other adopted City plans shall be granted by the property owner. Easements and other dedications may be for private streets, sidewalks, street lighting, traffic control devices, utilities, and temporary construction. Design features of a street may necessitate the granting of slope, wall, and drainage easements or other dedications.

B. Nonmotorized easements and other dedications may be required where necessary to facilitate pedestrian circulation between neighborhoods, schools, shopping centers and other activity centers, even if the facility is not specifically shown on the City’s nonmotorized circulation plan.

C. Nonmotorized easements and other dedications shall be wide enough to include the trail width and a minimum clear distance of two feet on each side of the trail. The width of easements and other dedications may vary according to site-specific design issues such as topography, buffering, and landscaping.

D. Easements and other dedications shall be designated “City of Tukwila nonmotorized public easement”, and easement and other dedication documents shall specify the maintenance responsibility.

E. The City may accept dedications of sensitive areas which have been identified and are required to be protected as a condition of development. Dedication of such areas to the City will be considered when:

1. The dedicated area would contribute to the City’s overall open space and greenway system;
2. The dedicated area would provide passive recreation opportunities and nonmotorized linkages;
3. The dedicated area would preserve and protect ecologically sensitive natural areas, wildlife habitat and wildlife corridors;
4. The dedicated area is of low hazard/liability potential; and
5. The dedicated area can be adequately managed and maintained.

(Ord. 1995 §1 (part), 2002)

11.12.060 Sites Shall be Served by Paved Streets

All development sites shall be served by a paved street surface that connects to an existing paved street surface.

(Ord. 1995 §1 (part), 2002)

11.12.070 Special Provisions – Additions, Alterations, or Repairs to Existing Structures

The following special provisions shall apply to additions, alterations, repairs, accessory buildings, and campus additions:

1. In the case of real property improvements consisting of additions, alterations, or repairs to an existing structure where square footage is added to the structure, or an accessory building is constructed, street system improvements shall be constructed. The Director shall decide the limit of the street system improvements. The cost for these improvements, to be borne by the property owner, will not be more than 10% of the total cost of the improvement. The Director may waive the construction of the street system improvements if it is determined that the street system improvements are negligible and not in the public interest.
2. In the case of real property improvements consisting of construction of an additional structure or structures on a private campus, street system improvements shall be constructed. The Director shall select the street system improvements to be made. The cost for these improvements, to be borne by the property owner, will not be more than 10% of the total cost of the improvement. In the case of real property improvements consisting of construction of an additional structure or structures

on a campus owned by a public entity, street system improvements shall be constructed along the full frontage.

3. In the case of corner lots or other development sites fronting more than one right-of-way, should the cost of the real property improvement be such that street system improvements would not be required on all rights-of-way fronting the development site, street system improvements shall be constructed on the right-of-way or rights-of-way selected by the Director.

(Ord. 1995 §1 (part), 2002)

11.12.080 Special Provisions – Single-Family Residence

The developer of one single-family residence shall construct the following street system improvements as a condition of building permit approval:

1. If the development site fronts entirely on an unpaved street surface, the developer shall construct a half-street section of street pavement along the frontage of the development site abutting the unpaved surface or, as an alternative, the property owner shall enter into an agreement with the City waiving the right of the property owner under RCW 35.43.180 to protest the formation of a local improvement district for the construction of a paved street surface and surface water drainage facilities. The agreement shall be recorded with the King County auditor;

2. If the development site is a corner lot and fronts on both a paved street surface and an unpaved street surface, the developer shall construct half-street section of street pavement and surface water drainage facilities along the frontage of the development site abutting the unpaved street surface;

3. If the development site is contiguous to a parcel that is served by paved street surface, the developer shall construct half-street section of street pavement and surface water drainage facilities along the frontage of the development site abutting the existing paved street surface;

4. Surface water drainage facilities in all cases, whether the development site fronts a paved street surface or an unpaved street surface; and

5. If the development site fronts a paved street surface, minor edge improvements to the street pavement, as required by the Director, shall be constructed.

(Ord. 1995 §1 (part), 2002)

11.12.090 Inspections

All such public improvements shall be constructed under the supervision of the Director in accordance with City standards. No final installation shall be done until the City has inspected and approved the installation and forms, and has certified they are according to proper profile and location.

(Ord. 1995 §1 (part), 2002)

11.12.100 Landscaping in Right-of-Way, Easements, and Access Tracts

A. The requirements of this section apply when street frontage improvements are required as part of any development. The City shall review proposed street frontage improvements for compliance with this section.

B. Retention of existing vegetation may be required along City streets. Whenever it is necessary to remove or relocate plant materials from the right-of-way in connection with a development project, the property owner shall replant such trees or replace them according to City standards as defined in TMC Chapter 11.20. Any landscaping in the right-of-way that is disturbed by construction activity on private property shall be replaced or restored to its original condition by the property owner. Landscaping and other improvements within the right-of-way are subject to removal at the request of the City when the right-of-way is needed for public use.

C. Street landscape installation or improvement is required when applicable projects are to be undertaken along arterials and according to City standards and guidelines. Ground cover shall be provided for site frontage right-of-way with a potential for erosion. The selection of tree species shall be in accordance with City standards.

D. The abutting property owner(s) shall maintain landscaping within the right-of-way unless maintenance has been accepted by the City. All landscape materials in the right-of-way shall be maintained to industry standards. Trees shall be pruned according to standards adopted by either the National Arborists Association or the International Society of Arboriculture. The property owner is responsible for ensuring that landscaping fronting his/her property does not impair sight-distance. Topping of street trees is prohibited.

(Ord. 1995 §1 (part), 2002)

11.12.110 Street Lighting

A. Street lighting is required along all public streets, including new public streets in subdivisions and short subdivisions. The developer is responsible for design and installation of new lighting and relocation of existing lighting along the street frontage of the development.

B. All street light installations, including wiring, conduit and power connections, shall be located or relocated underground, except in residential areas with existing aboveground utilities.

C. For new subdivisions, the City will accept maintenance and power cost responsibility for the public street light system when a subdivision is 50% or more occupied. Until then, the property owner shall remain responsible for the maintenance of and energy charges for the street lighting system.

D. Street illumination is required at the intersection of a private street and a public street. NI street lighting is required along a private street.

(Ord. 1995 §1 (part), 2002)

11.12.120 Private Streets

Private streets will be allowed when:

1. A covenant that provides for maintenance and repair of the private street by property owners has been approved by the City and recorded with King County;
2. The covenant includes a condition that the private street will remain open at all times for emergency and public service vehicles; and
3. The private street would not hinder public street circulation; and
4. At least one of the following conditions exists:
 - a. The street would ultimately serve four or fewer lots; or
 - b. The private street would be part of a planned residential development; or
 - c. The private street would serve commercial or industrial facilities where no circulation continuity is necessary.

(Ord. 1995 §1 (part), 2002)

11.12.130 Acceptance of Dedicated Private Streets as Public Streets

Acceptance of dedicated private streets as public streets will be considered if the street meets all public street design and construction standards. Consideration of acceptance is also subject to the requirements of other City departments. Final acceptance is subject to City Council approval. The following criteria will be evaluated:

1. Acceptability of street and utility construction. Pavement condition shall be brought up to the standards of new construction;
2. Condition of title;
3. Survey requirements for monumentation and conveyance;
4. The need for additional right-of-way and easements; and
5. Cost of accepting the street and future maintenance requirements.

(Ord. 1995 §1 (part), 2002)

11.12.140 Americans with Disabilities Act

All street improvements and nonmotorized facilities shall be designed and constructed to meet the intent of applicable requirements of the Americans with Disabilities Act (ADA). In accordance with the State law and Federal guidelines established by the ADA, wheelchair curb ramps shall be provided at all pedestrian crossings with curbs.

(Ord. 1995 §1 (part), 2002)

11.12.150 Nonmotorized Facilities

A. The City's goals and policies for nonmotorized facilities are described in the pedestrian and bicycle transportation plan. The users of nonmotorized facilities are separated in that plan into two categories: pedestrians (which includes people, wheelchairs, horses, and other nonmotorized users) and bicycles. Internal pedestrian circulation systems shall be provided within and between existing, new and redeveloping commercial, multifamily and single-family developments; activity centers; and existing frontage pedestrian systems.

B. Concrete sidewalks shall be provided:

1. On both sides of all arterial streets.
2. On both sides of all non-arterial streets longer than 200 feet and on one side of all non-arterial less than 200 feet in length.
3. On both sides of all public streets which provide access to existing or planned future sidewalks, activity centers, parks, schools, neighborhoods, or public transit facilities.

B. The Director may grant an exception to the requirement for concrete sidewalk when the subdivision design provides an acceptably surfaced and maintained public walkway system.

