

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Adoption of Ordinance 450 Amending Franchise Ordinance with Electric Lightwave LLC.
DEPARTMENT: City Manager's Office
PRESENTED BY: Bernard Seeger, City Manager's Office
Flannary Collins, Assistant City Attorney

PROBLEM/ISSUE STATEMENT:

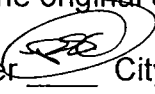
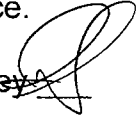
Staff seeks adoption of revisions to Ordinance 432, passed by the City Council on July 10, 2006, which provided a non-exclusive franchise to ELI to provide telecommunications services in the City's public Right-of-Way. The amended Ordinance 450 provides four changes that better reflect existing law and latent concerns of ELI with regard to the Franchise.

Outlined below are proposed changes to the original franchise ordinance..

- **Further Description of "Cost" in Section 7.3**
Add the word "reasonable" to describe the costs shared in joint trenching projects between the City and ELI
- **Revised Language with Regard to Performance Bond in Section 20**
Set the performance bond amount at \$30,000 to improve predictability in business requirements and provide additional time to acquire bond for ELI.
- **Deletion of Most Favored Nation Clause.**
Recent court rulings have found this language to be in violation of section 253 of the Federal Telecommunications Act, therefore this language is no longer applicable.

RECOMMENDATION

Staff recommends that City Council adopt the proposed ordinance to reflect existing law and address ELI concerns with the original ordinance.

Approved By: City Manager  City Attorney 

ORDINANCE NO. 450

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, AMENDING ORDINANCE 432, A NON-EXCLUSIVE FRANCHISE FOR ELECTRIC LIGHTWAVE, LLC.

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35A.47.040 grants the City broad authority to grant nonexclusive franchise agreements; and

WHEREAS, the Council finds that three amendments are necessary to better reflect existing law and to be responsive to the concerns of Electric Lightwave, LLC ("ELI").

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, AMENDS ORDINANCE 432 AS FOLLOWS:

Section 1. Amendment. Section 7.3 of Ordinance No. 432 is amended to read as follows:

Cost - ELI agrees to bear its proportionate share of all reasonable costs common to participants in any joint trenching project and to bear the entire cost of all materials and labor particularly necessary for the underground installation of its facilities and, upon the completion of that installation, the removal of the overhead facilities replaced thereby.

Section 2. Amendment. Section 20 of Ordinance No. 432 is amended to read as follows:

Bond. No later than ten days after the effective date of this franchise, ELI shall furnish a bond executed by ELI and a corporate surety authorized to do a surety business in the State of Washington, in a sum of \$30,000 to be set and approved by the Director of Public Works as sufficient to ensure performance of ELI's obligations under this franchise. The bond shall be conditioned so that ELI shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this franchise, and to erect or replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City.

Section 3. Deletion. Section 28 of Ordinance No. 432 is deleted in its entirety.

~~Most Favored Community. In the event that the Grantee enters into any agreement, franchise or other understanding with an other city, town, or county in the State of Washington and which provides terms or conditions more favorable to the city, town, or county than those provided in this franchise, such as, but not limited to, free or reduced fee hookups, access or service, the City of Shoreline shall be entitled to request at the City's option, and the Grantee shall be required to execute, an amendment to this franchise that incorporates the more favorable terms and conditions.~~

Section 4. Extension. Pursuant to Section 26 of Ordinance No. 432, the acceptance date of the franchise is extended to 30 days after City approval of Ordinance 450.

PASSED BY THE CITY COUNCIL ON _____.

Mayor Robert L. Ransom

ATTEST:

Scott Passey, CMC
City Clerk

APPROVED AS TO FORM:

Ian Sievers
City Attorney

Date of Publication: _____
Effective Date: _____

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