

TITLE 11

RIGHT-OF-WAY USE

CHAPTER 11.04

GENERAL PROVISIONS

Chapters:

- 11.04 General Provisions
- 11.08 Permits
- 11.12 Required Improvements for New Buildings and Developments
- 11.16 Developer Reimbursement Agreements
- 11.20 Right-of-Way Vegetation
- 11.24 Placement of Signs or Banners
- 11.28 Undergrounding of Utilities
- 11.32 Telecommunications
- 11.40 Highway Access Management
- 11.60 Street and Alley Vacation Procedure

Sections:

- 11.04.010 Short Title
- 11.04.020 Purpose
- 11.04.030 Territorial Application
- 11.04.040 Definitions
- 11.04.050 Powers of Director
- 11.04.060 Appeals
- 11.04.070 Hazardous Conditions on Public Right-of-Way
- 11.04.080 Compliance with One-Call, One-Number Locator Service
- 11.04.090 As-Built Drawings
- 11.04.100 Violation - Penalty

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.

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

14. *"City inspector"* means the Director's designated employee(s) responsible for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.

15. *"Cost of Construction"* means those costs incurred for design, acquisition for right-of-way and/or easements, construction, materials and installation required in order to create an improvement that complies with City standards. Until such time as RCW Chapter 35.91 is amended to expressly authorize inclusion of interest charges or other financing costs, such expenses shall not be included in the calculation of construction costs. In the event of a disagreement between the City and the applicant concerning the cost of improvement, the Public Works Director's determination shall be final.

16. *"Criminal Citation"* means a written document initiating a criminal proceeding issued by an authorized peace officer.

17. *"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.

18. *"Department"* means the City of Tukwila Public Works Department.

19. *"Deposit"* shall mean any bond, cash deposit, or other security provided by the applicant in accordance with TMC 11.08.110.

20. *"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 about the development site.

21. *"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.

22. *"Development Site"* means the lot or lots upon which real property improvements are proposed to be constructed.

23. *"Development Standards"* are those standards set forth in Chapter 11.08.130 of the Tukwila Municipal Code and the Department's Infrastructure Design and Construction Standards.

24. *"Directive Memorandum"* means a letter from the City to a right-of-way use permittee, notifying the recipient of specific nonconforming or unsafe conditions and specifying the date by which corrective action must be taken.

25. *"Director"* means the Director of the Public Works Department or his or her designee.

26. *"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.

27. *"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.

28. *"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.

29. *"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.

30. *"Facilities"* means the plant, equipment, structures and property within the City used to transmit, receive, distribute, provide or offer telecommunications or cable service.

31. *"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.

32. *"Franchise"* is an agreement required with any telecommunications carrier or cable operator who desires to construct, install, operate, maintain or otherwise locate facilities in rights-of-way, and to also provide telecommunications or cable services to persons or areas in the City.

33. *"Franchised Utilities"* means utilities that have City Council approval to use City rights-of-way for the purpose of providing their services within the City.

34. *"Frontage"* means that portion of the development site abutting public right-of-way; provided, however, in the case of developments 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.

35. *"Fronting"* means abutting a public right-of-way or public rights-of-way.

36. *"Grantee"* means the holder of a franchise or a right-of-way license.

37. *"Hazardous Waste"* includes any and all such materials as defined by RCW 43.200.015 (radioactive wastes) and RCW 70.105.010(5), (6) and (15) (other hazardous wastes), now or as hereafter amended.

38. *"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.

39. *"License"* is an agreement with any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights-of-way and to also provide telecommunications services exclusively to persons and areas outside the City.

40. *"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.

41. *"Minor Addition, Replacement, or Relocation"* includes the installation of secondary conductors, changing wire size or type, pole replacement, relocation of poles at a distance of not more than 50 feet, replacing secondary wire with primary wire to serve not more than two new customers, hardware replacement on existing poles, and the like.

42. *"Municipal Excavator"* shall mean any agency, board, commission, department or subdivision of the City that owns, installs, or maintains a facility or facilities in the public right-of-way.

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

44. *"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.

45. *"Nonprofit"* means not for monetary gain.

46. *"Notice and Order"* means a written document initiating a civil proceeding in accordance with TMC Chapter 8.45.

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

48. *"Off-Site Street System and/or Utility System Improvements"* means such improvements as are defined in TMC 11.12.030.

49. *"On-Site Street System Improvements"* means street system improvements that are required to be constructed on public right-of-way adjacent to the frontage of the development site and extending to the centerline of the public right-of-way.

50. *"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.