C. A paved path shall be provided in lieu of concrete sidewalk when:

1. The Director determines that the paved path is to be temporary in nature; or
2. The Director determines that the soil or topographic conditions dictate a flexible pavement; or
3. The pedestrian and bicycle transportation plan indicates that the neighborhood character does not warrant concrete sidewalks.

D. When street system frontage improvements are required under TMC 11.12.040 additional right-of-way and pavement may be required if indicated on a designated bicycle route as identified in the comprehensive plan for pedestrian and bicycle transportation.

(Ord. 1995 §1 (part), 2002)

11.12.160 Traffic Signals

A. When a proposed street or driveway design interferes with existing traffic signal facilities, traffic signal modification or relocation must be provided, at the expense of the developer.

B. To mitigate the traffic impacts of a development, modification of an existing signal or installation of a new signal may be required.

C. All traffic signal modification designs shall be prepared by a licensed engineer experienced in traffic signal design.

(Ord. 1995 §1 (part), 2002)

11.12.170 Street Ends

A. All dead-end public streets and private streets shall be designed as a cul-de-sac, except as provided below.

B. A hammerhead may be used in lieu of a circular turnaround if the street is less than 200 feet long and serves six or fewer lots. An alternative design may be used if approved by the Department and the Fire Marshal.

C. Streets which temporarily deadend and will be extended in the future will not have a turnaround or hammerhead unless determined necessary by the Department and the Fire Marshal. When no turnaround or hammerhead is provided, street-end barricading shall be installed and must conform to the most recent edition of the Manual on Uniform Traffic Control Devices (MUTCD).

D. A landscaped island delineated by curbing shall be provided in the cul-de-sac by the property owner. The landscaping shall be maintained by the homeowners' association or adjacent property owners. The maintenance agreement shall contain this requirement and be recorded with King County.

(Ord. 1995 §1 (part), 2002)

CHAPTER 11.16

DEVELOPER REIMBURSEMENT (LATECOMERS) AGREEMENTS

Sections:

- 11.16.010 Purpose
- 11.16.020 Application, Terms
- 11.16.030 Rights and Non-liability of the City
- 11.16.040 Authorization
- 11.16.050 Minimum Project Size
- 11.16.060 Application – Contents
- 11.16.070 Notice to Property Owners
- 11.16.080 City Council Action
- 11.16.090 Preliminary Assessment Reimbursement Area – Amendments
- 11.16.100 Contract Execution and Recording
- 11.16.110 Application Fee
- 11.16.120 Construction and Acceptance of Improvements
- 11.16.130 Collection of Reimbursement Fees
- 11.16.140 Segregation of Reimbursement Fees
- 11.16.150 Disposition of Undeliverable Reimbursement Fees

11.16.010 Purpose

This chapter is intended to implement and thereby make available to the public the provisions of RCW Chapter 35.72 and RCW Chapter 35.91, Contracts for Utilities, as presently constituted or as may be subsequently amended. The rules and regulations included in this chapter are based on Tukwila's interpretation that Chapter 35.91 contemplates that reimbursement agreements will be executed prior to commencement of construction.

(Ord. 1995 §1 (part), 2002)

11.16.020 Application, Terms

A developer – as required by an ordinance of the City, or as a result of review under the State Environmental Policy Act, or in connection with a decision of the City Council to construct street system and/or utility system improvements on public rights-of-way – may apply to the City to establish a latecomer agreement for recovery of a pro rata share of the costs of constructing the system improvements, from the owners of record who will subsequently derive benefit from the improvements. No latecomer agreement shall extend for a period longer than 15 years from the date of final acceptance by the City. The developer is required to assign such recovery to run with the land in order that the recovery is made for the benefit of the owner of the real property at the time payment is made.

(Ord. 1995 §1 (part), 2002)

11.16.030 Rights and Non-liability of the City

The City Council reserves the right to refuse to enter into any latecomer agreement or reject an application therefore. All applications for latecomer agreements are made on the basis that the applicant releases and waives any claims for liability of the City in establishment and enforcement of latecomer agreements. The City is not responsible for locating a beneficiary or survivor entitled to benefits by or through latecomer agreements. Any collected funds unclaimed by developers after three years from the expiration of the agreement are returned to parties making payment to the City. Any remaining undeliverable funds shall inure to the benefit of the appropriate utility and/or fund approved by City Council.

(Ord. 1995 §1 (part), 2002)

11.16.040 Authorization

A. The Public Works Director is authorized to accept applications for the establishment by contract of an assessment reimbursement area as provided by state law, provided such application substantially conforms to the requirements of this chapter.

B. The Public Works Director shall establish administrative rules, regulations, policies, and procedures necessary to implement the provisions of this chapter.

(Ord. 1995 §1 (part), 2002)

11.16.050 Minimum Project Size

In order to be eligible for a reimbursement agreement, the estimated cost of the proposed improvement must be \$50,000.00 or more. The estimated cost of the improvement shall be determined by the Director, based upon a construction contract for the project, bids, engineering or architectural estimates, or other information deemed by the Director to be a reliable basis for estimating costs. The determination of the Director shall be final.

(Ord. 1995 §1 (part), 2002)

11.16.060 Application – Contents

Applications for the establishment of an assessment reimbursement area are accompanied by the application fee as set by this chapter, and shall include the following items:

1. Detailed construction plans and drawings, prepared and stamped by a State-licensed engineer, of the entire project to be borne by the assessment reimbursement area.

2. Itemization of all costs of the project, including – but not limited to – design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lights, right-of-way landscaping, street trees, engineering, construction, property acquisition, and contract administration.

3. A map and legal description identifying the proposed boundaries of the assessment reimbursement area and each separately owned parcel within such area. Such map shall identify the location of the project in relation to the parcels of property in such area.

4. A proposed assessment reimbursement roll stating the proposed assessment for each separate parcel of property within the proposed assessment reimbursement area, as determined by apportioning the total project cost on the basis of the benefit of the project to each parcel of property within said area.

5. A complete list of record owners of property within the proposed assessment reimbursement area, certified as complete and accurate by the applicant and which states names and mailing addresses for each such owner.

6. Envelopes addressed to each of the owners of record within the assessment reimbursement area who have not contributed their pro rata share of such costs. Proper postage for certified mail shall be affixed or provided.

7. Copies of executed deeds and/or easements in which the applicant is the grantee for all property necessary for the installation of such project.

(Ord. 1995 §1 (part), 2002)

11.16.070 Notice to Property Owners

A. All notices required by this chapter, including notices approved as to form by the City, and pre-addressed envelopes with proper postage affixed are the responsibility of the applicant.

B. Prior to the execution of a contract with the City establishing an assessment reimbursement area, the Director or designee shall mail, via certified mail, a notice to all property owners of record within the assessment reimbursement area as determined by the City on the basis of information and materials supplied by the applicant, stating the preliminary boundaries of such area and assessments, along with substantially the following statement:

“As a property owner within the Assessment Reimbursement Area whose preliminary boundaries are enclosed with this notice, you or your heirs and assigns will be obligated to pay under certain circumstances a pro rata share of construction and contract administration costs of a certain street and/or utility project that has been preliminarily determined to benefit your property. The proposed amount of such a pro rata share or assessment is also enclosed with this notice. You, or your heirs and assigns, will have to pay such share if any development permits are issued for development on your property within [] years of the date a contract establishing such area is recorded with King County provided such development would have required similar street improvements for approval. You have a right to request a hearing before the City Council within 20 calendar days of the date of this notice. All such requests must be made in writing and filed with the City Clerk. After such contract is recorded, it is binding on all owners of record within the assessment area who are not a party to the contract.”

(Ord. 1995 §1 (part), 2002)

11.16.080 City Council Action

If an owner of property within the proposed assessment reimbursement area requests a hearing, notice of such is given to all affected property owners in the manner provided in TMC 11.16.070 and 11.16.090. At such hearing, the City Council shall take testimony from affected property owners and make a final determination of the area boundaries, the amount of assessments, and the length of time for which reimbursement is required, and shall authorize the execution of appropriate documents. The City Council’s ruling on these matters is determinative and final. If no hearing is requested, the Council may consider and take final action on these matters at any public meeting 20 calendar days after notice was mailed to the affected property owners.

(Ord. 1995 §1 (part), 2002)

11.16.090 Preliminary Assessment Reimbursement Area – Amendments

If the preliminary determination of area boundaries and assessments is amended so as to raise any assessment appearing thereon, or to include omitted property, a new notice of area boundaries and assessment shall be given as in the case of an original notice; provided, that as to any property originally included in the preliminary assessment area which assessment has not been raised, no objections shall be considered by the City Council unless objections were made in writing at or prior to the date fixed for the original hearing. The City Council’s ruling shall be determinative and final.

