AGENDA

SHORELINE CITY COUNCIL
REGULAR MEETING

Monday, July 24, 2000
7:30 p.m.

Shoreline Conference Center
Mt. Rainier Room

Page No.

1. CALL TO ORDER

2. FLAG SALUTE / ROLL CALL

3. REPORT OF CITY MANAGER

4. REPORTS OF BOARDS AND COMMISSIONS

5. PUBLIC COMMENT

This is an opportunity for the public to address the Council on any subject which is not of a quasi-judicial nature or specifically scheduled for today's agenda (see items below). The public may comment for up to two minutes. However, Item 5 will be limited to a maximum period of twenty minutes. A maximum of three persons will be permitted to speak to each side of any one topic. The public may also comment for two minutes on action items after the staff report has been presented. In all cases, speakers are asked to come to the front of the room to have your comments recorded. Please state clearly your name and address.

6. APPROVAL OF THE AGENDA

7. CONSENT CALENDAR

Approximate Length of Agenda Item	Page No.

(c) Ordinance No. 245 extending Solid Waste Collection Franchises 17

8. ACTION ITEMS: OTHER ORDINANCES, RESOLUTIONS AND MOTIONS

(a) Ordinance No. 244 establishing new regulations for siting telecommunication utilities within the public rights-of-way; and amending Shoreline Municipal Code Chapter 12.25 and Ordinance No. 238, Exhibit "A" Chapter II and Sections III 3, IV 3 B (W) 5, 6 and VII 5 B, D 20 minutes 21

9. CONTINUED PUBLIC COMMENT

Public comment is limited to five minutes per person.

10. ADJOURNMENT

The Council meeting is wheelchair accessible. Any person requiring a disability accommodation should contact the City Clerk's Office at 546-8919 in advance for more information. For TTY service, call 546-0457. For up-to-date information on future agendas, call 546-2190 or see the web page at www.citvofshoreline.com.

May 22, 2000

DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL
SUMMARY MINUTES OF JOINT DINNER MEETING

Monday, May 22, 2000
6:00 p.m.

Shoreline Conference Center
Highlander Room

Shoreline City Council

PRESENT: Mayor Jepsen, Deputy Mayor Hansen and Councilmembers Grossman, Gustafson, Montgomery and Ransom

ABSENT: Councilmember Lee

STAFF: Robert Deis, City Manager; Larry Bauman, Assistant City Manager; Kristoff Bauer, Assistant to the City Manager

Lake Forest Park City Council

PRESENT: Mayor Hutchinson, Councilmembers Goss, Herzog, Kiest, Olstad, Sterner, Thompson

ABSENT: Councilmember Armanini

STAFF: Doug Jacobson, City Administrator; Sarah Phillips, Community and Government Affairs Manager

The meeting convened at 6:25 p.m. All Shoreline City Councilmembers were present with the exception of Councilmember Lee. All Lake Forest Park Councilmembers were present with the exception of Councilmember Armanini.

Mayor Jepsen welcomed the guests from Lake Forest Park. He explained the purpose of the meeting to address issues of mutual concern. He noted that such issues include water, the Endangered Species Act, transportation, transit and a Youth Council.

Mayor Jepsen mentioned that the City has been reviewing water services in Shoreline. He asked about the interests of Lake Forest Park in determining future water services.

Robert Deis, City Manager, explained that the City Comprehensive Plan calls for the City to be involved in utility services and to review delivery options. He noted the potential impact on Lake Forest Park, given that the Shoreline Water Department serves both cities.

Mayor Hutchinson said his first question is whether there is a potential benefit to Lake Forest Park customers within the Shoreline Water District. He stressed that Lake Forest Park has an interest in whatever Shoreline decides to do.

Deputy Mayor Hansen commented that the City may eventually be better off operating its own water utility. He noted that the tax revenues that Seattle Public Utilities (SPU) collects from the Shoreline customers it serves go to the City of Seattle budget.

Councilmember Thompson pointed out that the SPU wastewater system is similar to the SPU water system in the manner of deciding who should be the service provider for Lake Forest Park.

Councilmember Kiest inquired as to the benefits of assuming the Shoreline Water District. Kristoff Bauer, Assistant to the City Manager, explained that some costs could be reduced through efficiencies and the reduction of related overhead expenses.

Councilmember Thompson said the Lake Forest Park City Council has not done enough analysis of water services to develop an opinion on the issue.

