

**MAPLE VALLEY, WASHINGTON
ORDINANCE NO. O-12-496**

AN ORDINANCE OF THE CITY OF MAPLE VALLEY, WASHINGTON RELATING TO TELECOMMUNICATIONS MASTER PERMITS, PROVIDING FOR SEVERABILITY, ESTABLISHING AN EFFECTIVE DATE AND PROVIDING FOR CORRECTIONS.

WHEREAS, the City Council desires to adopt an ordinance consistent with its police powers and its regulatory authority relating to telecommunications master permits pursuant to Ch. 35.99 RCW;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. New Chapter Created.

A new Chapter 5.30 of Title 5 of the Maple Valley Municipal Code, entitled Telecommunications Master Permits” is hereby adopted to read as follows:

Sections

- 5.30.010 Purpose
- 5.30.020 Definitions
- 5.30.030 Permission Required: Master Permit, Use Permit
- 5.30.040 Master Permit Application; Contents
- 5.30.050 Permit Procedures
- 5.30.060 Use Permit; Expedited Consideration
- 5.30.070 Use Permit; Advance Notice; Coordination of Work in Right-of-Way
- 5.30.080 Conditions of Occupancy or Use of the Right-of-Way
- 5.30.090 Agreement
- 5.30.100 Nonexclusive grant
- 5.30.110 Term of Master Permit Grant
- 5.30.120 Right Granted
- 5.30.130 Master Permit Territory
- 5.30.140 Existing Franchises
- 5.30.150 Amendment of Master Permit
- 5.30.160 Renewal of Master Permit
- 5.30.170 Obligation to Cure as a Condition of Renewal
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- 5.30.200 Limitations and Reservations
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- 5.30.220 Relocation
- 5.30.230 Facilities for City Use
- 5.30.240 Fees and Charges
- 5.30.250 Imposition of Taxes, Fees or Requirements by the City of Maple Valley
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- 5.30.270 Violations of Master Permit
- 5.30.280 Other Users, Occupants Outside Right-of-Way
- 5.30.290 Conflict of Laws

Section 5.30.010 Purpose

- A. The purposes of this chapter are to:
 - 1. Protect the general public health and safety;
 - 2. Provide for the orderly use of the City’s scarce and valuable Right-of-Way by establishing clear guidelines, standards and time-frames for the exercise of City authority with respect to the regulation of Right-of-Way use by Service Providers.
 - 3. Preserve and maintain the primary purpose of the Right-of-Way as a means of public access and travel and emergency vehicle access;
 - 4. Conserve the limited physical capacity of the Right-of-Way held in public trust by the City;
 - 5. Comply with requirements of applicable federal and state laws, including Chapter 83, Laws of 2000 (RCW Chapter 35.99, incorporated herein by reference), reserving as well all applicable municipal authority with respect to use and occupancy of the Right-of-Way;
 - 6. Preserve the value of the public investment in the Right-of-Way, maximize the useful life of street, curbing, and sidewalk paving, and to maintain the integrity and quality of the paving;
 - 7. Assure that the city’s current and ongoing costs of granting and regulating private access to and use of the Right-of-Way are fully paid by the persons seeking such access and causing such costs to be incurred by the city, to the fullest extent permitted by state and federal law.
 - 8. Support municipal utility and other Municipal Infrastructure needs as a priority use of the Right-of-Way, and the value of Municipal Infrastructure investment; and
 - 9. Promote a healthy urban environment and the public convenience and aesthetics.
- B. The purposes stated govern questions of interpretation and enforcement of this chapter, as implemented in the sound discretion of the Administering Officer. Notwithstanding any other provision, nothing in this chapter or any municipal action or inaction relating thereto is intended to create or expand any specific municipal duty or liability to any particular person or group or otherwise create or expand municipal tort liability for any purpose. This provision shall control all others in the event of conflict or ambiguity.

Section 5.30.020 Definitions

The definitions in this section apply throughout this chapter unless otherwise stated or the context clearly requires otherwise.

- A. “Administering Officer” means the City Manager or his/her designee.