(Ord. 1995 §1 (part), 2002)

11.16.100 Contract Execution and Recording

A. Within 30 days of the final City Council approval of an assessment reimbursement agreement, the applicant shall execute and present such agreement for signature of the appropriate city officials.

B. The latecomer agreements must be recorded in the King County Department of Records within 30 days of the final execution of the agreement. It is the sole responsibility of the latecomer applicant to record said agreement and to provide the City with a copy of the recorded instrument. Failure to comply with the requirements of this subsection is grounds for unilateral rescission of the agreement by the City.

C. Once recorded, the latecomer agreement is binding on owners of record within the assessment area who are not party to the agreement.

(Ord. 1995 §1 (part), 2002)

11.16.110 Application Fee

A. All applications for latecomer agreements are on forms approved by the Department and are accompanied by a nonrefundable application fee. The Department is responsible for administration, review and processing of such application and preparing the agreement. The fee for these services shall be set forth in a fee schedule to be adopted by motion or resolution of the City Council.

B. In the event that costs incurred by the City for engineering or other professional consultant services required in processing the application exceed the amount of the application fee, the applicant shall reimburse the City for such costs before the agreement is recorded.

(Ord. 1995 §1 (part), 2002)

11.16.120 Construction and Acceptance of Improvements

A. After the reimbursement agreement has been signed by both parties, and all necessary permits and approvals have been obtained, the applicant shall construct the improvements and, upon completion, request final inspection and acceptance of the improvements by the City, subject to any required obligation to repair defects. An appropriate bill of sale, easement and any other document needed to convey the improvements to the City and to insure right of access for maintenance and replacement shall be provided, along with documentation of the actual costs of the improvements and a certification by the applicant that all of such costs have been paid.

B. In the event actual costs are less, by 10% or more, than the Director's estimate used in calculating the estimated reimbursement fees, the Director shall recalculate the fees, reducing them accordingly, and shall cause a revised list of fees to be recorded with the county auditor.

(Ord. 1995 §1 (part), 2002)

11.16.130 Collection of Reimbursement Fees

A. Subsequent to the recording of a reimbursement agreement, the City shall not permit connection of any property within the reimbursement area to any water or sewer facility constructed pursuant to the reimbursement agreement, unless the share of the costs of such facilities required by the recorded agreement is first paid to the City.

B. Upon receipt of any reimbursement fees, the City shall deduct a 17% administrative fee and remit the balance of the reimbursement fees to the party entitled to the fees pursuant to the agreement. If an error were to occur in calculating the fee amount, the City shall make diligent efforts to collect such fee, but shall under no circumstances be obligated to make payment of the difference to the party entitled to reimbursement.

(Ord. 1995 §1 (part), 2002)

11.16.140 Segregation of Reimbursement Fees

The reimbursement agreement shall provide that the City is authorized to make segregation or adjustments to reimbursement fees because of subdivision or boundary line adjustment of the benefited properties. The segregation or adjustment shall generally be made in accordance with the method used to establish the original reimbursement fees. Segregation or adjustment shall not increase or decrease the total reimbursement fees to be paid. Should a segregation or adjustment be undertaken, a separate fee will be owed to the City for this additional administrative work.

(Ord. 1995 §1 (part), 2002)

11.16.150 Disposition of Undeliverable Reimbursement Fees

In the event that, after reasonable effort, the party to which reimbursement fees are to be paid pursuant to a reimbursement agreement cannot be located, and upon the expiration of 180 days from the date fees were collected by the City, the fees shall become the property for the City and shall be revenue to the appropriate City fund.

(Ord. 1995 §1 (part), 2002)

CHAPTER 11.20

RIGHT-OF-WAY VEGETATION

Sections:

11.20.010	Purpose
11.20.020	Permit
11.20.030	Permit Exemptions
11.20.040	Permit Fee
11.20.050	Permit Criteria
11.20.060	Public Notice
11.20.070	Vegetation Restrictions
11.20.080	Interference
11.20.090	Sight Distance Requirements
11.20.100	Response to Emergencies
11.20.110	Replacement Vegetation
11.20.120	Damaging Vegetation
11.20.130	Topping
11.20.140	Tree Root Damage – Liability
11.20.150	Maintenance of Plant Materials
11.20.160	Violations

11.20.010 Purpose

This chapter is intended to be implemented in a manner to:

1. Facilitate the planting, maintenance, restoration, replacement, and survival of desirable trees, shrubs, and groundcover within the public right-of-way;
2. Protect the public from personal injury and property damage caused or threatened by the improper planting, maintenance, or removal of vegetation;
3. Promote the use of drought tolerant vegetation and the reduction in the use of irrigation systems;
4. Provide a process for the beautification of the community; and
5. Promote the concept of a “walkable community.”

(Ord. 1995 §1 (part), 2002)

11.20.020 Permit

Any person wishing to perform any vegetation work within the public right-of-way must file an application with the City and obtain a right-of-way use permit prior to commencing any work.

(Ord. 1995 §1 (part), 2002)

11.20.030 Permit Exemptions

Owners or occupants of abutting property may maintain such property, other than plant replacement without obtaining a permit. The City and its employees, agents and representatives may perform such work without obtaining a permit.

(Ord. 1995 §1 (part), 2002)

11.20.040 Permit Fee

Permit fees will not be charged in connection with right-of-way applications made pursuant to TMC 11.20.030, except for applications requiring public notice under TMC 11.20.060.

(Ord. 1995 §1 (part), 2002)

11.20.050 Permit Criteria

The Director may grant any vegetation permit application submitted pursuant to TMC 11.20.020, if all of the following criteria exist:

1. The proposed vegetation work is consistent with achieving the purposes of this chapter pursuant to TMC 11.20.010; and
2. The proposed work is consistent with the City's Comprehensive Plan; and
3. The proposed work is consistent with the City's intended use of the public right-of-way; and
4. The proposed work is consistent with TMC Chapter 18.54 and all other applicable statutes, laws, rules, policies, and regulations; and
5. The granting of the permit will not constitute a grant of a special privilege; and
6. If the proposed work is located within a designated environmentally sensitive area, all necessary environmental and sensitive area approvals have been granted pursuant to TMC Title 18, the State Environmental Policy Act as adopted by the City, and all other applicable environmental regulations, as now existing or hereafter amended or adopted; and
7. The granting of the permit will not be materially detrimental to the public welfare or injurious to property or improvements located in the area surrounding the abutting property; and
8. The proposed vegetation work is consistent with the character of the neighborhood.

(Ord. 1995 §1 (part), 2002)

11.20.060 Public Notice

A. The Director shall distribute, by regular mail, a public notice of any vegetation right-of-way permit application to persons receiving the property tax statements for all property within 100 feet of the affected vegetation, whenever such application covers the removal or significant pruning of vegetation that is 4 inches or larger in diameter measured at 4.5 feet (54 inches) above the ground; provided, however, that such public notice shall not be required for applications covering red alder, cottonwood, poplar, big leaf maple, or willow trees regardless of size.

- B. The public notice shall contain the following information:
1. The name of the applicant;
 2. The street address of the abutting property which is adjacent to the affected vegetation, or if this is not available, a locational description other than legal description. The notice must also include a vicinity map that identifies the location of the vegetation;
 3. A citation of this chapter;
 4. A brief description of the proposed vegetation work;

- 5. A statement of availability of the official file;
- 6. A statement of the right of any person to submit written comments to the Director; and
- 7. A statement that “Only persons who submit written comments to the Director within 14 calendar days from the date of the notice may appeal the Director’s decision.”

C. The Director shall issue a written decision to either grant or deny the application, and shall attach a final vegetation restoration plan to such decision. The Director shall use the decisional criteria set forth in this chapter and shall consider all public comments in deciding upon the application. The Director shall issue the decision within 14 calendar days after the close of the time period for public comments. The Director shall include in the written decision any restrictions and conditions that are determined reasonably necessary to eliminate or minimize any undesirable effects of granting the application. The Director’s decision is determinative and final.

(Ord. 1995 §1 (part), 2002)

11.20.070 Vegetation Restrictions

No one shall plant in any public place any maple, Lombardy poplar, cottonwood or gum, or any other tree, the roots of which cause damage to the sewers, sidewalks, or pavements, or which breed disease dangerous to other trees or to the public health, or allow to remain in any public place any planted tree which has become dead or is in such condition as to be hazardous to the public. No illegal or illegally manufactured, collected or delivered vegetation, as codified by the Revised Code of Washington or other applicable laws rules and regulations, as now exist or are hereafter adopted or amended, or carrying harmful diseases, such as worms, insects, caterpillars or larvae, shall be permitted within the City.

(Ord. 1995 §1 (part), 2002)

11.20.080 Interference

A. No flowers, shrubs or trees shall be allowed to overhang or prevent the free use of the sidewalk or roadway, or street maintenance activity, except that trees may extend over the sidewalk when kept trimmed to a height of eight feet above the walkway, and 18 feet above a roadway.