Doug Jacobson, Lake Forest Park City Administrator, said Lake Forest Park is reserving judgment regarding water services. Regarding the wastewater utility, he noted that the city may want to exercise its option to manage the wastewater utility within Lake Forest Park.

Councilmember Kiest commented that Lake Forest Park citizens are not eager to lose their voting rights in the Shoreline Water District should the City of Shoreline assume the water district. He said those customers believe that they receive a high level of service.

Mr. Deis said the analysis of service should include the amount that customers pay for the level of service they receive. He asserted that cities provide a higher level of oversight and accountability because of the higher level of citizen participation.

Councilmember Grossman said one has to question the decisions of the Shoreline Water District when one considers the policies it is pursuing. He asserted that District plans to use water from Lake Washington are questionable given the unlikely possibility of obtaining the necessary water rights.

Councilmember Ransom questioned the actions of the Shoreline Water District regarding the Cascade Water Alliance.

Councilmember Thompson said Lake Forest Park does not want to be perceived as delaying a decision by Shoreline.

Councilmember Kiest said the city would like to work with the 40 percent of Shoreline Water District customers residing in Lake Forest Park.

Mayor Jepsen asked the Lake Forest Park City Council to consider whether it would like to assess any of the information that City of Shoreline staff has gathered about water services and the Shoreline Water District or whether it wants to wait to respond to City of Shoreline actions.

Councilmember Thompson suggested that Shoreline send Lake Forest Park a formal letter outlining options regarding water services that Shoreline is considering that they wish Lake Forest Park to consider simultaneously.

Councilmember Goss recommended that in the interests of the citizens of each city, both city governments should work towards the goals of the highest, most efficiently run water district.

On another issue, Mayor Hutchinson thanked the Shoreline City Council for making the teen program at the Aldercrest Annex a partnership. He asserted the value of the cities' partnership in Club Kellogg as well. He said he would like to explore a partnership with the City of Shoreline in summer recreation programs in the schools.

Mr. Deis commented that the Shoreline and Lake Forest Park City Councils have similar philosophies: to keep youth active. He noted that the Shoreline City Council has invested in improving youth services.

Noting that Lake Forest Park and Shoreline both have students attending Shorecrest High School and Kellogg Middle School, Councilmember Kiest encouraged the city councils to collaborate on youth programs.

Mayor Jepsen thanked the Lake Forest Park City Council and staff for attending the joint meeting.

The meeting adjourned at 7:25 p.m.

_____

Larry Bauman, Assistant City Manager

June 26, 2000

DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL
SUMMARY MINUTES OF JOINT DINNER MEETING

Monday, June 26, 2000
6:00 p.m.

Shoreline Conference Center
Highlander Room

Shoreline City Council

PRESENT: Mayor Jepsen, Deputy Mayor Hansen, Councilmembers Grossman, Gustafson, Lee, Montgomery and Ransom

ABSENT: None

STAFF: Robert Deis, City Manager; Kristoff Bauer, Assistant to the City Manager; and Wendy Barry, Parks, Recreation and Cultural Services Director

Shoreline School Board

PRESENT: President Parsons, Vice President Bryce, Board members Gibony, Grace and Robinson

ABSENT: None

STAFF: Gil Noble, Deputy Superintendent for Management/Technology; Paul Lesh, Director of Athletics, Clarence Kwock, Chief Financial Officer, and Diane Jenkins, Clerk of the Board

The meeting convened at 6:25 p.m.

Mayor Jepsen initiated the discussion by reflecting on the process followed in developing the draft Joint Use Agreement between the City and the School District; and President Parsons thanked staff for their efforts in bringing it to the point of adoption.

Mayor Jepsen asked Boardmembers if they had had an opportunity to discuss the City Council's comments on the draft agreement.

President Parsons responded that the Board has not discussed the specifics because the next step is to consult with the District's legal counsel. However, she offered to discuss these comments this evening.

Mayor Jepsen referred to the second sentence of Section 3 of the agreement ("For this scheduling, each entity will keep foremost in its thoughts and actions the needs of our youth"). He wished to clarify the intent of the basic objective of serving youth and adults as scheduling decisions are made. He said the Council questioned whether the emphasis on youth might be too focused.

Mr. Robinson explained the School District wanted to avoid having youth take a second place while accommodating utilization of school facilities by the broader community.