- B. “Cable Television Service” means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.
- C. “City” means the City of Maple Valley and its legal successors.
- D. “Facilities” means all of the plant, equipment, fixtures, appurtenances, antennas, and other facilities necessary to furnish and deliver telecommunications services and cable television services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services. For parties other than service providers, “Facilities” includes “Facility” and means any physical plant installed or maintained in the Right-of-Way by such parties.
- E. “Municipal Infrastructure” means the road bed and road area, street and sidewalk paving, curbing, associated drainage facilities, bike paths, and other construction or improvements pertaining to public travel. It further includes municipal water and sewer lines or other municipal utility facilities, as well as municipal traffic signal, street lighting, and communications facilities in the Right-of-Way or other areas or easements open for municipal use. It further includes sidewalks, street trees, plants, shrubs, lawn, and other ornamental or beautification installations owned by the City in the Right-of-Way or other ways open for public travel or municipal use, and accepted for municipal management or control as such. The definition is intended to encompass any municipal physical plant, equipment, fixtures, appurtenances, or other facilities located in or near the Right-of-Way or areas or easements opened and accepted for municipal use.
- F. “Permit” refers to a grant of municipal permission or authority to an applicant to use the Right-of-Way to locate Facilities and perform related activities therein. This chapter identifies two levels of permits, a Master Permit and a Use Permit.
 - 1. A “Master Permit” means an agreement in whatever form whereby the City grants general permission to a Service Provider to enter, use, and occupy the Right-of-Way for the purpose of locating facilities. The term “Master Permit” includes a telecommunications franchise, but excludes a cable television franchise. A cable operator must obtain a cable television franchise pursuant to Chapter 5.20 MVMC.
 - 2. A “Use Permit” means a more limited authorization in whatever form whereby the City grants permission to a Service Provider to enter and use a specified area or location in the Right-of-Way for the purpose of installing, maintaining, repairing, or removing identified Facilities pursuant to this chapter and Ch. 12.15 MVMC.
- G. “Personal Wireless Services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.
- H. “Right-of-Way” means land acquired by or dedicated to the City for public roads and streets, but does not include:
 - 1. State highways;

2. Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;
 3. Structures, including poles and conduits, located within the Right-of-Way;
 4. Federally granted trust lands or forest board trust lands;
 5. Lands owned or managed by the State parks and recreation commission; or
 6. Federally granted railroad rights-of-way acquired under 43 U.S.C. 912 and related provisions of federal law that are not open for motor vehicle use.
- I. “Service Provider” means every corporation, company, association, joint stock association, firm, partnership, person, city, or town owning, operating, or managing any Facilities used to provide and providing Telecommunications Service or Cable Television Service for hire, sale, or resale to the general public. Service Provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city, or town.
- J. “Telecommunications Service” means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this chapter, Telecommunications Service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

Section 5.30.030 Permission Required; Master Permit, Use Permit

- A. A Service Provider must obtain a Master Permit to enter, use, and occupy the Right-of-Way or like areas, including utilities easements, and to locate Facilities therein. In the event a Service Provider has an existing statewide grant to occupy the Right-of-Way this requirement shall be deemed a request, consistent with RCW 35.99.030(1).
- B. Master Permits are granted by the City Council, by ordinance, following a public hearing, on the recommendation of the Administering Officer.
- C. In addition to a Master Permit, a Service Provider must obtain permission to enter and use a specified Right-of-Way by obtaining a Use Permit, in order to install, maintain, repair, or remove identified Facilities. Unless ordered by the Administering Officer or otherwise provided by ordinance, a Use Permit is granted consistent with Chapter 12.10 MVMC, Article VIII and Chapter 12.15 MVMC, Article I.
- D. Utilities or agencies of the City of Maple Valley are exempt from the Master Permitter Use Permit requirements, but the Administering Officer may specify conditions of use or occupancy, including the condition of user City departments to coordinate work in the Right-of-Way by giving appropriate notice to the municipal office issuing Use Permits. The Administering Officer resolves any conflicts among municipal users.

Section 5.30.040 Master Permit Application; Contents

- A. To obtain a Master Permit, a written application is filed with the Administering Officer, in such form as required by said official. General information requested may include, but is not limited to:
1. All of the information required under MVMC 12.15.080 for a Right-of-Way Use Authorization Application.
 2. Applicant's true name, address, telephone, fax, and e-mail, together with an identification of the true ownership of the applicant, including the names and addresses of all persons with ten percent or more ownership interest. For a corporation or other business organization, the state of incorporation or organization and a certificate of incorporation or other proof of legal status should be included;
 3. A statement of whether the applicant, or any entity controlling the applicant, has voluntarily filed for relief under any provision of the bankruptcy laws of the United States, title 11 of the United States Code, had an involuntary petition against it pursuant to the bankruptcy code, or been the subject of any state law insolvency proceeding such as a transfer for the benefit of creditors;
 4. A statement of whether the applicant or any entity controlling the applicant has had a Master Permit, franchise, or similar Right-of-Way use or occupancy permission ever suspended or revoked in any other jurisdiction;
 5. A statement of whether the applicant or any entity controlling the applicant has been found guilty, by any federal, state, or municipal court or administrative agency in the United States of:
 - a. A violation of a security, antitrust, or tax laws; or
 - b. A felony or any other crime involving fraud, theft, or moral turpitude.If so, the application shall identify any such person and fully explain the circumstances;
 6. A demonstration of the applicant's technical, legal, and financial ability to construct and operate the proposed telecommunications services Facility;
 7. A description of the physical Facility proposed, including capacity, the area to be served, a description of technical characteristics, and a map of the proposed system service area and distribution scheme;
 8. A description of how any construction will be implemented, identification of areas having above-ground or below-ground Facilities, the proposed construction schedule, and a description (where appropriate) of how service will be converted from any existing Facility to a new Facility. To the extent practicable, the construction plan shall be coordinated with other improvement plans and Municipal Infrastructure needs;
 9. A description of the services to be provided over the system;
 10. The proposed rates to be charged, including rates for each service offered to the public, as appropriate, and charges for installation, equipment, and other services, and whether such rates are subject to regulatory or informational