B. No trees shall be allowed to come into contact with telephone, telegraph, electric or power wires of public service companies or of the City; provided, however, that such wires are 25 feet above the level of the public place over which they pass.

C. When the Director finds that trees, shrubs or landscaping are coming in contact with the wires of a public service company or of the City or are interfering with the free use of the sidewalk or roadway, the Director may order the trees or landscaping trimmed; and if not so trimmed within ten days after service of written notice to the owner of such trees or landscaping, or the posting of written notice upon the premises, the Director may issue a permit to the owners of the wires, authorizing them to trim such trees or landscaping at their own expense.

(Ord. 1995 §1 (part), 2002)

11.20.090 Sight Distance Requirements

A. Areas around all intersections, including the entrance and exit of driveways onto streets, must be kept clear of sight obstructions. Intersection sight distance shall be based on posted speed limits per AASHTO Policy on Geometric Design requirements, current edition. The Director may require a traffic study, at the owner’s expense, to determine safety requirements.

B. When the Director finds that the public safety has been jeopardized because sight distance requirements at intersections are not being maintained, the Director may order the trees or landscaping to be trimmed; and if not trimmed within ten days after the service of written notice to the owner, or the posting of written notice upon the premises, the Director may have the trees or landscaping trimmed and the cost for such work charged to the owner.

(Ord. 1995 §1 (part), 2002)

11.20.100 Response to Emergencies

In the event of an emergency, any person may take all reasonably necessary actions involving the maintenance, removal, or cutting of any vegetation or street tree in order to prevent injury to persons or damage to property without prior permit approval. The Director must be notified in a written report within three working days as to the nature and location of the emergency, and the action taken by the person.

(Ord. 1995 §1 (part), 2002)

11.20.110 Replacement Vegetation

No person shall remove vegetation within a public right-of-way without replacing the removed vegetation in accordance with the right-of-way vegetation plan. The replacement vegetation shall be equivalent in number, size, quality, species, and placement as the removed vegetation, unless otherwise approved by the Director. An exemption from the requirements of this section may be granted by the Director if the proposed exemption is found to be consistent with the criteria set forth in TMC 11.20.050. The cost of such removal and replacement shall be borne by the person removing or causing the removal of such vegetation.

(Ord. 1995 §1 (part), 2002)

11.20.120 Damaging Vegetation

No person shall intentionally damage, destroy or mutilate any vegetation located in any public right-of-way or other public place, or attach any rope or wire (other than used to support a young or broken tree), nail, sign, poster, handbill or other item to such vegetation, or allow any gaseous liquid, or solid substance which is harmful to such vegetation to come in contact with the vegetation, or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of such vegetation. The owner or the occupant shall not be precluded from removing or maintaining damaged vegetation.

(Ord. 1995 §1 (part), 2002)

11.20.130 Topping

No person may top any street tree located in the public rights-of-way. The Director may exempt the City and other persons from the provisions of this section when the street tree to be topped has been severely damaged by storms or other natural causes, or the street tree is located under utility wires or other obstructions where other pruning practices are impractical, or where the topping is necessary to preserve the public safety and welfare.

(Ord. 1995 §1 (part), 2002)

11.20.140 Tree Root Damage – Liability

Any person who owns any tree or vegetation within private property, the roots of which cause damage to the public right-of-way or other public space, including limitation, damage to utilities located in the public right-of-way, sidewalks, paved areas, or create a safety hazard, shall be liable for repairing any damage to public rights-of-way, or other public places, or utilities located therein by said trees or vegetation.

(Ord. 1995 §1 (part), 2002)

11.20.150 Maintenance of Plant Materials

A. Landscaping in the right-of-way shall be maintained by the abutting property owner(s) unless maintenance has been accepted by the City.

B. All landscape materials in the public right-of-way shall be maintained to industry standards. Trees shall be pruned according to standards adopted by either the National Arborists Association or the International Society of Arboriculture.

C. The property owner is responsible for ensuring that landscaping fronting his/her property does not impair sight distance.

(Ord. 1995 §1 (part), 2002)

11.20.160 Violations

Any person violating any of the provisions of this chapter, which results in a hazard to the public health, safety and welfare is guilty of a misdemeanor and shall be punished as provided by law. Damage to each item of vegetation shall be deemed a separate violation. The value of damaged vegetation shall be calculated pursuant to the International Society of Arboriculture Tree Replacement Guide.

(Ord. 1995 §1 (part), 2002)

CHAPTER 11.24**PLACEMENT OF SIGNS OR BANNERS****Sections:**

11.24.010	Banner Permit
11.24.020	Permit Application Requirements
11.24.030	Qualified Applicants
11.24.040	Approved Locations
11.24.050	Time Limitation
11.24.060	Banner Removal Cost
11.24.070	Removal of Signs
11.24.080	Disposition of Signs

11.24.010 Banner Permit

No person shall hang or cause to be hung a banner above or across a public right-of-way, except in conformance with the provisions of this chapter, nor without first obtaining a permit from the City of Tukwila.

(Ord. 1995 §1 (part), 2002)

11.24.020 Permit Application Requirements

A. An application will not be accepted, except from a qualified applicant, as defined in TMC 11.24.030, nor will it be accepted more than one year in advance of the time the banner is to be installed.

B. Permit applications along with a permit fee must be submitted to the Director at least 30 days in advance of installation, and shall contain the following information:

1. Date of event or public service announcement.
2. Name and purpose of event.
3. Date of proposed placement of banner.
4. Proposed location of banner.
5. Type of banner – quality, brand, type, size, weight, clearance, and name of vendor who is producing the banner.
6. Draft art work – sample specification and message to be printed on the banner.
7. Mechanism to be used for hanging the banner.
8. Date banner will be removed.
9. Names of installer who will hang, remove and service the banner should a problem arise.
10. Written permission from private property owner(s) to attach a banner to private property, if applicable.
11. Copy of IRS tax exempt certificate.
12. Contact person, name and phone number to be used in the event of a problem.
13. Current comprehensive liability insurance certificate and hold harmless agreement.

C. Minimum requirements for the banner:

1. Banner text shall reflect a public service message or event announcement.
2. Banner shall maintain minimum clearance of 20 feet above the right-of-way.
3. The banner shall not exceed four feet in height.
4. All banners must be manufactured or produced by a banner company; “homemade” banners shall not be permissible.

(Ord. 1995 §1 (part), 2002)

11.24.030 Qualified Applicants

Applications will only be accepted from organizations meeting all of the following criteria:

1. A Tukwila-based organization; and
2. Be a nonprofit organization, having obtained IRS certification as tax exempt; and
3. City Sponsored. For the purposes of this chapter, “city sponsored” means an organization which meets one or more of the following criteria: receives grant money from the City of Tukwila; or has a contractual relationship with the City of Tukwila; or receives in-kind services from the City of Tukwila; or the City of Tukwila is a member of the applying organization.

(Ord. 1995 §1 (part), 2002)

11.24.040 Approved Locations

A. Banner permits shall be issued only on approval of the application by the Director.

B. The Director will maintain a list of approved locations for hanging banners. Request for hanging banners at locations not on the pre-approved list will be subject to approval by the Director. Newly approved sites will be added to the list of approved locations. The Director will approve the method of attachment, and the first installation of a banner at an approved location will be performed by the Department of Public Works.

C. Applicants are responsible for making arrangements and contracting with an approved installer to hang any banner after the first banner at an approved location. Any installations performed by the Department of Public Works will be done for the current installation fee established by the Director and shall be payable in advance.

D. If a banner will be secured by anchor bolts, lag screws or other similar methods of attachment to the exterior wall or face of a building, approval by the Building Department will be required.

(Ord. 1995 §1 (part), 2002)

11.24.050 Time Limitation

A banner shall be hung no more than two weeks in advance of an event and shall be removed by an approved installer no later than 5:00PM the first business day following the event.

(Ord. 1995 §1 (part), 2002)

11.24.060 Banner Removal Cost

The City will remove banners hung over the right-of-way without prior approval by the Director, and the responsible party shall reimburse the City for the cost of having the banner removed. The holder of a permit to hang banners will be responsible for the cost to repair any damage to City-owned property that may result from the installation, attachment, hanging or suspension of the banner.

(Ord. 1995 §1 (part), 2002)

11.24.070 Removal of Signs

A sign placed in violation of TMC 11.24.070 shall be removed by the City immediately and without prior notice. If the owner of the sign is present at the time of removal, the owner is given an opportunity to remove the sign immediately.

(Ord. 1995 §1 (part), 2002)

11.24.080 Disposition of Signs

A. Except as provided in this chapter, signs removed under TMC 11.24.080 will be immediately destroyed by the City without compensation to the owner.