51. *"Oral Directive"* means a directive given orally by City personnel to correct or discontinue a specific condition.

52. *"Ordinance"* means the City of Tukwila Telecommunication Ordinance, TMC Chapter 11.32.

53. *"Overhead Facilities"* means telecommunications and/or cable facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

54. *"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.

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

56. *"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.

57. *"Permit Center"* means the central location for applying for permits.

58. *"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.

59. *"Person"* shall mean any person, corporation, partnership, municipal excavator, or any governmental agency.

60. *"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.

61. "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.

62. "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.

63. "Rebuilds" means a placement of overhead facilities for a distance of three or more spans (four poles) or 500 feet exclusive of replacements due to casualty damage.

64. "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.

65. "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."

66. "Relocations" means removal of existing facilities with subsequent reinstallation at an adjacent location, generally necessitated by roadway improvements or widening projects.

67. "Removal" means the act of cutting down or removing any vegetation, or causing the effective removal through damaging, poisoning, or other direct or indirect actions resulting in the death of vegetation.

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

69. "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 Design and Infrastructure Manual. (See TMC 11.08.230 for more details.)

70. "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.

71. "Security Device" means any and all types of bonds, deeds of trust, security agreements, or other similar instruments.

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

73. "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.

74. "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.

75. "Sidewalk Routes" means sidewalk routes shown on a map prepared by the Director and adopted by the City Council by resolution or by ordinance pursuant to the comprehensive plan.

76. "Standard Street Surface" means street surface that is paved in accordance with the "City of Tukwila Infrastructure Design and Construction Standards."

77. "State" means the State of Washington.

78. "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.

79. "Street" means any street, road, boulevard, alley, lane, way or place, or any portion thereof within the City limits.

80. "Street Assessment and/or Utility Assessment Agreement" means contracts authorized by RCW Chapter 35.72 and RCW Chapter 35.91, as presently constituted or as may be subsequently amended, for system improvements, and may be referred to from time to time in this chapter as "Latecomer Agreements."

81. "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.

82. "Street System Improvements" means such improvements as are defined in TMC 11.12.030.

83. "Street Trees" means any trees located on any street or public right-of-way.

84. "Street Use Official" means the Director's designated employees responsible for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.

85. "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.

86. *“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.

87. *“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).

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

89. *“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.

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

91. *“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.

92. *“Underground Facilities”* means telecommunication and/or cable 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.

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

94. *“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.

95. *“Utility Excavator”* shall mean any owner whose facility or facilities in the public right-of-way are used to provide electricity, gas, information services, sewer service, steam, storm drains, telecommunications, traffic controls, transit service, video, water, or other services to customers regardless of whether such owner is deemed a public utility.

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

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

98. *“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. 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****Sections:**

11.08.010	Permit Requirements
11.08.020	Right-of-Way Use Permits
11.08.030	Application Contents
11.08.040	Permit - No Transfer or Assignment
11.08.050	Emergency Work
11.08.060	Permit Fees and Charges
11.08.070	Permit Exception
11.08.080	Revocation of Permits
11.08.090	Renewal of Permits
11.08.100	Insurance
11.08.110	Deposits, Fees and Bonds
11.08.120	Hold Harmless
11.08.130	Compliance with Specifications, Standards, and Traffic-Control Regulations
11.08.140	Inspections
11.08.150	Correction and Discontinuance of Unsafe, Non-conforming, or Unauthorized Conditions
11.08.160	Failure to Conform to Design Standards
11.08.170	Warning and Safety Devices
11.08.180	Clearance for Fire Equipment
11.08.190	Protection of Adjoining Property - Access
11.08.200	Preservation of Monuments
11.08.210	Protection from Pollution and Noise
11.08.220	Impact of Work on Existing Improvements
11.08.230	Restoration of the Public Right-of-Way
11.08.240	Recently Improved Streets
11.08.250	Coordination of Right-of-Way Construction
11.08.260	Relocation of Structures in the Public Right-of-Way

11.08.010 Permit Requirements

A. It is unlawful for anyone to perform work of any kind in a public right-of-way, or to make private use of any public right-of-way without a right-of-way use permit issued by the City.

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 public right-of-way to accommodate the facilities or structures proposed to be installed in the public right-of-way.

2. The capacity of the public right-of-way to accommodate wire in addition to cables, conduits, pipes or other facilities or structures of other existing users of the public 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 public right-of-way.