- tariff or other rate regulation requirements from any other agency with jurisdiction;
11. Verification that the proposal is designed to be consistent with all federal and state requirements;
 12. In the case of an application by an existing Service Provider for a renewal, a verification that said Service Provider has complied with all terms of the existing Master Permit (or franchise, as the case may be) and with applicable law;
 13. Other information that the Administering Officer may request of the applicant;
 14. The signature, under penalty of perjury, by the applicant or duly authorized agent thereof, certifying, in a form acceptable to the City, the truth and accuracy of the information contained in the application and acknowledging the enforceability of this Chapter; and
 15. Payment of a five hundred dollar (\$500.00) application fee.
- B. With narrow exceptions, Washington State's Public Records Act, Ch. 42.56 RCW, precludes the City from honoring requests for confidentiality.

Section 5.30.050 Permit Procedures

- A. Master Permits.
1. This section states a formal process for the consideration of requests for Master Permits.
 2. On receipt of an application and payment of the application fee from a Service Provider, the Administering Officer may notify the applicant of expected costs for processing the application that will exceed the application fee.
 3. An applicant must deposit costs as notified with the Administering Officer within ten days of notification as a condition of further consideration of an application. Any unexpended moneys after the application process has concluded are refunded to the applicant. Additional costs are billed by the Administering Officer and must be paid within thirty (30) days of the invoice date. If an applicant fails to file a completed application, furnish requested information, or pay required fee amounts on time, the Administering Officer cancels the application process and notifies the applicant. No refund is allowed for the application fee.
 4. Upon the filing of a complete application and payment of required fees by a Service Provider, the Administering Officer negotiates the terms of a Master Permit with the applicant and forwards the Master Permit to the City Council to request a public hearing; or, determines whether to recommend to the City Council that a Master Permit be denied. If the Master Permit is recommended for denial, the Administering Officer explains the reasons for denial as an informational item to the City Council, which shall be supported by a written record based on substantial evidence. The City Council retains the discretion to override the Administering Officer's recommendation for denial, and take action consistent with the provisions

of this Chapter to negotiate a Master Permit with the applicant. If the City Council acts to deny the Master Permit, the applicant may utilize the procedure set forth in subsection 6, herein, for remedy and relief.

5. The City shall act upon a complete application within one hundred twenty (120) days from the date a Service Provider files the complete application for a Master Permit to use the Right-of-Way except:
 - a. With the agreement of the applicant; or
 - b. Where the Master Permit requires the action of the City Council and such action cannot be reasonably be obtained within the one hundred and twenty (120) day period.
 6. A Service Provider adversely affected by the final action denying a Master Permit, or by an unreasonable failure to act on a Master Permit in accord with this section may commence an action within thirty (30) days to seek relief in a court of competent jurisdiction, which shall be limited to injunctive relief. Venue of such a proceeding shall be in King County. Upon timely appeal, the Administering Officer certifies the record and delivers the same to the court where filed. Said Officer may require a deposit of funds by the appealing party in an amount estimated necessary to prepare the record as a condition of certifying the record. Any costs above the City prepared estimate shall be paid by the Service Provider; conversely, any funds paid by the Service Provider in excess of costs shall be refunded by the City to the Service Provider.
- B. Use Permits.
1. The City must act upon a request for a Use Permit from a Service Provider relating to a use of the Right-of-Way within thirty (30) days of receipt of a completed application and any application fee by the official designated to issue such permits, unless a Service Provider consents to a different time period or the Service Provider has not obtained a Master Permit or cable television franchise from the City.
 2. A Use Permit may not be denied to a Service Provider with an existing state-wide grant to occupy the Right-of-Way for wireline Facilities on the basis of failure to obtain a Master Permit.
 3. For the purposes of this section, “act” means that the City makes the decision to grant, condition, or deny the Use Permit, or notifies the applicant in writing of the amount of time that will be required to make the decision and the reasons for this time period.
 4. A Service Provider adversely affected by the final action denying a Use Permit may commence an action within thirty (30) days in a court of competent jurisdiction to seek relief, which shall be limited to injunctive relief. In any appeal of the final action denying a Use Permit, the standard for review and burden of proof shall be as set forth in RCW 36.70C.130 (Standards for Granting Relief – Renewable Resource Projects within Energy Overlay Zones), consistent with RCW 35.99.030(4).
- C. In addition to any other applicable reasons, a Master Permit or Use Permit for placement of facilities of Personal Wireless Services may further be denied