B. Non-business signs are retained while the apparent owner is contacted by the City. If the owner cannot be located or does not reply to the City within five working days, the City shall destroy the sign. If the owner is located and replies within five working days, the City shall make the sign available for pickup, except the sign shall be destroyed if:

1. The sign is not picked up within five working days of the owner's reply; or
2. A sign owned by the same person had been removed by the City within the past six months.

(Ord. 1995 §1 (part), 2002)

**CHAPTER 11.28
UNDERGROUNDING OF UTILITIES**

Sections

- 11.28.010 Policy
- 11.28.020 Purpose
- 11.28.030 Undergrounding – Scope
- 11.28.040 Facilities Exempted
- 11.28.050 Undergrounding Requirements
- 11.28.060 Deviations
- 11.28.070 Overlapping
- 11.28.080 Upgraded Service
- 11.28.090 Connections and Disconnections of Affected Service
- 11.28.100 Service Connection Requirements

11.28.010 Policy

It is the policy of the City to require the underground installation of all new electrical and communication facilities, with certain exceptions noted in this chapter. The City Council finds that the convenience, health, safety, and general welfare of the residents of the community require that all new facilities specified in this chapter be installed underground.

(Ord. 2701 §5, 2023)

11.28.020 Purpose

The purpose of this chapter is to establish minimum requirements and procedures for the underground installation of electric and communication facilities within the City.

(Ord. 2701 §6, 2023)

11.28.030 Undergrounding – Scope

This chapter shall apply to any person or entity, other than the City, who owns electrical or communication facilities, and to all new electrical and communication systems, including but not limited to electric power, telephone, telecommunication, and cable television facilities within the corporate City limits.

(Ord. 2701 §7, 2023)

11.28.040 Facilities Exempted

The following facilities are exempted from the undergrounding requirements of this chapter:

1. Electric utility substations, pad-mounted transformers, and switching facilities not located on the public right-of-way where site screening is or will be provided in accordance with TMC Chapter 18.54.
2. Electric transmission systems of a voltage of 115 kV or more (including poles and wires) and equivalent communication facilities.
3. Ornamental street lighting standards, as defined by the Director.

4. Telephone pedestals, cross connect terminals, repeaters, cable warning signs, and other equivalent communication facilities.

5. Government equipment, including but not limited to: traffic control equipment and police and fire sirens.

6. Temporary services for construction.

7. Replacement of existing overhead facilities due to damage by natural or man-made causes.

8. Overlapping onto existing facilities installed, subject to the limitations and restrictions set forth in TMC Section 11.28.070.

9. Secondary wiring for street lighting.

10. Upgrade or replacement service of existing facilities pursuant to TMC Section 11.28.080.

11. Other facilities as determined by the Director.

(Ord. 2701 §8, 2023)

11.28.050 Undergrounding Requirements

Except for wireless communication facilities specifically permitted, pursuant to TMC Chapter 18.58, all new facilities shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a franchise. Right-of-way users shall be responsible for all costs associated with undergrounding its facilities except as otherwise provided herein or within Federal or State law.

1. The right-of-way user shall install its new facilities underground, unless otherwise approved by the City, pursuant to TMC Section 11.28.060.

2. The right-of-way user shall install its new facilities within an existing underground duct or conduit whenever excess capacity exists within such facility and the right-of-way user is able to access such underground duct or conduit for a commercially reasonable fee; otherwise, the right-of-way user shall place its new facilities within its own new underground duct or conduit. The right-of-way user is encouraged to place conduit underground that can accommodate both the new facilities and future facilities, including any existing above ground facilities that may be relocated underground at a later date.

3. Whenever any new or existing electric utilities are being located underground, or upon a City project within a public right-of-way, the right-of-way user, with permission to occupy the same right-of-way, shall also relocate its facilities underground or along an alternative public way, consistent with the requirements of RCW 35.99.060 and TMC Section 11.08.300.

4. If requested, the right-of-way user shall provide the City with additional ducts and conduits, at the right-of-way user's cost, and related structures necessary to access the ducts and conduits; provided, that the terms and conditions under which such additional ducts and/or conduits are provided shall be consistent with RCW 35.99.070.

5. These locational requirements shall apply even if the right-of-way user is providing services to a wireless communication facility in the right-of-way, and such wireless communication facility is allowed to remain above ground.

(Ord. 2701 §9, 2023)

11.28.060 Deviations

A. The right-of-way user may request that the Director allow a deviation from the requirements in this section by establishing that such compliance would be an undue hardship to the right-of-way user, a user of the facilities, or any other affected person. The term “undue hardship” shall mean either:

1. The installation would be technologically unfeasible; or
2. The impact of the underground construction outweighs the general welfare consideration in requiring underground construction; or
3. Delay of the installation of the underground facilities would better coordinate the project with other private improvements which are in the permitting process or public improvements shown on the Capital Improvement or Transportation Improvement elements of the Comprehensive Plan; or
4. Strict application of this chapter would materially inhibit or would have the effect of materially inhibiting a right-of-way user's ability to provide telecommunication services; or

5. For existing or new single-family residences only, the requirement to underground new facilities constitutes a financial hardship.

B. The Director may also deviate from these requirements if a statute or tariff prohibits the enforcement thereof or requires the City or rate payers to pay for such undergrounding.

C. Deviations shall be requested in writing by the applicant, which shall include how the applicant meets the criteria of TMC Section 11.28.060.A or B. The Director shall determine, in writing, if the undue hardship criteria are sufficiently established such that the applicant is not required to underground the new facilities. The Director's decision shall be final.

(Ord. 2701 §10, 2023)

11.28.070 Overlashing

Existing right-of-way users may overlash to their existing wires, subject to all applicable local, state, and federal regulations; and further provided that existing right-of-way users may only overlash a total of two additional new wires per existing wire owned by the right-of-way users on a given pole, not to exceed three wires in total for any given right-of-way user. The overlashed wire(s) shall be limited to like-in-kind only, meaning that it shall not exceed the same size, weight and diameter of the original wire that is being overlashed to.

(Ord. 2701 §11, 2023)

11.28.080 Upgraded Service

Existing wires may be replaced or upgraded for increased service capacity provided that no additional wires are added (i.e., a new wire can be added but the existing wires shall be removed). The new upgrade or replacement wires shall be limited to like-in-kind only, meaning that it shall not exceed the size, weight, and diameter of the original wire that the applicant proposes to remove.

(Ord. 2701 §12, 2023)

11.28.090 Connections and Disconnections of Affected Service

The owner of real property abutting an underground project shall be responsible, at his or her expense, for converting to underground service and disconnecting his or her aerial services within 30 days following notice in writing of availability of such underground service. Time in consummating such connection and disconnection is of the essence, and such notice to the property owner, customer or subscriber may be mailed, postage prepaid, or delivered in person. In the event that such conversion and disconnection is not accomplished within 30 days of receipt of notice, the City may order the work done and the actual cost shall constitute a lien against the real property, subject to enforcement as provided by law.

(Ord. 2701 §13, 2023)

11.28.100 Service Connection Requirements

A. **Single-Family Residential Areas.** All electrical or communication service lines from either existing overhead or underground facilities to the service connection of new structures shall be installed underground.

B. **Non-Single Family Residential Areas.** All new electrical or communication service lines from either existing overhead or underground facilities to the service connection of new and existing structures shall be installed underground.

(Ord. 2701 §14, 2023)

CHAPTER 11.32 TELECOMMUNICATIONS

Sections:

- 11.32.010 Purpose
- 11.32.020 Administration
- 11.32.030 Existing Licenses or Telecommunications or Cable Franchises
- 11.32.040 Existing Telecommunications Carriers and/or Cable Operators Occupying the Rights-of-Way without a License or Franchise
- 11.32.050 Registration Required
- 11.32.060 License or Franchise Application
- 11.32.070 Determination by the City
- 11.32.080 Conditions
- 11.32.090 Applicability to Use of Rights-of-Way
- 11.32.100 Amendment of Grant
- 11.32.110 Renewal of Grant
- 11.32.120 Revocation or Termination of Grant
- 11.32.130 Grantee Insurance and Bond
- 11.32.140 Release, Indemnity, and Hold Harmless
- 11.32.150 Applicability of Fees and Compensation
- 11.32.160 Other Remedies

11.32.010 Purpose

The purpose of this chapter is to:

1. Permit and manage reasonable, fair and equitable access to the public rights-of-way of the City for telecommunications purposes on a competitively neutral basis;
2. Establish predictable, enforceable, clear and nondiscriminatory local regulations, guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications carriers and cable operators;
3. Conserve the limited physical capacity of the public rights-of-way held in public trust by the City;
4. Assure that the City's current and ongoing costs of granting and regulating private access to and use of the public rights-of-way and/or public property are fully compensated by the persons seeking such access and causing such costs;
5. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare; and
6. Enable the City to discharge its public trust consistent with rapidly evolving Federal and State regulatory policies, industry competition and technological development.