4. The public interest in minimizing the cost and disruption of construction caused by numerous excavations of the public 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 public 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. 1995 §1(part), 2002)

11.08.020 Right-Of-Way Use Permits**A. Type A – Short-Term Nonprofit.**

1. Type A permits may be issued for use of a right-of-way for 72 or less continuous hours for nonprofit purposes, which do not involve any physical disturbance of the right-of-way.

2. This type of use may involve disruption of pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 hours, these uses will be considered Type D, long-term. If any of these uses are for profit, they are considered Type B.

3. Type A permits include but are not limited to the following, when for nonprofit purposes:

- Assemblies.
- Bike races.
- Block parties.
- Parades.
- Parking.
- Processions.
- Nonmotorized vehicle races.
- Street dances.
- Street runs.

B. Type B – Short-Term Profit.

1. Type B permits may be issued for use of right-of-way for 72 or less continuous hours for profit purposes, which do not involve the physical disturbance of the right-of-way.

2. This type of use may involve disruption to pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 consecutive hours, these uses will be considered Type D, long-term.

3. Type B permits include, but are not limited to the following when they are for profit purposes:

- Fairs;
- House or large structure moves other than those, which require a Type E permit.
- Temporary sale of goods.
- Temporary street closures.

C. Type C – Infrastructure and Grading on Private Property and City Right-of-Way and Disturbance of City Right-of-Way.

1. Type C1 permits shall be required for on-site development including, but not limited to, infrastructure work and grading performed on private property. Type C2 permits shall be required for infrastructure work and grading within the public right-of-way. Type C1 and C2 permits may be issued for a period not in excess of 180 continuous days, for activities that may alter the appearance of or disturb the surface or subsurface of the City right-of-way.

2. Type C1 and C2 permits include, but are not limited to:

- a. Boring.
- b. Culverts.
- c. Curb cuts.
- d. Paving.
- e. Drainage facilities.
- f. Driveways.
- g. Fences.
- h. Landscaping.
- i. Painting/Striping.
- j. Sidewalks.
- k. Street trenching.
- l. Utility installation, repair, replacement.

D. Type D – Long-Term

1. Type D permits may be issued for use of a right-of-way, for any period in excess of 72 hours, for activities occurring for extended periods of time but which will not physically disturb the right-of-way.

2. The use of the right-of way for structures, facilities, and uses that involve capital expenditures and long-term commitments of use require this type of permit.

3. Type D permits include, but are not limited to:

- a. Air rights and aerial facilities.
- b. Bus shelters and stops.
- c. Access to construction sites and haul roads.
- d. Loading zones.
- e. Newspaper sale, distribution, and storage facilities.
- f. Recycling facilities.
- g. Sales structures.
- h. Sidewalk cafes.
- i. Special and unique structures, such as awnings, benches, clocks, decorations, flagpoles, fountains, kiosks, marquees, private banners, public mailboxes, and street furniture.
- j. Underground rights.
- k. Utility facilities.
- l. Waste facilities.

E. Type E – Potential Disturbance of City Right-of-Way.

1. Type E permits may be issued for use of a right-of-way, for a period not in excess of 180 continuous days, for those activities that have the potential of altering the appearance of, or disturbing the surface or subsurface of, the right-of-way.

2. Type E permits include, but are not limited to:

a. Frequent use hauling involving an average of six loaded vehicles per hour during any eight-hour period in one day, for two or more consecutive days.

b. Any hazardous waste hauling.

3. Type E permits may be issued to a general contractor to authorize construction and fill activities by the said general contractor and by subcontractors.

F. Type F – Blanket permits.

The Director may issue blanket permits to any person to make utility service connections, to locate trouble in utility conduits or pipes, for making repairs thereto, or for emergency purposes. Blanket permits shall be issued for a period of 365 days (one year), and shall only authorize work referred to in this chapter.

(Ord. 2253 §1 (part), 2009; Ord. 1995 §1(part), 2002)

11.08.030 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 with the City's Permit Center.

B. Every application shall contain:

1. The name, address, telephone and facsimile number of the applicant. Where an applicant is not the owner of the facility to be installed, maintained or repaired in the public right-of-way, the application shall also include the name, address, telephone and facsimile number of the owner.

2. A description of the location, proposed use of the public right-of-way, method of excavation, surface and subsurface area of the proposed excavation, and method of restoration.

3. A plan showing the proposed location and dimensions of the excavation; the facilities to be installed, maintained, or repaired in connection with the excavation; and such other details as the Department may require.

4. A copy or other documentation of the franchise, easement, encroachment permit, license or other legal instrument that authorizes the applicant or owner to use or occupy the public right-of-way for the purpose described in the application. 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.