consistent with the provisions of RCW 35.21.860(1)(e) and MVMC 18.50.020, Personal Wireless Service Facilities.

Section 5.30.060 Use Permit; Expedited Consideration

Where a Service Provider's Master Permit does not contain procedures to expedite Use Permit approvals and the Service Provider requests action in less than thirty (30) days, the Service Provider shall advise the Administrating Officer in writing of the reasons why a shortened time period is necessary and the time period within which action by the City is requested. The City shall reasonably cooperate to meet the request where practicable.

Section 5.30.070 Use Permit; Advance Notice; Coordination of Work in the Right-of-Way

- A. In order to facilitate the scheduling and coordination of work in the Right-of-Way, the Administering Officer shall provide as much advance notice as reasonable of plans to open the Right-of-Way to those Service Providers who are current users of the Right-of-Way or who have filed notice with the City Clerk within the past twelve (12) months of their intent to place Facilities in the City.
- B. This obligation may be fully satisfied by publishing such plans or a description of the same in the City's official newspaper. A courtesy, individual notice may be provided to Service Providers by the City, but failure to provide a courtesy notice shall not be grounds for a Service Provider to claim lack of knowledge of plans to open the Right-of-Way.
- C. Service Providers shall subscribe to the City's official newspaper at their expense and are further responsible to maintain on file with the Administering Officer, a current working e-mail address.
- D. The City is not liable for damages for failure to provide individual notice under this section. Where the City has failed to provide individual notice of plans to open the Right-of-Way to a Service Provider consistent with this section, a Use Permit to a Service Provider may not be denied on the basis that the Service Provider failed to coordinate with another project.

Section 5.30.080 Conditions of Occupancy or Use of the Right-of-Way

The following requirements apply as minimum conditions of installing, locating, using, maintaining, abandoning, or removing Facilities in the Right-of-Way or other permitted areas, whether by a Service Provider or any other user:

- A. All of the conditions of Right-of-Way Use Authorizations and Facilities Leases contained in Chapter 12.15 MVMC, Article II, to the extent they do not conflict with the provisions herein.
- B. Service Providers must obtain all permits required by the City for the installation, maintenance, repair, or removal of Facilities in the Right-of-Way and pay all permit and filing fees, costs, charges, and penalties on the date of application for the permit, or within thirty days of billing, whichever is applicable.
- C. Service Providers must comply with all applicable federal and state laws relating to operations in the City of Maple Valley, including safety laws and standards, as well

as local ordinances, Title 12 MVMC, this chapter or any other applicable chapter, and the policies and standards of the City, construction codes, regulations, and orders of the Administering Officer, such compliance being further subject to audit or verification by the City at the Service Providers' expense.

- D. Service Providers must always act in good faith and must engage in fair dealings with the public and must provide safe, reliable service to the public. Service Providers must cooperate with the City in ensuring that Facilities are installed, maintained, repaired, and removed within the Right-of-Way or other permitted areas in such a manner and at such points so as not to inconvenience the public use or to adversely affect the public health, safety, and welfare.
- E. Service Providers must provide information and plans reasonably necessary to enable the City to comply with and enforce this Chapter, including, when notified by the City, the provision of advance planning information pursuant to the procedures established by the Administering Officer. Service Providers must keep the Administering Officer fully informed of any changes to information required to be supplied with any Master Permit or any Use Permit.
- F. Service Providers must provide advance notice of long and short-range needs for access to the Right-of-Way or other permitted areas as may be ordered by the Administering Officer, and otherwise, as much as reasonable in order to facilitate the scheduling and coordination of work in the Right-of-Way or other permitted areas.
- G. Service Providers must obtain the written approval of the facility or structure owner, if they do not own it, prior to attaching to or otherwise using a facility or structure in the Right-of-Way or other permitted areas, and construct, install, operate, and maintain their facilities at their sole expense and liability except as otherwise provided by law or agreement, consistent with RCW 35.99.030(6).
- H. The City is not responsible for construction or maintenance of any Facilities placed and has no duty to modify the Right-of-Way or other permitted areas to accommodate such Facilities. All areas utilized must be accepted "as is," without express or implied assurances of suitability of any area for Facilities placed. Service Providers must assume all risk of Facility placement and occupancy, including risks now or hereafter arising because of lack of municipal resources to maintain the Municipal Infrastructure or any component in current or better condition. Service Providers must waive any claim against the City for loss or liability arising from acts or omissions of other users, occupants or the public, because of unstable earth or roadbed, changes in groundwater conditions or other natural or artificial conditions rendering the Right-of-Way or other permitted areas unsuitable for use for Facilities placed or any other problem. This does not affect the applicability of RCW Chapter 19.122, Washington State's underground utilities statute.
- I. The City reserves the right to vacate or abandon any Right-of-Way that includes a permitted area at no cost or liability to the City. Municipal Infrastructure needs have first priority in all cases except and only so far as shown to be otherwise required by a preemptive right.
- J. There is no duty or liability of the City to any third-party tenant in or on a user's Facilities in the Right-of-Way or other permitted areas, or to any customers or