Responding to Mr. Grace's question about whether any problems have arisen, Wendy Barry, Director of Parks, Recreation and Cultural Services, explained that the only difficulties have been at the level of individual indoor facilities--basketball courts, for example.

On a second issue, Mayor Jepsen asked how site-based decision-making works and what authority a principal at an individual school would have.

President Parsons explained that principals need to be in control of their buildings and should be able to exclude activities that they find disruptive.

Mr. Grace added that perhaps the Board should establish guidelines for greater community use of the schools. He said that some site councils have suggested such use.

Mr. Robinson said that site councils include community representatives who are pushing for open schools while protecting classroom use. It is to the School District's benefit to have taxpayers in the schools.

President Parsons elaborated that an appropriate process needs to be developed to work with the principals in expanding community use of their facilities.

Councilmember Gustafson supported joint scheduling for fields and gyms, while allowing principals to retain responsibility for libraries, classrooms, etc. The principals could schedule first, but pressure from large user groups would be born by central staff. Then, over time, trust should allow for growing cooperation for community use of schools.

Councilmember Montgomery asked for clarification regarding the meaning of the phase "when school is in session" as referenced in the proposed agreement. There was general discussion concluding with consensus that this phrase has two possible meanings, i.e., the school day and the school year, depending on the context.

Councilmember Gustafson raised another issue about how to approach custodial work and other school activities that occur after the school day.

Responding to Mayor Jepsen's question about the process for finalization of the agreement, President Parsons said the School Board is comfortable with the draft as presented. She asked whether Council had any outstanding issues.

Mayor Jepsen pointed out that the Council has two concerns: the focus on youth in the scheduling section and the implications of shared decision-making.

Mr. Robinson said the Board is still developing a definition of "shared decision-making."

Vice President Bryce explained the District must still have its attorney review the language but the Board does not expect any significant issues to arise.

Gil Noble, Deputy Superintendent for Management/Technology, said that the attorney does have a few wording suggestions that are non-substantive. He added that there was one question specific to the depreciation schedule, but the Chief Financial Officer does not have a problem with the policy as written.

General discussion followed regarding the skate park and the City's plans for getting input for City youth.

Mr. Grace said he was very excited to see that the joint use agreement is moving forward.

Deputy Mayor Hansen commented that the City is not interested in holding up the process for either of the issues that have been raised by Council.

Another general discussion followed regarding scheduling of agreement approval.

Ms. Barry commented on the need to finalize the addenda, which she believed could be done fairly quickly. Mr. Gil concurred.

Councilmember Gustafson pointed out that a few facilities must be added to the addenda.

There was consensus that the Board would act on the joint use agreement and the addenda on August 7, 2000.

Turning to the School Resource Officer program, Robert Deis, City Manager, briefly described the history of the program and how it was impacted by Initiative 695. He explained that the problem to be addressed is the budget shortfall created by the passage of I-695. The City did get a grant, to be applied at the secondary level only, but needs a commitment from the School District to share the remainder of the costs of the program.

There was general discussion regarding the School District's budget process. The concern was that time for the Board to consider funding this program in the current budget process is short, although it is still possible.

DRAFT

Responding to Mr. Robinson, Mr. Deis clarified that the current program for elementary and middle schools is addressed by officers on overtime. The grant for the secondary program would allow for hiring a full-time regular position.

Mayor Jepsen suggested a joint staff presentation to assist the District in setting its priorities.

Mr. Deis clarified that Police Chief Pentony has shared financial information with the District finance staff and will follow-up.

The last topic for discussion was the youth council initiative sponsored and partially funded by King County Councilmember Maggi Fimia. The group commented on current activities and how such a council might interact with the District and the City.

In conclusion, both Mayor Jepsen and President Parsons recognized the value of the City and School District getting together and the potential for positive and immediate benefit arising from the proposed joint use agreement.

The meeting adjourned at 7:20 p.m.

_____

Kristoff Bauer, Assistant to the City Manager

DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL
SUMMARY MINUTES OF DINNER MEETING

Monday, July 10, 2000
6:00 p.m.

Shoreline Conference Center
Highlander Room

PRESENT: Mayor Jepsen, Deputy Mayor Hansen, Councilmembers Lee, Montgomery and Ransom

ABSENT: Councilmembers Grossman and Gustafson

STAFF: Robert Deis, City Manager; Larry Bauman, Assistant City Manager; Ian Sievers, City Attorney; and Kristoff Bauer, Assistant to the City Manager

The meeting convened at 6:15 p.m.