5. The proposed start date of the use or excavation.

6. The proposed duration of the use or excavation, which shall include the duration of the restoration of the public right-of-way physically disturbed by the excavation.

7. Written acknowledgment that the applicant and owner are in compliance 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 and owner are not subject to any outstanding assessments, fees or penalties that have been finally determined by the City or a court of competent jurisdiction.

8. A current business license issued by the City of Tukwila.

9. Evidence of insurance as required by Section 11.08.100.

10. A deposit as required by Section 11.08.110.

11. A traffic control plan to be approved by the Department.

12. Any other information that may be reasonably required by the Department.

13. An application fee as required by TMC 11.08.060.

The Director may allow an applicant to maintain documents complying with TMC 11.08.030 B.4, B.8, B.9 and B.10 on file with the Department, rather than requiring submission of such documents with each separate application.

C. The Director or his/her designee shall examine each application submitted for review and approval to determine if it complies with the applicable provisions and procedures of this chapter. Other departments that have authority over the proposed use or activity may be requested to review and approve or disapprove the application. If the Director finds that the application conforms to the requirements of this chapter and the procedures adopted under this chapter, 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.

D. All applications for permits will be submitted at least 30 days before the planned need for the permit. If unforeseen conditions require expedited processing, the City will attempt to cooperate, but additional fees to cover additional costs to the City may be charged to the applicant.

(Ord. 1995 §1(part), 2002)

11.08.040 Permit – No Transfer or Assignment

Permits shall not be transferable or assignable, 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, that 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. 1995 §1(part), 2002)

11.08.050 Emergency Work

A. Any authorized permit or franchise holder maintaining pipes, lines, or facilities in the public right-of-way may proceed with work upon existing facilities without a permit when emergency circumstances demand that work be done immediately, provided that a permit cannot be reasonably and practicably obtained beforehand.

B. In the event that emergency work is commenced on or within any public right-of-way of the City during regular business hours, the Director or City Engineer shall be notified within 1/2 hour from the time the work commences. The permit or franchise holder commencing and conducting such 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 permit or franchise holder from taking any action necessary for the preservation of life or property or for the restoration of interrupted service provided by a municipal or utility excavator when such necessity arises during days or times when the Department is closed. In the event that any permit or franchise holder takes action to excavate or cause to be excavated the public right-of-way, such permit or franchise holder shall apply for an emergency permit within 24 hours after the Department's offices first open. The applicant for an emergency permit shall submit a written statement that addresses the basis of the emergency action, and describes the excavation performed and work remaining to be performed.

(Ord. 1995 §1(part), 2002)

11.08.060 Permit Fees and Charges

A. The Director shall be responsible for the plan review, plan approval, inspection and acceptance of all construction within any public right-of-way and all public works improvement projects, such as streets, sidewalks and walkways, street lighting systems, storm drainage systems (public and private), water systems (public and private), sewer systems (public and private), and utilities; and shall make a charge therefor to the developer.

B. The fee for these services shall be set forth in a fee schedule to be adopted by motion or resolution of the Tukwila City Council.

C. Type A, B, D, E and F permit fees will be a flat rate.

D. Type C1 permits shall be required for on-site development including, but not limited to, infrastructure work and grading performed on private property. The total fees for Type C1 permits shall consist of the following parts:

1. An Application Base Fee, which is associated with establishing the necessary files;

2. A fee associated with the plan review and approval of the construction plans;

3. A fee associated with the issuance of the permit and the required inspection of the construction, the fee amount to be determined from the value of the construction on private property; and

4. A Grading Plan Review.

For Type C1 permits, the developer shall submit separate cost estimates for each item of improvement. The Department will check the accuracy of these estimates.

E. Type C2 permits shall be required for infrastructure work and grading performed within the City right-of-way. The total fees for Type C2 permits shall consist of the following parts:

1. An Application Base Fee, which is associated with establishing the necessary files;

2. A fee associated with the plan review and approval of the construction plans, the fee amount determined from the value of the construction within the public right-of-way;

3. A fee associated with the issuance of the permit and the required inspection of the construction, the fee amount to be determined from the value of the construction within the public right-of-way;

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

5. A Grading Plan Review.

F. A non-refundable deposit, equal to the fee associated with an application base fee and the review and approval of construction plans, is due and payable prior to starting the review, with the balance of the total fee due and payable prior to issuance of the permit. Two reviews of the construction plans are included in the above referenced fee, an original review and a follow-up review associated with a correction letter. Each additional

re-review, which is attributed to the developer's action or inaction, shall be charged as a separate transaction in accordance with the fee schedule. Should additional fees for re-review be imposed, they will be added to the balance due and be payable prior to issuance of the permit.