third-party beneficiaries of a user. The City disclaims any such duty or responsibility. Service Providers must accept sole responsibility for claims of their third-party tenants, customers or third-party beneficiaries.

- K. Nothing in this chapter limits or restricts any requirement, duty, or obligation heretofore arising to the benefit of the City as a result of any municipal contract, permit, or franchise, and such provisions are supplemental and in addition to this chapter. The provisions of this Chapter are supplemental and in addition to other applicable municipal ordinances, standards, and requirements. Nothing in this chapter impairs any obligation of contract in violation of the constitution of the State of Washington or the United States.
- L. Access may be limited by the Administering Officer at a location, considering the purpose of this chapter, where there is inadequate space or other special limitations in an area, subject also to MVMC 5.30.210 (Restrictions on Moratorium). Minimum underground horizontal separation is five feet from municipal water facilities and ten feet from above-ground municipal water facilities, subject to the Administering Officer's review and further determination.
- M. Any assignment of use or occupancy privileges requires consent of the City Manager.

Section 5.30.090 Agreement

No Master Permit shall be deemed to have been granted hereunder until the applicant and the City have executed a written agreement, adopted by ordinance, setting forth the particular terms and provisions under which the Permittee has been granted the right to occupy and use Right-of-Way. If the City determines it is in the public interest, the City and a Permittee may enter into an agreement that differs from one or more specific provisions of this ordinance. Master Permits granted pursuant to this Chapter shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other Master Permits.

Section 5.30.100 Nonexclusive grant

No Master Permit granted under this Chapter shall confer any exclusive right, privilege, license or Master Permit to occupy or use the Right-of-Way of the City for delivery of Telecommunications Service or any other purposes.

Section 5.30.110 Term of Master Permit Grant

Unless otherwise specified in a master permit agreement, a Master Permit granted hereunder shall be valid for a term of five (5) years.

Section 5.30.120 Right Granted

No Master Permit granted under this Chapter shall convey any right, title or interest in the Right-of-Way, but shall be deemed a Master Permit only to use and occupy the Right-of-Way for the

limited purposes and term stated in the grant. Further, no Master Permit shall be construed as any warranty of title.

Section 5.30.130 Master Permit Territory

Unless otherwise provided in the Master Permit agreement, a Master Permit granted under this Chapter shall be limited to the specific geographic area of the City to be served by the Permittee, and to the specific Right-of-Way necessary to serve such areas.

Section 5.30.140 Existing Franchises

Nothing in this Ordinance shall preempt or amend specific provisions in existing telecommunication franchises or contracts between the City and any Service Provider.

Section 5.30.150 Amendment of Master Permit

- A. If a Permittee wishes to modify the conditions of the Master Permit, including the portions of the Right-of-Way it is authorized to use and occupy, it shall make a new application to the City pursuant to the procedures set forth in Section 5.30.040.
- B. If a Permittee is ordered by the City to locate or relocate its Facilities in the Right-of-Way not included in a previously granted Master Permit, the City shall grant an amendment making that change without further application. Relocation of Facilities is governed by MVMC 5.30.220.

Section 5.30.160 Renewal of Master Permit

A Permittee that wishes to renew its Master Permit hereunder shall, not more than one hundred eighty (180) days or less than ninety (90) days before the expiration of the current master permit, make a new application to the City for an additional term pursuant to the procedures set forth in Section 12.35.050. The fee shall be the same as for the initial Master Permit application.

Section 5.30.170 Obligation to Cure as a Condition of Renewal

No Master Permit shall be renewed until any ongoing violations or defaults in the Permittee's performance of the Master Permit agreement, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the Permittee has been approved by the Administering Officer.