Robert Deis, City Manager, reminded Council that the joint dinner meeting with the Planning Commission is scheduled for July 24. He distributed a list of proposed topics for discussion developed by the Commission, noting that important topics for the Planning Commission include communications, the upcoming Planning Commission work program; sub-area planning; and Phase III of the Development Code. Planning Commissioners apparently would like a high-level discussion with the Council.

At 6:20 p.m. Councilmember Ransom arrived.

The Council discussed the proposed topics and the fact that there are probably too many items to discuss at a single meeting.

Mr. Deis brought up the MUGA process and provided the Council with an update on Snohomish County activities. He also discussed the King County concept of providing mitigation for the potential Pt. Wells Wastewater Treatment Plant.

Mayor Jepsen added that the Wastewater Treatment Plant Siting Committee has, at his urging, extended the timeline for its work through September.

Mr. Deis described the off-docket item staff is proposing for tonight's agenda regarding a fee waiver policy.

Responding to Deputy Mayor Hansen's question about how the policy would apply to events such as "Night Out Against Crime", Mr. Deis said that such an event is clearly

covered by the policy. He also explained the purpose of a right-of-way permit and why such a permit is important to the City.

Larry Bauman, Assistant City Manager, distributed the new letterhead design and asked for any Council comment before it is finalized. Councilmember Lee suggested that the City's website be included on the letterhead.

The meeting adjourned at 7:20 p.m.

_____

Larry Bauman, Assistant City Manager

July 10, 2000

DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL
SUMMARY MINUTES OF RE GULAR MEETING

Monday, July 10, 2000
7:30 p.m.

Shoreline Conference Center
Mt. Rainier Room

PRESENT: Mayor Jepsen, Deputy Mayor Hansen, Councilmembers Lee, Montgomery and Ransom

ABSENT: Councilmembers Grossman and Gustafson

1. CALL TO ORDER

The meeting was called to order at 7:30 p.m. by Mayor Jepsen, who presided.

2. FLAG SALUTE/ROLL CALL

Mayor Jepsen led the flag salute. Upon roll call by the City Clerk, all Councilmembers were present with the exceptions of Councilmembers Grossman and Gustafson.

Councilmember Lee moved to excuse Councilmember Gustafson. Deputy Mayor Hansen seconded the motion, which carried 5-0. Later in the meeting, Councilmember Montgomery moved to excuse Councilmember Grossman. Councilmember Lee seconded the motion, which carried 5-0.

3. REPORT OF CITY MANAGER

City Manager Robert Deis said the executive session included in the agenda will not be necessary.

Shoreline Police Chief Denise Pentony distributed and discussed a report on the "4th of July fireworks situation in Shoreline." Shoreline Fire Chief J. B. Smith asserted that the fireworks ban is "absolutely working." He noted the low number of fire calls (five) and the lack of injuries during the Fourth of July.

In response to Councilmember Ransom, Chief Smith said his department is researching Fourth of July activity in jurisdictions surrounding Shoreline.

Mr. Deis reported that the National Association of Police Organizations has recognized Shoreline Police Officers Patrick Saulet and Joseph Craig as two of 13 "Top Cops" nationwide.

Public Works Director Bill Conner reviewed the City's response to the Suburban Cities Association (SCA) questionnaire concerning the Endangered Species Act (ESA).

Mayor Jepsen asked why staff decided not to respond to the "Potential Contract Terms" portion of the questionnaire. Mr. Conner said staff approves of the descriptions of the potential contract terms in general and decided to let the process of developing an interlocal contract for Water Resource Inventory Area (WRIA)/watershed basin planning continue without specific comments.

Noting item nine, "Governing Body," under "Potential Contract Terms," Mayor Jepsen expressed concern about the additional bureaucracy of creating another governing body.

Deputy Mayor Hansen noted his understanding of a legal question as to whether SCA can accept funds to serve an administrative role. City Attorney Ian Sievers asserted that the interlocal agreement would establish the authority for SCA to handle a budget designated by member agencies.

Mr. Deis requested that Council consider approval of Ordinance No. 243, authorizing the City Manager to waive or reduce certain fees for City-sponsored or -sanctioned special events, as an item on the meeting agenda.