(Ord. 2253 §2 (part), 2009; Ord. 1995 §1(part), 2002)

11.08.070 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. 1995 §1(part), 2002)

11.08.080 Revocation of Permits

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

1. The activity does not proceed in accordance with the plans 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 progress of the permitted activity indicates that it is – or will be – inadequate to protect the public and adjoining property or the street or utilities in the street, or any excavation or fill endangers – or appears reasonably likely to endanger – the public, the adjoining property or street, or utilities 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 subject each and every violator to the maximum penalties provided by this chapter, with every day constituting a new violation.

(Ord. 1995 §1(part), 2002)

11.08.090 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. 1995 §1(part), 2002)

11.08.100 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, the permittee shall maintain in full force and effect, throughout the term of the permit, an insurance policy or policies issued by an insurance company or companies satisfactory to the Director, having a policyholders' surplus of at least \$20,000,000, or if insurance is written by more than one company, each company shall have policyholders' surplus of at least 10 times the amount insured. Policy or policies shall afford insurance covering all operations, vehicles, and employees with the following limits and provisions:

1. Comprehensive general liability insurance with limits of not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including contractual liability; personal injury; explosion hazard, collapse hazard, and underground property damage hazard; products; and completed operations.

2. Business automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned, and hired auto coverage, as applicable.

3. Contractors' 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 any deductible not to exceed \$25,000 each occurrence.

4. Said policy or policies shall include the City and its officers and employees 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.

5. 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.

6. 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

7. 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.

8. 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.

9. Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers and employees 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.

10. Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers and employees 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 of 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. 1995 §1(part), 2002)

11.08.110 Deposits, Fees and Bonds

A. Except as noted in this chapter, each applicant, before being issued a permit, shall provide the City with an acceptable security (this may include a corporate surety bond, cash deposit or letter of credit) in the amount of 150% of the value of the work being performed within the public right-of-way in order to guarantee faithful performance of the work authorized by the permit granted pursuant to this chapter. The amount of the security required 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 franchised by the City shall not be required to file any security if such requirement is expressly waived in the franchise documents.

C. The applicant shall provide a Maintenance Bond that guarantees workmanship and materials for a period of two years following the completion of the work, with reasonable wear and tear excepted. Notwithstanding the foregoing, utilities shall guarantee workmanship and materials;

D. 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 Public 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 public 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.

(Ord. 1995 §1(part), 2002)

11.08.120 Hold Harmless

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. 1995 §1(part), 2002)

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

A. The work performed in the public 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," Uniform Building Code, and the City's Municipal Code as currently exists and as hereafter amended, copies of which shall be available from the Department, kept on file in the office of the City Clerk and at the Permit Center for public inspection during office hours.

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 at the site, indicating the permittee's name, or company name, telephone number, and after-hours telephone number.

(Ord. 1995 §1(part), 2002)

11.08.140 Inspections

As a condition of issuance of any permit or authorization that requires approval of the Department, each applicant shall be required to consent to inspections by the Department or any other City department.

(Ord. 1995 §1(part), 2002)

11.08.150 Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions

A. Whenever the Director determines that any condition on any right-of-way is in violation of, or any right-of-way is being used contrary to any provision of, this chapter, procedures adopted under this chapter or other applicable codes or standards, or without a right-of-way use permit, the Director may order the correction or discontinuance of such condition or any activity causing such condition.

B. The Director is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions, or activities as the Director determines appropriate:

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. Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed or notices served;
4. Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work;
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 Department 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 City 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, this chapter, and procedures adopted under this chapter for securing the correction or discontinuance of any conditions specified by the City.

(Ord. 1995 §1(part), 2002)

11.08.160 Failure to Conform to Design Standards

For failure to conform to the Design Standards and Regulations as identified in Section 11.08.130, the Director may:

1. Suspend or revoke the permit;
2. Issue a stop work order;
3. Order removal and replacement of faulty work;
4. Require an extended warranty period; and/or
5. Negotiate a cash settlement to be applied toward future maintenance costs.

(Ord. 1995 §1(part), 2002)

11.08.170 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 right-of-way use permit, the Director or his/her designee may require an applicant to submit a traffic detour plan showing the 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 plan is required, no right-of-way use permit shall be issued until after the traffic plan is approved.