Section 5.30.180 Personal Wireless Facilities in the Right-of-Way

- A. The City may impose a site-specific charge pursuant to an agreement with a service provider of Personal Wireless Services for:
 - 1. The placement of new personal wireless Facilities in the Right-of-Way regardless of height, unless the new Facility is the result of a City-mandated relocation, in which case the provisions of MVMC 5.30.220 shall govern;

2. The placement of replacement structures when the replacement is necessary for the installation or attachment of personal wireless Facilities, and the overall height of the replacement structure and the personal wireless Facility is more than sixty feet (60); or
 3. The placement of personal wireless Facilities on structures owned by the City located in the Right-of-Way.
- B. The City is not required to approve a permit for the placement of Personal Wireless Facilities that meets one of the criteria in this section absent a written agreement. If the parties are unable to agree on the amount of the charge, the Service Provider may submit the amount of the charge to binding arbitration by serving notice on the City. Within thirty (30) days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and Right-of-Way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location and zoning requirements. Costs of the arbitration, including compensation for the services of the arbitrator(s), must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses in connection with the arbitration proceeding.

Section 5.30.190 City Use of Poles and Conduit

- A. The City may, in accordance with RCW 35.99.070 and Section 5.30.230 MVMC, require a telecommunications or cable Service Provider that is constructing, relocating or placing ducts or conduits in the Rights-of-Way to provide the City with additional duct or conduit and related structures necessary to access the conduit.
- B. Subject to such reasonable rules and regulations as may be prescribed by the pole owner and subject to the limitations prescribed by RCW 70.54.090 or any other applicable law, the City may post City signs on a Service Providers poles within the City.
- C. Subject to the Service Provider’s prior written consent, which may not be unreasonably withheld, the City may install and maintain City-owned overhead wires upon a Service Provider’s poles for communications purposes, subject to the following:
 1. Such installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as the Service Provider may specify from time to time (Including, without limitation, requirements accommodating its Facilities or the Facilities of other parties having the right to use the pole);
 2. The Service Provider shall have no indemnification obligations in connection with any City-owned wires so installed and maintained;
 3. The owner shall not charge the City a fee for the use of such poles in accordance with this Section as a means of deriving revenue therefrom; provided, however, that nothing herein shall require the Service Provider to bear any cost or expense in connection with such installation and maintenance by the City.

4. The Service Provider shall not enter into an agreement with a third person which would require the Service Provider to exclude the City or any other person from use of such poles.
5. The Service Provider may not condition the City's use of such poles on the City's acceptance of limitations on the purpose or use of the City's Facilities.

Section 5.30.200 Limitations and Reservations

- A. For convenience, this section recites certain restrictions on municipal authority from chapter 83, Laws of 2000, now codified at Ch. 35.99 RCW. Such restrictions, which do not apply to preexisting franchises or permits, state that the City may not adopt or enforce regulations specifically relating to the use of the Right-of-Way by a Service Provider which:
 1. Impose requirements that regulate the services or business operations of the Service Provider, except where otherwise authorized in state or federal law;
 2. Conflict with federal or state laws, rules, or regulations that specifically apply to the design, construction, and operation of facilities or with federal or state worker safety or public safety laws, rules, or regulations;
 3. Regulate the services provided based upon the content or kind of signals that are carried or are capable of being carried over the Facilities, except where otherwise authorized in state or federal law; or
 4. Unreasonably deny the use of the Right-of-Way by a Service Provider for installing, maintaining, repairing, or removing Facilities for Telecommunications Service or Cable Television Service.
- B. In addition, RCW 35.99.040(2) preserves certain areas of municipal authority. Consistent therewith, nothing in this chapter limits the authority of the City or its officials to regulate the placement of Facilities through its local zoning codes, set forth in Title 18 MVMC, or its police power, if the regulations do not otherwise:
 1. Prohibit the placement of all wireless or of all wireline Facilities within the City;
 2. Prohibit the placement of all wireless or of all wireline Facilities within City Right-of-Way; or
 3. Violate section 253 of the Telecommunications Act of 1996, P.L. 104-104 (110 Stat. 56).

Section 5.30.210 Restriction on Moratorium

- A. Consistent with RCW 35.99.050, the City shall not place or extend a moratorium on the acceptance and processing of applications, permitting, construction, maintenance, repair, replacement, extension, operation, or use of any Facilities for Personal Wireless Services, except as consistent with the guidelines for facilities siting implementation, as agreed to on August 5, 1998, by the Federal Communications Commission's local and state government advisory committee, the Cellular Telecommunications Industry Association, the Personal Communications Industry Association, and the American Mobile

Telecommunications Association. In the event of a change to this state law, this section shall become void.