(Ord. 1995 §1 (part), 2002)

11.32.020 Administration

The Director is authorized to administer this chapter and to establish further rules, regulations and procedures for the implementation of this chapter.

(Ord. 1995 §1 (part), 2002)

11.32.030 Existing Licenses or Telecommunications or Cable Franchises

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

(Ord. 1995 §1 (part), 2002)

11.32.040 Existing Telecommunications Carriers and/or Cable Operators Occupying the Rights-of-Way Without a License or Franchise

Notwithstanding the foregoing, the requirements of this chapter shall apply to any telecommunications carrier or cable operator who currently occupies rights-of-way without a license, franchise, cable franchise, right-of-way use permit or other agreement with the City. Any such telecommunications carrier or cable operator shall register or apply for a license, telecommunication franchise or cable franchise as provided by this chapter within 120 days of the effective date of this chapter. This chapter shall not apply to lessees that solely lease bandwidth (and do not own telecommunications facilities within the City), so long as the lessor has complied with the requirements of this chapter.

(Ord. 1995 §1(part), 2002)

11.32.050 Registration Required

A. **Business Registration.** All telecommunications carriers or cable operators having facilities within the City that offer or provide telecommunications or cable service within the City, who are not otherwise required to acquire a license or franchise, shall register with the City as set forth in TMC Chapter 5.04.

B. **Exception to Registration.** A person that provides telecommunications or cable services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control, provided that such person does not use or occupy any rights-of-way of the City or other ways within the City, is excepted from the registration requirements pursuant to this chapter.

(Ord. 1995 §1 (part), 2002)

11.32.060 License or Franchise Application

To the extent permitted by law, any telecommunications carrier or cable operator who currently occupies or desires in the future to occupy any rights-of-way with any facilities for the purpose of providing telecommunications or cable services shall file an application on a form provided by the Director for one or more of the following:

1. *Right-of-Way License.* If the telecommunications carrier or cable operator provides or intends to provide services exclusively to persons or areas outside the City, a right-of-way use permit will be required in order to construct, install, control or otherwise locate telecommunication facilities in, under, over or across any rights-of-way. TMC Chapter 11.08 provides guidance.

2. *Telecommunications Franchise.* Required if the telecommunications carrier provides or intends to provide service to any person or area within the City.

3. *Cable Franchise.* Required if the cable operator provides or intends to provide cable services to any person or area in the City. Services similar to cable service, such as Open Video Systems, shall also be subject to this chapter, and subject to substantially similar terms and conditions as those contained in franchise agreement(s) issued to cable operator(s) in the City with respect to franchise fee obligations, public, educational, and governmental access programming obligations, and all other franchise obligations to the extent provided by law.

4. *Persons Asserting an Existing State-Wide Grant.* Any person asserting an existing State-wide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution may continue to operate under the existing State-wide grant, provided the person provides the City with documentation evidencing the existing State-wide-grant. Upon acceptance of the documentation by the City, the person shall then be required to obtain all applicable right-of-way use permits from the City pursuant to TMC Chapter 11.08.

5. *Facilities Lease Required.* Any person, including but not limited to service providers and non-service providers, who occupies or desires to locate telecommunications equipment on or in City property, including lands or City-owned physical facilities other than the public rights-of-way, shall not locate such facilities or equipment on City property unless granted a facilities lease from the City pursuant to this chapter. The City reserves unto itself the sole discretion to lease City property for telecommunication facilities, and no vested or other right shall be created by this section or any provision of this chapter applicable to such facilities leases. For purposes of this section, "City property" shall include site-specific locations in the rights-of-way.

(Ord. 1995 §1 (part), 2002)

11.32.070 Determination by the City

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

1. The applicant must have current registration issued by the FCC and WUTC.

2. The applicant must demonstrate the willingness and ability to mitigate and/or repair damage or disruption, if any, to public or private facilities, improvements, services or landscaping, if the application is granted.

3. The grant to use the rights-of-way will serve the community interest.

4. Applicable Federal, State and local laws, regulations, rules and policies will be met.

(Ord. 1995 §1 (part), 2002)

11.32.080 Conditions

The following conditions apply to each license, lease, or franchise granted hereunder:

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

a. *License Route.* A license granted hereunder shall be limited to a grant of specific rights-of-way and defined portions thereof, as may be indicated in the license agreement.

b. *Franchise Territory.* A telecommunications or cable franchise granted hereunder shall encompass all territory within the corporate limits.

c. *Facilities Maps.* Upon request by the Director, the grantee shall provide the City with maps in a format prescribed by the Director, identifying the location of all telecommunications and cable facilities within the rights-of-way.

2. *Leased Capacity.* A grantee shall have the right to offer or provide excess conduit capacity to another telecommunications or cable provider with prior City notification, provided that:

a. The grantee shall furnish the City 60 days advance written notice of any such proposed lease or agreement;

b. The proposed lessee shall comply with all of the requirements of this chapter prior to providing telecommunications or cable services.

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

4. *Limitations.*

a. No grant shall convey any right, title or interest in rights-of-way but shall be deemed a license or franchise only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.

b. No grant shall authorize or excuse a licensee or franchisee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way.

c. No grant shall expressly or implicitly authorize a licensee or franchisee to provide service to, or install a system on private property without owner consent, or to use publicly or privately owned poles, ducts or conduits without a separate agreement with the owners and to the extent provided by law.

d. No grant shall confer any exclusive right, privilege or license to occupy or use the rights-of-way for delivery of telecommunications or cable services or for any other purposes.

e. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the City's power of eminent domain.

5. *Term.* Unless otherwise specified in a license, telecommunications franchise or cable franchise agreement, the term shall be for no more than three years.

(Ord. 1995 §1 (part), 2002)

11.32.090 Applicability to Use of Rights-of-Way

A. General Duties.

1. Except as otherwise provided herein, the holder of a right-of-way license, franchise or lease granted pursuant to this chapter, or otherwise authorized to use and occupy the public rights-of-way, shall – in addition to said right-of-way license, franchise, lease or grant – be required to obtain a right-of-way use permit from the City pursuant to TMC Chapter 11.08 before performing any work in City rights-of-way. No work, construction, development, excavation, installation or maintenance and repair of any equipment or facilities shall take place within the rights-of-way or upon City property until such time as the right-of-way use permit is issued

2. All grantees shall have no ownership rights in rights-of-way, even though they may be granted a license, franchise or cable franchise to construct or operate their facilities.

3. Nothing herein shall limit or otherwise affect the authority of the City to require a lease for any use, occupation, construction, installation, maintenance or location upon any property owned in fee by the City.

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

1. Telecommunications and cable facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility and permission can be obtained reasonably from the installer of such duct or conduit;

2. Whenever one or more existing telephone, electric utilities, cable systems or telecommunications facilities are located underground within rights-of-way, a licensee or franchisee shall occupy the same trench where reasonable and practical;

3. When sufficient capacity is not available under 11.32.090 A.1 or A.2 above, the telecommunications or cable facility shall be installed underground within the rights-of-way, below the sidewalk, or within the planter strip;

4. A franchisee or licensee with written authorization from the utility pole owner to install overhead facilities shall install its telecommunications or cable facilities on pole attachments to existing utility poles only, and then only if surplus space is available;

5. When a franchisee or licensee has been granted authority to install overhead facilities as in 11.32.090 B.4 above and the City directs such facilities to be relocated to allow construction or reconstruction within the right-of-way, a licensee or franchisee that occupies the same rights-of-way shall concurrently relocate its facilities underground at its own expense.

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

1. *City Use.* At the option of the City, whenever new conduit is laid by the licensee or franchisee, the City shall be provided access to the open trench or bore hole, and space shall be made available for purposes of installing two 4-inch conduits for City use. There shall be no cost to the City associated with the trenching, backfilling, boring or surface restoration involved with these activities.

2. *Use by Others.* When the City reasonably determines such construction is in an area in which another telecommunications or cable provider may also construct telecommunications or cable facilities in the future, the City may require the franchisee or licensee to construct or install excess conduit capacity in the rights-of-way. The expense of such excess conduit capacity shall be borne by the City or other such person that contracts with the City to bear the expense. The grantee may manage the excess conduit itself and be permitted to charge a reasonable market lease rate for occupancy of the additional conduit space, provided such lease revenues shall be first applied to reimburse the City for its actual contribution to the construction of the excess conduit (plus interest compounded at the Washington State Local Government Investment Pool rate during the time in question).