C. Unless otherwise specified in adopted right-of-way use procedures, the following standards manuals – as they currently exist and as hereafter amended – shall apply to the selection, location and installation of required warning and safety devices; provided, that the Director or designee may impose additional requirements if site conditions warrant such enhanced protection of pedestrian or vehicular traffic:

1. Manual of Uniform Traffic Control Devices for Streets and Highways;
2. City of Tukwila Infrastructure Design and Construction Standards;

3. Part VIII, "Regulations for Use of Public Streets and Projections over Public Property," Uniform Building Code.

D. Any right-of-way use permit that requires a partial lane or street closure may require a certified flag person, properly attired, or an off-duty police officer for the purpose of traffic control during the construction.

E. All decisions of the Director or his/her designee shall be final in all matters pertaining to the number, type, locations, installation and maintenance of warning and safety devices in the public right-of-way during any actual work or activity for which a duly authorized right-of-way use permit has been issued.

F. Any failure of a permit holder to comply with the oral or written directives of the Director or his/her designee related to the number, type, location, installation, or maintenance of warning and safety devices in the public right-of-way shall be cause for correction or discontinuance as provided in this chapter.

(Ord. 1995 §1(part), 2002)

11.08.180 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. 1995 §1(part), 2002)

11.08.190 Protection of Adjoining Property – Access

The permittee shall at all times and at the permittee's expense preserve and protect from injury adjoining property by complying with such measures as the Director or designee may deem reasonably suitable for such purposes. The permittee shall at all times maintain access to all property adjoining the excavation or work site.

(Ord. 1995 §1(part), 2002)

11.08.200 Preservation of Monuments

The permittee 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, bench marks, and other monuments disturbed during the progress of the work shall be replaced by a licensed surveyor, at the expense of the permittee, to the satisfaction of the Director or his/her designee.

(Ord. 1995 §1(part), 2002)

11.08.210 Protection from Pollution and Noise

The permittee shall comply with all State laws, City ordinances, and procedures adopted hereunder by the Director to protect the public from air and water pollution and excessive noise. The permittee shall provide for the flow of all water-courses, sewers or drains intercepted during the excavation work, and shall replace the same in as good condition as the permittee found them. The permittee shall not obstruct the gutter of any street, but shall use all proper measures to provide for the free passage of surface water. The permittee 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 permittee's failure to so provide.

(Ord. 1995 §1(part), 2002)

11.08.220 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 permittee shall cover an open excavation with non-skid steel plates ramped to the elevation of the contiguous street, pavement, or other public 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 permittee 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 permittee to secure the necessary permission and make all arrangements for any required storage and disposal of excavated material.

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

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. 1995 §1(part), 2002)

11.08.230 Restoration of the Public Right-Of-Way

A. **Restoration.** In any case in which the sidewalk, street, or other public right-of-way is or is caused to be excavated, the owner and permittee shall restore or cause to be restored such excavation in the manner prescribed by the orders, regulations, and Department standards.

B. **Backfill, and replacement of pavement base.** Backfilling in a right-of-way opened or 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 or his/her designee prior to any overlaying or patching.

C. **Pavement restoration.** The permittee shall restore the surface of any public right-of-way to its original condition 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 conform to the City Standards and shall be accomplished within the time limits set forth in the permit.

(Ord. 1995 §1(part), 2002)

11.08.240 Recently Improved Streets

The Department 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. 1995 §1(part), 2002)

11.08.250 Coordination of Right-Of-Way Construction

The permittee, at the time of receiving a Type C right-of-way use permit, shall notify all other public and private utilities using or proposing to use the same right-of-way as the applicant's proposed construction, and the proposed timing of such construction. A utility so notified may, within seven days of such notification, request of the Director a delay in the commencement of any proposed construction for the purpose of coordinating other right-of-way construction with that proposed by the permittee. The Director may delay the commencement date of the permittee's right-of-way construction, except in emergencies, if the Director finds that such a delay will reduce the inconvenience to City right-of-way uses and if the Director finds that delay of the construction activities will not create undue economic hardship on the applicant.

(Ord. 1995 §1(part), 2002)

11.08.260 Relocation of Structures in the Public Right-Of-Way

A. The Director may direct any permit or franchise holder or any other entity owning or maintaining facilities or structures in the public right-of-way to alter, modify, or relocate such facilities or structures as may be required herein. These facilities include, but are not limited to, sewers, pipes, drains, tunnels, conduits, vaults, trash receptacles, newspaper dispensers, overhead and underground gas, electric, telephone, telecommunication and communication facilities. The City shall notify the permit or franchise holder or other entity in writing no less than 60 days and no greater than 120 days in advance, except in the case of emergencies, of Tukwila's intention to perform or have such work performed. The permit or franchise holder or other entity owning or maintaining the facilities or structures shall, at their own cost and expense, promptly protect or promptly alter or relocate such facilities or structures, or part thereof, but in no event later than three working days prior to the date Tukwila has notified the permittee, franchise holder or other entity, that it intends to commence its work, or immediately in the case of emergencies. In the event that such permit or franchise holder 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 or structures without liability to such person. Such person shall pay to the City all costs incurred by the City in connection with such work performed by the City, including also design, engineering, construction, materials, insurance, court costs, and attorney fees. Upon the permittee, franchise holder or other entity's failure to accomplish such work and after three working days notice, all other work permits held by permittee, franchise holder, or other entity, may be summarily 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.