4. REPORTS OF BOARDS AND COMMISSIONS: None

5. PUBLIC COMMENT

(a) Ken Howe, 745 N 184th Street, said he asked US Representative Jay Inslee to be active in Washington D.C. about the sale of dangerous fireworks on Indian reservations. He asserted that local jurisdictions that have banned fireworks should insure that the federal government does its part to make the bans effective. On another issue, he asserted that the City should provide a copy of the historic inventory that King County performed for Shoreline in 1996 to each new Planning Commissioner.

6. APPROVAL OF THE AGENDA

Deputy Mayor Hansen moved that Council adopt the agenda. Councilmember Lee seconded the motion.

Councilmember Ransom moved to add Ordinance No. 243, authorizing the City Manager to waive or reduce certain fees for City-sponsored or -sanctioned special events, as agenda item 8 (c). Deputy Mayor Hansen seconded the motion, which carried unanimously.

A vote was taken on the motion to adopt the agenda, as amended, which carried unanimously.

7. CONSENT CALENDAR

Councilmember Montgomery moved that Council adopt the consent calendar. Deputy Mayor Hansen seconded the motion, which carried unanimously, and the following items were approved:

Minutes of Regular Meeting of June 12, 2000
Minutes of Workshop Meeting of June 19, 2000
Minutes of Regular Meeting of June 26, 2000

Approval of payroll and expenses as of June 22, 2000 in the amount of $436,094.05

Resolution No. 169 approving the final plat for Elena Lane at 18034 Stone Ave. N.

Ordinance No. 242, amending Ordinance No. 222, as amended, by increasing the revenue to the General Fund and authorizing expenditures for repairs to the Shoreline Pool

8. ACTION ITEMS: OTHER ORDINANCES, RESOLUTIONS AND MOTIONS

(a) Ordinance No. 241 amending the City's Zoning Map to change the zoning of two parcels located at 514 N 150th Street from R-6 to contract zone #CZ-00-01 subject to restrictive covenants

Senior Planner Rachael Markle reviewed the staff report. She said the applicant requested a contract rezone—instead of a straight rezone to R-12—to provide the public with assurances of the scale and design of the development to occur on the site. She noted conditions in the Mitigated Determination of Non-Significance (MDNS) concerning: 1) pedestrian safety and aesthetics; and 2) storm water management. She mentioned the three conditions that the Planning Commission added in recommending the reclassification for approval. She said the fire department verified the adequacy of the proposed access for emergency vehicles in a preliminary review of the project. Finally, she noted a question at the public hearing on whether the proposed driveway on 150th Street will be located a safe distance from the intersection with Westminster Way. She said the City will review the adequacy of the site distance triangle as part of the building permitting process.

Councilmember Lee moved to adopt Ordinance No. 241. Councilmember Montgomery seconded the motion.

Councilmember Lee noted concerns about traffic and asked what mitigation might address such concerns. Ms. Markle mentioned the proposal to conduct a traffic study to obtain a traffic count at the location. She noted that current zoning would allow four units at the site (two units with one accessory dwelling unit each). She said staff does not envision traffic problems. Mr. Deis explained that the design of the driveway and the

distance of it from the intersection remain to be defined. He said the projected number of vehicle trips is within the thresholds of the current zoning.

Mayor Jepsen said the location of the driveway in the proposed site plan is as far west on N 150th Street as possible. He noted the following alternatives to address safety concerns: redesigning the site plan; stipulating right turn out only or right turn in only.

In response to Councilmember Lee, Ms. Markle explained that the project was grandfathered under the 1993 King County road standards rather than the new road standards adopted as part of the Development Code Phase 2.

Mayor Jepsen expressed appreciation of the Planning Commission discussion of the application. Councilmember Lee concurred.

Mayor Jepsen supported the proposal as an attached townhouse project.

A vote was taken on the motion to adopt Ordinance No. 241 amending the City's Zoning Map to change the zoning of two parcels located at 514 N 150th Street from R-6 to contract zone #CZ-00-01 subject to restrictive covenants. The motion carried 5-0.

(b) Update on Recommended Skate Park location at Paramount School Park

Wendy Barry, Parks, Recreation and Cultural Services Director, reviewed the staff report. She mentioned the skate park design meeting scheduled for July 25 at the Shoreline Center.