D. Occupancy of City-Owned Conduit. In furtherance of the same object of 11.32.090-C, if the City owns conduit in the path of a grantee's proposed facilities, and provided it is

technologically feasible for a grantee to occupy the conduit owned by the City, a grantee shall be required to occupy the conduit owned by the City in order to reduce the necessity to excavate the rights-of-way. The grantee shall pay to the City for such occupancy a reasonable fee, to be determined by the City Council.

E. Relocation or Removal of Facilities. Within 90 days following written notice from the City, a grantee shall, at its own expense, temporarily or permanently remove, relocate, place underground, change or alter the position of any telecommunications or cable facilities within the rights-of-way whenever the Director shall have determined that such removal, relocation, undergrounding, change or alteration is reasonably necessary for:

1. The construction, repair, maintenance or installation of any City or other public improvement in or upon the rights-of-way; or
2. The operations of the City or other governmental entity in or upon the rights-of-way.

F. Removal of Unauthorized Facilities.

1. A telecommunications or cable facility is unauthorized and subject to removal in the following circumstances:

- a. Upon expiration or termination of the grantee's license, telecommunications franchise or cable franchise unless otherwise provided by law.
- b. Upon abandonment of a facility within the rights-of-way.
- c. If the facility was constructed or installed without prior issuance of a required encroachment or utility permit, license, telecommunications franchise, or cable franchise.
- d. If the facility was constructed or installed at a location not permitted by the grantee's license, franchise or cable franchise.
- e. To the extent permitted by law, any such other reasonable circumstances affecting public health, safety and welfare deemed necessary by the Director.

2. The Director may exercise discretion to allow an unauthorized facility to come into compliance with this chapter upon written request of the unauthorized telecommunications carrier or cable operator made within 30 days after said carrier or operator is notified that the facility is unauthorized pursuant to this chapter. Notice shall be given in accordance with TMC 11.32.120. The Director shall make the determination of whether to allow said carrier or operator to cure by using the standards of review set forth in TMC 11.32.120.

3. Notwithstanding any other provision of this chapter, the Director may, if deemed appropriate, allow a grantee or other person who may own, control or maintain telecommunications or cable facilities within the rights-of-way to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the Director. Any plan for abandonment or removal of such facilities must be first approved by the Director, and all necessary permits must be obtained prior to commencement of such work in accordance with TMC 11.08.270. Upon permanent abandonment of any telecommunications or cable facilities of such persons in place, the facilities shall become the property of the City, and such persons shall submit to the Director an instrument in writing, to be approved by the City Attorney, transferring ownership of such facilities to the City. The consideration for the conveyance is Tukwila's permission to abandon the facilities in place. The provisions of this section shall survive the expiration, revocation or termination of any license, franchise or cable franchise granted under this chapter.

(Ord. 1995 §1(part), 2002)

11.32.100 Amendment of Grant

A. Adding or modifying services. Additions or modifications to initial route(s) identified for licenses which are determined to be significant by the Director will require a new license.

B. Relocation of services. If ordered by the City to locate or relocate its telecommunications or cable facilities in rights-of-way not included in a previously granted license, telecommunications franchise or cable franchise, the City shall grant a license or franchise amendment without further application.

C. Assignments or Transfers. All assignees or transferees of interest in a license, franchise, or cable franchise of any telecommunications carrier or cable operator must comply with the terms and conditions of this chapter, the license, telecommunications franchise, or cable franchise agreement, the requirements of the FCC, and the requirements of the WUTC. If said assignee or transferee fails to comply with such requirements, the license, telecommunications franchise, or cable franchise assigned or transferred is subject to revocation.

(Ord. 1995 §1(part), 2002)

11.32.110 Renewal of Grant

A. Renewal Application. A licensee or franchisee that desires to renew its license or franchise hereunder shall, not more than 180 days nor less than 120 days before expiration of the current license or franchise, file an application with the City for renewal of its license or franchise.

B. Renewal Determination. Within 90 days after receiving an application hereunder, the City Council shall make a determination on behalf of the City granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for non-renewal. The criteria enumerated in this chapter shall apply when determining whether to grant or deny the application, and the City may further

consider the applicant's compliance with requirements of this chapter and the license or franchise agreement.

C. **Obligation to Cure as a Condition of Renewal.** No license or franchise shall be renewed until any on-going violations or defaults in the licensee's or franchisee's performance of the license or franchise agreement, of the requirements of this chapter, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing corrective action to be taken by the licensee or franchisee has been approved by the Director. Failure to comply with the terms of an approved corrective action plan shall be grounds for non-renewal or revocation of the license or franchise.

(Ord. 1995 §1(part), 2002)

11.32.120 Revocation or Termination of Grant

A license, telecommunications franchise or cable franchise granted by the City to use or occupy rights-of-way may be revoked pursuant to the provisions of TMC Sections 11.32.090F, 11.32.110C, and 11.32.120.

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

a. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.

b. That rebuts the alleged violation or non-compliance.

c. That it would be in the public interest to impose some monetary damages, penalty or sanction less than revocation.

2. **Standards for Revocation or Lesser Sanctions.** If persuaded that the grantee has violated or failed to comply with a material provision of this chapter or of a license, telecommunications franchise or cable franchise or applicable codes, statutes, or rules and regulations, the City Council shall make a preliminary determination whether to revoke the license, telecommunications franchise or cable franchise, and issue a written order, or to impose monetary damages, a penalty, or other such lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

a. Whether the misconduct was egregious.

b. Whether substantial harm resulted.

c. Whether the violation was intentional.

d. Whether there is a history of prior violations of the same or other requirements.

e. Whether there is a history of overall compliance.

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

(Ord. 1995 §1(part), 2002)

11.32.130 Grantee Insurance and Bond

A. **Insurance required.** Commercial General Liability Insurance, and, if necessary, Umbrella Liability Insurance, which will cover bodily injury, property damage, and any other exposure which can be reasonably identified as potentially arising from the grantee's activities within the rights-of-way shall be required. The limit of liability shall not be less than \$2,000,000 for each occurrence. The City, its elected and appointed officers, officials, employees, agents, and representatives shall be named as additional insured with respect to activities occurring within its rights-of-way. Coverage shall be comprehensive with respect to the grantee's activities within the rights-of-way, and shall include completed operations, explosions, collapse, and underground hazards. Such insurance shall name the City as additional insured and provide a certificate of insurance with a 45-day cancellation notice

B. **Bond required.** The grantee or the contractor for the grantee shall post with the City a bond from a surety qualified to do bonding business in this state, a cash deposit or an assigned savings account or other security acceptable to the City in an amount equal to 150% of the cost of the work as estimated by the Director or in an amount as set forth in the franchise agreement. Such bond, deposit or other security shall be conditioned upon the grantee or its contractor performing the work pursuant to the terms of this chapter, including the restoration and/or replacement of the street, sidewalk, or other rights-of-way within the time specified by the Director.

(Ord. 1995 §1(part), 2002)

11.32.140 Release, Indemnity, and Hold Harmless

A. **Additional requirements.** In addition to and distinct from the insurance requirements of this chapter, a grantee releases and shall defend, indemnify, and hold harmless the City from any and all claims, losses, costs, liabilities, damages, and expenses (except those damages caused solely by the negligence of the City), including, but not limited to, those of the grantee's lessees, and also including, but not limited to, reasonable attorney's fees arising out of or in connection with the telecommunications or cable facilities, the performance of any work, the operation of any telecommunications or cable facilities, or the grantee's system, or the acts or omissions of the grantee or any of its suppliers or contractors of any tier, or anyone acting on the Grantee's behalf in connection with said installation of telecommunications or cable facilities, performance of work, or operation of telecommunications or cable facilities or grantee's system.

B. **Inclusions.** Such indemnity, protection, and hold harmless shall include any demand, claim, suit, or judgment for damages to property or injury to or death of persons, including officers, agents, and empl of any person inlment made under or in connection with any Worker's Compensation Law or under any plan for employee's disability and death benefits, which may arise out of or be caused or contributed to directly or indirectly by the erection, maintenance, presence, operation, use, or removal of the

grantee's telecommunication or cable facilities, including any claims or demands of customers of the grantee with respect thereto.

C. **Indemnification.** The City shall not be liable to the grantee or to the grantee's customers, and the grantee hereby indemnifies, protects and saves harmless the City against any and all such claims or demands, suit or judgment for loss, liability, damages, and expense by the grantee's customers, or for any interruption to the service of the grantee, or for interference with the operation of the telecommunications or cable facilities.

D. **Application.** To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless provisions shall apply to and be for the benefit of the City.