B. Any directive by the Director shall be based upon one or more of the following:

1. The facility or structure was installed, erected, or is being maintained contrary to law, or determined by the Director to be structurally unsound or defective.
2. The facility or structure constitutes a nuisance as defined under this chapter, the TMC or State statute.
3. The permit under which the facility or structure was installed has expired or has been revoked.
4. The public right-of-way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction.
5. The grades or lines of the public right-of-way are to be altered or changed.

C. Any directive of the Director under this section shall be under and consistent with the City's police power. Unless an emergency exists, the Director shall make a good faith effort to consult with the permit or franchise holder regarding any condition that may result in a removal or relocation of facilities in the public right-of-way, to consider possible avoidance or minimization of removal or relocation requirements; and the Director shall provide the directive as far enough in advance of the required removal or relocation to allow the permit or franchise holder a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.

D. This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the public right-of-way, if that prior private easement grants a superior vested right.

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 public right-of-way, in which event the City shall not be liable therefore to a permit or franchise holder.

(Ord. 1995 §1(part), 2002)

11.08.270 Abandonment and Removal of Facilities

A. **Notification of Abandoned Facilities.** Any permittee, franchise holder, or other entity that intends to discontinue use of any facilities within the public 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 permittee, franchise holder, or other entity may not remove, destroy, or permanently disable any such facilities during said 30-day period without written approval of the Director. After 30 days from the date of such notice, the permittee, franchise holder, or other entity shall remove and dispose of such facilities as set forth in the notice and shall complete such removal and disposal within six months, 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 public rights-of-way.

B. **Conveyance of Facilities.** At the discretion of Tukwila, and upon written notice from the Director within 30 days of the notice of abandonment, the permittee, franchise holder, or other entity may abandon the facilities in place, and shall further convey full title and ownership of such abandoned facilities to Tukwila. The consideration for the conveyance is Tukwila's permission to abandon the facilities in place. The permittee, franchise holder, or other entity is responsible for all obligations as owner of the facilities, or other liabilities associated therewith, until conveyance to Tukwila is completed.

(Ord. 1995 §1(part), 2002)

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. No 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 Signs Prohibited within the Right-of-way
- 11.24.080 Removal of Signs
- 11.24.090 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 Signs Prohibited within the Right-of-Way

This chapter shall not apply to regulatory, directional, or informational signs installed by the City or the State. Except as provided in this chapter, no person shall place a sign of any size or description:

1. On (whether stationary or moving), above, or over the right-of-way of a City street;
2. On, above, or over the right-of-way of a State highway;
3. On a bridge or overpass; or
4. On a public or utility improvement.

(Ord. 2303 §12, 2010; Ord. 1995 §1(part), 2002)

11.24.080 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)

11.24.090 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 Scope
- 11.28.040 Facilities Excepted
- 11.28.050 Cost
- 11.28.060 Permits and Fees
- 11.28.070 Undergrounding Requirements
- 11.28.080 Service Connection Requirements
- 11.28.090 Street Lighting
- 11.28.100 Connections and Disconnections of Affected Service
- 11.28.110 Site Screening
- 11.28.120 As-built Drawings
- 11.28.130 Joint Trenches
- 11.28.140 Request for Waiver

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. 1995 §1(part), 2002)

11.28.020 Purpose

The purpose of TMC Chapter 11.28 is to establish minimum requirements and procedures for the underground installation and relocation of electric and communication facilities within the City.

(Ord. 1995 §1(part), 2002)

11.28.030 Scope

This chapter shall apply to anyone 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. 1995 §1(part), 2002)

11.28.040 Facilities Excepted

A. The following facilities are excepted 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 11.28.110.

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 Public Works Director.

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

5. Municipal 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. Secondary wiring for street lighting.

9. Cable television cables to the extent that such cables are to be hung on existing utility poles in areas of the City where electrical facilities under 115kV or other distribution facilities are primarily overhead.