Mayor Jepsen supported the recommended skate park location. He anticipated good turnout for the skate park design meeting July 25.

Councilmember Ransom commented on the thoughtful analysis of the skate park location alternatives by the Parks, Recreation and Cultural Services Advisory Committee. He supported the committee's recommendation.

Mayor Jepsen confirmed Council consensus in support of the recommended location.

(c) Ordinance No. 243, authorizing the City Manager to waive or reduce certain fees for City-sponsored or -sanctioned special events

Mr. Deis presented the staff report. He noted that the Briarcrest Neighborhood Fourth of July Parade brought the issue of right-of-way fees to the fore.

Councilmember Montgomery moved to adopt Ordinance No. 243, authorizing the City Manager to waive or reduce certain fees for City-sponsored or -sanctioned special events. Deputy Mayor Hansen seconded the motion.

Councilmember Ransom favored the ordinance as a means of supporting civic events. He noted the number of organizations for which the City Manager may waive or reduce fees. He said Council can amend the ordinance in the future, if necessary, to include other organizations or events.

Deputy Mayor Hansen noted that the motion Council passed at its June 26 meeting to waive the permit fees for the Briarcrest Neighborhood Fourth of July Parade stipulated "until such time as a specific fee waiver policy is adopted by the City of Shoreline." He said Ordinance No. 243 represents such a policy.

Mayor Jepsen said Ordinance No. 243 is a positive step forward.

A vote was taken on the motion to adopt Ordinance No. 243, authorizing the City Manager to waive or reduce certain fees for City-sponsored or -sanctioned special events. The motion carried 5-0.

9. CONTINUED PUBLIC COMMENT

(a) Richard Kink, 19553 27th Avenue NW, asserted the difficulty of trying to establish a dialogue and work as an ally with the City regarding the bulkheads of residences on 27th Avenue NW. He described the unique situation of the residences (e.g., the only homes in the City of Shoreline on Puget Sound; the bulkheads predate 1941; the geology of the area is fully known). He said he provided testimony to the City when staff was addressing shoreline management policies, and he has provided testimony to the State Department of Ecology, which is proposing revisions to the Shoreline Management Act. He stressed that the residents on 27th Avenue are not trying to circumvent City permitting processes. He asked how residents can work with the City to address the special circumstances of their area.

Mayor Jepsen said he met with the homeowners along 27th Avenue NW approximately a year ago. He said the City identified a staff member at that time as a point of contact for the homeowners. He asserted the need to reestablish that arrangement.

10. EXECUTIVE SESSION: None

11. ADJOURNMENT

At 8:25 p.m., Mayor Jepsen declared the meeting adjourned.

_____

Sharon Mattioli, CMC
City Clerk

Council Meeting Date: July 24, 2000 **Agenda Item: 7(b)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Approval of Expenses and Payroll as of July 6, 2000
DEPARTMENT:	Finance
PRESENTED BY:	Al Juarez, Financial Operations Supervisor

EXECUTIVE / COUNCIL SUMMARY

It is necessary for the Council to approve expenses formally at the meeting. The following claims expenses have been reviewed by C. Robert Morseburg, Auditor on contract to review all payment vouchers.

RECOMMENDATION

Motion: I move to approve Payroll and Claims in the amount of $1,138,549.76 specified in the following detail:

Payroll and benefits for May 28 through June 10 in the amount of $271,306.96 paid with ADP checks 4383-4440, vouchers 260001 through 260099 benefit checks 5016 through 5025 and

the following claims examined by C. Robert Morseburg paid on June 30, 2000:

Expenses in the amount of $39,718.03 paid on Expense Register dated 6/27/00 with the following claim checks: 4885-4908 and

Expenses in the amount of $33,288.10 paid on Expense Register dated 6/27/00 with the following claim checks: 4909-4912 and

Expenses in the amount of $50,392.42 paid on Expense Register dated 6/27/00 with the following claim checks: 4913-4924 and

Expenses in the amount of $447.45 paid on Expense Register dated 6/28/00 with the following claim check: 4925 and

Expenses in the amount of $4,495.88 paid on Expense Register dated 6/28/00 with the following claim checks: 4926-4928 and

Expenses in the amount of $174.06 paid on Expense Register dated 6/28/00 with the following claim checks: 4929-4939 and

Expenses in the amount of $6,214.03 paid on Expense Register dated 6/28/00 with the following claim checks: 4940-4953 and