- B. Should such a moratorium be implemented, the Administering Officer shall, on receipt of a written request of a Service Provider impacted by the moratorium, participate with the Service Provider in the informal dispute resolution process included with the guidelines for facilities siting implementation. Any costs of municipal participation shall be payable in advance by the Service Provider.

Section 5.30.220 Relocation

- A. Subject to the provisions of Section D., E., and F., herein, the Administering Officer may require Service Providers to relocate authorized Facilities within the Right-of-Way at their sole expense when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of public welfare, health, or safety as provided in chapter 83, Laws of 2000 (RCW Chapter 35.99).
- B. The Administering Officer shall notify Service Providers as soon as practicable of the need for relocation and shall specify the date by which relocation in the Right-of-Way shall be completed. Notice may be given by posting the same on the City's website, publication in the City's official newspaper, or any other means. In calculating the date that relocation must be completed, the Administering Officer shall consult with affected Service Providers and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the City's overall project construction sequence and constraints, to safely complete the relocation.
- C. Service Providers shall complete the relocation by the date specified, unless the Administering Officer, or a reviewing court, establishes a later date for completion, after a showing by the Service Provider that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.
- D. Service Providers may not seek reimbursement for their relocation expenses from the City requesting relocation under subsection (A) of this section except:
 - 1. Where the Service Provider had paid for the relocation cost of the same Facilities at the request of the City within the past five years, the Service Provider's share of the cost of relocation will be paid by the City when it is requesting the relocation;
 - 2. Where aerial to underground relocation of authorized Facilities is required by the City under subsection (A) of this section, for Service Providers with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in the approved tariff if less, will be paid by the City requiring relocation; and
 - 3. Where the City requests relocation under subsection (A) of this section solely for aesthetic purposes, unless otherwise agreed to by the parties;
 - 4. No relocation reimbursement is paid by the City for other permitted areas outside the Right-of-Way where not otherwise required by chapter 83, Laws of 2000 (RCW Chapter 35.99).

- E. Where a project in subsection (A) of this section is determined by the Administering Officer to be primarily for private benefit, the private party or parties shall reimburse the cost of relocation in the same proportion to their contribution to the costs of the project. Service Providers will not be precluded from recovering their costs associated with relocation required under subsection (A) of this section, provided that the recovery is consistent with subsection (C) of this section and other applicable laws. The City has no obligation to secure the collection or payment of any funds not owed by the City.
- F. The Administering Officer may require the relocation of Facilities at the Service Provider's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health, or welfare consistent with RCW 35.99.060(5).
- G. For users other than Service Providers, such parties shall relocate any Facilities as ordered by the Administering Officer and no right of reimbursement from the City will ever be recognized.

Section 5.30.230 Facilities for City Use

- A. The Administering Officer may require that a Service Provider that is constructing, relocating, or placing ducts or conduits in the Rights-of-Way provide the City with additional duct or conduit and related structures necessary to access the conduit, provided that:
 - 1. The City enters into a contract with the Service Provider consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Service Provider. If the City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing Telecommunications Service or Cable Television Service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated costs of the Service Provider. The Service Provider shall state both contract rates in the contract. The Administering Officer shall inform the Service Provider of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the City;
 - 2. Except as otherwise agreed by the Service Provider and the City, the City agrees that the requested additional duct or conduit space and related access structures will not be used by the City to provide Telecommunications Service or Cable Television Service for hire, sale, or resale to the general public;
 - 3. The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of the Service Provider;
 - 4. The value of the additional duct or conduit requested by the City shall not be considered a public works construction contract;
 - 5. This section shall not affect the provision of an institutional network by a cable television provider under federal law. Additional requirements may

apply as determined by the City in other permitted areas, outside the Right-of-Way. (See RCW 35.99.070.)

- B. Except where preempted by state or federal law, the City reserves the right to require the provision of Facilities for City use or impose other conditions on users of the Right-of-Way or other permitted areas.

Section 5.30.240 Fees and Charges

Subject to the limitations under federal and state law (*see* RCW 35.21.860, incorporated herein by reference), the City reserves the right to require compensation for use of the Right-of-Way as a condition of granting permission to use and occupy the Right-of-Way or other permitted areas.

Section 5.30.250 Imposition of Taxes, Fees or Requirements by the City

The City may impose on the Service Provider all fees, taxes, and requirements authorized by RCW 35.21.860, as written or hereafter amended. Each Master Permit granted under this Chapter is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid as reimbursement for the City's costs in connection with reviewing, inspecting and supervising the use and occupancy of the Right-of-Way on behalf of the public and existing or future users.