E. **Successors and assigns.** All provisions of this chapter shall apply to the successors and assigns of the Grantee.

(Ord. 1995 §1(part), 2002)

11.32.150 Applicability of Fees and Compensation

A. **Fees.** The fees to be paid to the City at the time of application for registration, license, lease, franchise, or right-of-way use permits shall be established by resolution of the City Council. All fees paid shall be nonrefundable. Fees may include, but not limited to, business registration, administrative fee, application review, utility permit and inspection, pavement mitigation, and other regulatory fees.

B. **Compensation to City.** RCW 35.21.860 currently prohibits a municipal franchise fee for permission to use the public rights-of-way from any person engaged in the "telephone business," as defined in RCW 82.04.065. If this statutory prohibition is repealed, the City reserves the right to impose and receive a fee of a percentage, up to the maximum allowed by law, of the grantee's gross receipts from its business activities in the City. The City shall collect fees for other telecommunications activities not covered by the statutory prohibition. The fee shall be compensation for use of the rights-of-way and shall not be applied as credit towards business license fees or taxes required under TMC Chapter 11.32 and TMC Title 5. Each license granted hereunder is subject to the City's right, to the extent permitted by law, to fix a fair and reasonable compensation to be paid for use of property pursuant to the license or franchise, provided nothing in this chapter shall prohibit the City and a licensee or franchisee from agreeing upon the compensation to be paid or services to be provided. In the absence of such an agreement, such compensation shall be in an amount reasonably established by the City Council. Provided that the compensation required from any telecommunications provider or carrier engaged in the telephone business as defined in RCW 82.04.065 shall be consistent with RCW 35.21.860.

C. **Fees and Compensation Not a Tax.** The fees, charges and fines provided for in this chapter and any compensation charged and paid for the rights-of-way provided herein, whether fiduciary or in-kind, are separate from and additional to any and all Federal, State, local and City taxes as 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 telecommunication services.

D. **Compensation for City Property Occupancy and Use and Facility Leases.** Each facilities lease granted under this chapter or a lease for use and occupancy of a specific site in the right-of-way is subject to the City's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the rights granted to the lessee; provided, nothing in this chapter shall prohibit the City and a lessee from agreeing to the compensation to be paid. Notwithstanding any other provision in this chapter, any charges for use and occupancy of a specific site in the right-of-way pursuant to an agreement between the City and a service provider of personal wireless services shall be in accordance with RCW 35.21.860(1).

(Ord. 1995 §1(part), 2002)

11.32.160 Other Remedies

Nothing in this chapter shall be construed as limiting any other remedies that the City may have, at law or in equity, for enforcement of TMC Chapter 11.32. Notwithstanding the existence or use of any other remedy, the City may seek legal or equitable relief to enjoin any acts or practices and abate any conditions that constitute or will constitute a violation of this chapter.

(Ord. 1995 §1(part), 2002)

**CHAPTER 11.40
HIGHWAY ACCESS MANAGEMENT**

Sections:

- 11.40.010 Revised Code of Washington Chapter Adopted
- 11.40.020 Washington Administrative Code Chapters Adopted

11.40.010 Revised Code of Washington Chapter Adopted

RCW Chapter 47.50 is hereby adopted by reference, to provide for the regulation and control of vehicular access and connection points of ingress to, and egress from, the State highway system within the incorporated areas of the City of Tukwila.

(Ord. 2194 §1, 2008)

11.40.020 Washington Administrative Code Chapters Adopted

In order to implement the requirements and authority of RCW Chapter 47.50, provisions of Chapter 468-51 and 468-52 of the Washington Administrative Code are hereby adopted by reference, together with all future amendments.

(Ord. 2194 §2, 2008)

**CHAPTER 11.60
STREET AND ALLEY
VACATION PROCEDURE**

Sections:

- 11.60.010 Purpose
- 11.60.020 Streets Abutting Water
- 11.60.030 Filing
- 11.60.040 Fees and Charges
- 11.60.050 Valuation and Compensation
- 11.60.060 Property Trade in Lieu of Payment
- 11.60.070 Waiving Compensation - Other Governmental Agencies
- 11.60.080 Title to Vacated Street
- 11.60.090 Procedure
- 11.60.100 Limitations on Vacation
- 11.60.110 Approval of Vacation
- 11.60.120 Effective Date of Vacation

11.60.010 Purpose

This chapter establishes street vacation policies and procedures regarding petition for vacation by owner(s) of an interest in any real estate abutting a street right-of-way pursuant to RCW 35.79.

(Ord. 1995 §1 (part), 2002)

11.60.020 Streets Abutting Water

Streets abutting water shall not be vacated unless in compliance with RCW 35.79.030.

(Ord. 1995 §1 (part), 2002)

11.60.030 Filing

A. The petition for street vacation shall be submitted to the Department. The complete application shall include a completed petition form, a vicinity map, a tax assessor's map showing all properties abutting the vacation, total of assessed land value proposed for vacation, an appraisal per TMC 11.60.050, mailing labels for all property owners within 500 feet of the vacation boundaries, and a non-refundable application fee pursuant to TMC 11.60.040.

B. A completed petition form shall be one that is signed by owners of more than two-thirds of the properties abutting the street proposed for vacation.

C. If the assessed value of the land proposed for vacation is greater than \$10,000, the complete application shall include a fair market appraisal.

D. The petition and application expire two years from date of application, if the vacation conditions have not been met and compensation paid.

(Ord. 1995 §1 (part), 2002)

11.60.040 Fees and Charges

The Department shall be responsible for review of the petition, inspection and acceptance of all required construction, and vacation plan review. The fee for these services shall be set forth in a fee schedule to be adopted by motion or resolution of the City Council.

(Ord. 1995 §1 (part), 2002)

11.60.050 Valuation and Compensation

A. The value of the right-of-way proposed for vacation shall be determined utilizing either of two methods: First, based on the assessed value of land abutting the street or, second, on an appraisal which was conducted no more than 3 months prior to the date of the application for vacation. Under the first method, the value shall be calculated by multiplying the total square footage of right-of-way by the assessed value per square foot of the abutting land, as set by the County Department of Records and Elections and the County Assessor's office. Under the second method of calculation, a real property appraisal from a member of the American Institute of Real Estate Appraisers will be conducted.

B. If the calculated value is less than \$10,000.00, the calculated value shall be used as the right-of-way value. If the calculated value is \$10,000 or more, then the right-of-way value shall be set under the second method above.

C. Compensation shall be one-half of the valuation, except any part of the right-of-way that has been part of a dedicated right-of-way for 25 years or more shall be compensated at the full valuation.

D. One-half of the revenue received by the City as compensation must be dedicated to the acquisition, improvement, development and related maintenance of public open space or transportation capital projects within the City.

(Ord. 1995 §1 (part), 2002)

11.60.060 Property Trade in Lieu of Payment

The petitioners may grant or dedicate to the City, for street or other purposes, real property which has a fair market value, set by an appraisal less than three months old, at least equal to the compensation value set in TMC 11.60.050.

(Ord. 1995 §1 (part), 2002)

11.60.070 Waiving Compensation - Other Governmental Agencies

For a vacation petitioned by another governmental agency, the City Council may waive compensation required by this code and may waive the filing fee, if the Council determines the waiver is in the public interest. In this case, the petitioner shall record a covenant at King County Records that provides the City compensation by the current fair market value, for future sale or lease by the governmental agency of the vacated property.

(Ord. 1995 §1 (part), 2002)

11.60.080 Title to Vacated Street

The title to the vacated street shall be granted equally to abutting property owners.

(Ord. 1995 §1 (part), 2002)

11.60.090 Procedure

Once the Department receives a complete application, the Department shall:

1. Propose a resolution to the City Council fixing a time, pursuant to RCW 35.79.010, when the matter will be heard.
2. Forward the petition and resolution to all City departments and all concerned utilities for review and comment.
3. Post on-site notification of the public hearing per RCW 35.79.020.
4. Provide notification of the public hearing to all property owners within 500 feet of the right-of-way proposed for vacation.
5. Provide the City Council all relevant information for decision deliberations during the public hearing.

(Ord. 1995 §1 (part), 2002)

11.60.100 Limitations on Vacation

The vacation shall meet limitations on vacations spelled out in RCW 35.79.030 and RCW 35.79.035, and shall not prevent legal access to public right-of-way for any existing lot.

(Ord. 1995 §1 (part), 2002)

11.60.110 Approval of Vacation

If the City Council approves all or part of a proposed vacation, it shall, by ordinance, vacate the property pursuant to RCW 35.79.030. The ordinance shall contain the valuation and compensation amounts, and all conditions that shall be met before the vacation is effective.

(Ord. 1995 §1 (part), 2002)

11.60.120 Effective Date of Vacation

The vacation shall be effective after the parties acquiring the land have compensated the City and have met all conditions of the ordinance, and all relevant documents have been recorded with King County Records, and all applicable fees pursuant to TMC 11.60.040 have been paid to the City.

(Ord. 1995 §1 (part), 2002)