B. The Director shall decide if a facility qualifies for an exception. The decision is determinative and final.

(Ord. 1995 §1(part), 2002)

11.28.050 Cost

A. The cost of constructing new facilities underground or relocating existing aerial facilities underground shall be borne by the serving utilities, the owners of the real property to be served, or others in accordance with the applicable valid tariffs on file with the Washington State Utilities and Transportation Commission, or other rules and regulations, or the published policies of the respective utilities furnishing such service, or as may be contractually agreed upon between the utility and such owner or applicant.

B. In the absence of filed tariffs, rules or regulations, published policies, or contractual agreement, the cost of constructing new facilities underground or relocating existing aerial facilities underground may be financed by a local improvement district or any other method authorized by State law.

(Ord. 1995 §1(part), 2002)

11.28.060 Permits and Fees

A. Unless as otherwise provided in any existing franchise agreement, a permit for underground construction shall be obtained from the Department prior to construction of facilities in the public right-of-way.

B. An appropriate fee shall be charged for this permit, consistent with the schedule on file with the Department.

(Ord. 1995 §1(part), 2002)

11.28.070 Undergrounding Requirements

A. New Facilities:

1. New electrical or communication service to a building where no service previously existed shall be constructed underground. Does not include restorations and/or repairs.

2. All major additions of new facilities (three or more spans and/or 500 feet or more) shall be underground.

3. Minor additions of new facilities may be constructed aerially where existing services are aerial.

B. Rebuilds, Replacements and Additions:

1. A relocation necessitated by a public works project, including, but not limited to, road realignment or widening, sewer and water main projects, a major rebuild or replacement of existing aerial facilities (three or more spans and/or 500 feet or more) shall be underground, and a permit from the Department shall be required; except undergrounding shall not be required in those cases where the Director finds that undergrounding will not be in the best interest of the public.

2. A minor rebuild, replacement or relocation of existing aerial facilities that does not alter the essential system configuration may be constructed aerially.

3. When there is casualty damage to an overhead service system or other major service outage, the facilities may be restored aerially.

4. Installation of additional conductors to provide one three-phase circuit is allowed on existing aerial facilities.

5. Reconductoring for routine maintenance that does not constitute a major rebuild is allowed on existing aerial facilities. Routine maintenance is also allowed on existing facilities for pole replacements and replacement of miscellaneous hardware.

6. No work permitted by this subsection shall result in an increase in the number of utility poles, except an additional pole may be installed if an existing pole that is suitable as a termination for underground installation is not available within 300 feet of the closest property line of the development site.

(Ord. 1995 §1(part), 2002)

11.28.080 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. 1995 §1(part), 2002)

11.28.090 Street Lighting

Street lighting facilities or systems, conforming to the City Public Works Department standards in effect, shall be installed as an integral part of all underground projects constructed after the effective date of the ordinance from which this section was derived.

(Ord. 1995 §1(part), 2002)

11.28.100 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. 1995 §1(part), 2002)

11.28.110 Site Screening

Where a permit for the underground project is required by this chapter, plans for all above-ground facilities shall be submitted to the Department of Community Development for approval of site screening and setbacks, prior to issuance of a permit by the Public Works Department.

(Ord. 1995 §1(part), 2002)

11.28.120 As-built Drawings

A drawing of a completed underground 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 the completion of any underground project within the City. No bond money, deposit or fee shall be released to the developer until the Department receives the drawings.

(Ord. 1995 §1(part), 2002)

11.28.130 Joint Trenches

Where several utilities are planned or required in the same corridor, every effort shall be made by the utilities to use joint trenches for such facilities.

(Ord. 1995 §1(part), 2002)

11.28.140 Request for Waiver

A. All applications for waivers from the foregoing underground requirements shall be first filed with the Director.

**CHAPTER 11.32
TELECOMMUNICATIONS**

B. A waiver shall not be granted by the Director unless the Director finds that the utility owner or user or other affected parties can demonstrate that it would be an undue hardship to place the facilities concerned underground. For purposes of this chapter, undue hardship is intended to mean:

1. A technological or environmental difficulty associated with the particular facility or with the particular real property involved that would render the installation unfeasible; or

2. The cost of the underground construction outweighs the general welfare consideration in requiring underground construction.

C. The Director may grant a deferral of the requirement for undergrounding if the current underground construction would not be in the best interests and welfare of the public. A deferral is predicated upon the applicant's willingness to sign a no-protest LID agreement for future installation. The Director's decision is determinative and final.

(Ord. 1995 §1(part), 2002)

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 employees of any person including payment 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)(e).

(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)