Section 5.30.260 Other City Costs

All Service Providers shall, within thirty (30) days after written demand, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the Master Permit when such is requested by the Service Provider. In addition, all Service Providers shall, within thirty (30) days after written demand, reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving the Service Provider's Facilities. Finally, all Service Provider's shall, within thirty (30) days after written demand, reimburse this City for the Service Provider's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any Municipal Infrastructure as a result of the presence in the Right-of-Way of the Service Provider's Facilities.

Section 5.30.270 Violations of Master Permit

Unless otherwise provided herein the Administering Officer interprets and enforces this chapter, resolves conflicts, and determines disputes arising under this chapter or permits or Master Permits issued in connection therewith.

A. Dispute Resolution Procedure

- 1. If the Administering Officer believes that a Service Provider has failed to perform any obligation under the Master Permit, the City shall notify Service Provider in

writing, stating with reasonable specificity the nature of the alleged default. Service Provider shall have thirty (30) days from the receipt of such notice to:

- a. respond to the City, contesting the City's assertion that a default has occurred, and request a meeting in accordance with subsection (2), below; or
 - b. cure the default; or
 - c. notify the City that Service Provider cannot cure the default within thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Service Provider shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (2) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Service Provider's proposed completion schedule and steps are reasonable.
2. If Service Provider does not cure the alleged default within the cure period stated above, or denies the default and requests a meeting in accordance with subsection (1)(a), or the City orders a meeting in accordance with subsection (1)(c), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Service Provider of the meeting in writing and such meeting shall take place no less than thirty (30) days after Service Provider's receipt of notice of the meeting. At the meeting, Service Provider shall be provided an opportunity to be heard and to present evidence in its defense.
3. If, after the meeting, the City determines that a default exists Service Provider and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Service Provider to correct or remedy the default or breach within such reasonable timeframe as the City shall determine. In the event Service Provider does not cure the default within such time to the City's reasonable satisfaction, the Administering Officer shall submit a report and recommendation to a Hearing Examiner who shall conduct a public hearing to determine if the Service Provider is in default of the Master Permit and make a recommendation to the City Council. The City Council shall act as the final decision maker for the City.
- a. At least twenty one (21) calendar days prior to the public hearing, the City Clerk shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City shall hear any Persons interested therein; and provide that the Service Provider shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses, consistent with the adopted Hearing Examiner rules.
 - b. The Hearing Examiner shall hear testimony, take evidence, hear oral argument and receive written briefs. A transcript may be made of such proceeding and the cost shall be shared equally between the parties. The Hearing Examiner shall create for the City Council a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording.

- c. Within twenty (20) calendar days after the close of the hearing, the Hearing Examiner shall issue a written recommendation, including findings of fact upon which the recommendation is based and the conclusions derived from those findings.
4. The City Council shall, at a public meeting, consider and take final action on a recommendation of the Hearing Examiner. The City Council shall consider the complete record developed before the Hearing Examiner and the recommendation of the Hearing Examiner. The City Council may, in its sole discretion, allow further testimony, written submissions, and oral argument on the matter from City staff and the Service Provider.
5. The City Council shall adopt a written decision by a majority vote of the members of the City Council. The City Council's written decision shall include findings of fact and conclusions derived from those facts which support the decision of the City Council. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.
6. Service Provider shall be bound by the City Council's decision unless an appeal to a court of competent jurisdiction is timely filed as allowed by applicable law.

Section 5.30.280 Other Users, Occupants Outside Right-of-Way

Whether or not otherwise expressly provided in this chapter, the Administering Officer is authorized to adapt this chapter, considering its purposes, in the exercise of sound discretion in dealing with users other than Service Providers, or with respect to Service Providers in other permitted areas outside the Right-of-Way, recognizing that the state legislature chose to limit the effect of chapter 83, Laws of 2000 (RCW Chapter 35.99) to Service Providers and a defined Right-of-Way area, but no waiver of any municipal requirement is binding unless in writing and notwithstanding any statement therein, any such waiver remains revocable at all times.

Section 5.30.290 Conflict of Laws

In the event of any conflict between this Chapter 5.30 and Chapter 12.15, the provisions of this Chapter 5.30 shall control.

Section 2. Severability. If any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. A Summary of this ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five days after adoption and publication.

Section 4. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the Code Reviser are authorized to make necessary corrections to this

Ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or section/subsection numbering.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON
ON THIS 12th DAY OF MARCH, 2012.

William T. Allison, Mayor

ATTEST:

Shaunna Lee-Rice, City Clerk

APPROVED AS TO FORM:

Christy A. Todd, City Attorney

Date of Publication: March 20, 2012

Effective Date: March 26, 2012