Expenses in the amount of $20,848.97 paid on Expense Register dated 6/29/00 with the following claim checks: 4954-4970 and

the following claims examined by C. Robert Morseburg paid on July 6, 2000:

Expenses in the amount of $6,072.68 paid on Expense Register dated 6/30/00 with the following claim check: 4971 and

Expenses in the amount of $519,385.54 paid on Expense Register dated 7/5/00 with the following claim checks: 4972-4998 and

Expenses in the amount of $29,307.72 paid on Expense Register dated 7/6/00 with the following claim checks: 4999-5015 and

Expenses in the amount of $560.00 paid on Expense Register dated 7/6/00 with the following claim checks: 5026-5027 and

Expenses in the amount of $156,337.92 paid on Expense Register dated 7/6/00 with the following claim checks: 5028-5041

Approved By: City Manager ____ City Attorney ___

Council Meeting Date: July 24, 2000 **Agenda Item: 7(c)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Extension of Franchises for Solid Waste Collection Services
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Kristoff T. Bauer, Assistant to the City Manager

EXECUTIVE / COUNCIL SUMMARY

Residences and businesses in the City currently receive solid waste collection services from two separate providers formerly under Washington Utilities and Transportation Commission (WUTC) regulation. Rabanco (Allied) serves eastern Shoreline while Waste Management serves western Shoreline. The City Council took action in August 1995, and subsequently with each annexation (Area B in Feb. 1997, Area A-3 in November 98, and Area A-2 in August 99) to provide continuation franchises to these providers. The statutory transition period for the first area (the initial incorporation boundary of the City) is scheduled to end August 31, 2000. The proposed ordinance extends this period for an additional two months through October 31, 2000, and grants the City Manager authority to extend this period for up to an additional 6 months.

As your Council may recall, staff issued a Request For Proposal (RFP) for Solid Waste Collection Services on May 16, 2000. The RFP schedule required responses by June 23, 2000, and was designed to allow your Council to award a new collection contract prior to August 31, 2000.

Staff met with potential respondents to the RFP on June 5th to discuss questions regarding the RFP. Representatives from three companies (the two current providers; Rabanco & Waste Management, and General Disposal) attended. The majority of those attending stated a preference for extending the process to allow additional time to respond to the City's RFP. In addition, the City has filed a legal action for the purpose of clarifying the City's ability to terminate, as of August 31, 2000, the authority of current service providers to operate in the City. Prior to the meeting, discussions with the City's legal representation and a review of the court calendar related to this action raised concerns that the Court's decision may not be available prior to your Council's August 28th decision date set by the RFP schedule. Legal counsel recommended a two-month delay in your Council's final action to ensure that your Council will have the benefit of a judicial opinion regarding the City's rights prior to awarding a contract for services.

The RFP schedule was revised to both allow additional time for the proposal creation by the three respondents and to ensure that additional information regarding the City's legal authority is available. The revised schedule is as follows:

ACTION	PROPOSED DATE
Phase 1 - RFP Distribution and Information	
Advertise Request for Proposals	May 1 & 3, 2000
Letters of Interest due	May 12, 2000
Request for Proposals mailed	May 16, 2000
Questions for Proposers' Meeting due	May 31, 2000
Proposers' Meeting (attendance mandatory)	June 5, 2000
Letters of Intent due	June 9, 2000
Last day for Proposers' questions	June 16, 2000
PROPOSALS DUE	**2:00pm, July 21, 2000**
Phase 2 - Proposal Review	
Clarification requests by the City	August 7, 2000
Clarification responses by Proposers due	August 21, 2000
Presentation of Proposals to City Council	September 5, 2000
Phase 3 - Selection and Negotiations	
Notification of recommended Contractor	September 6, 2000
Presentation of recommended contract to City Council	October 23, 2000
CONTRACT EFFECTIVE	**November 1, 2000**

The proposed ordinance simply extends the effective period of the initial franchises granted to Rabanco and Waste Management by Shoreline Ordinance No. 45 in 1995 for an additional two months. In addition, it delegates to the City Manager the authority to provide up to six months of additional extension as part of the implementation of a new service contract or for unforeseen delays in adoption of that contract.

RECOMMENDATION

Adopt Ordinance No. 245 extending solid waste collection franchises.

ATTACHMENTS

Attachment A – Ordinance No 245 Extending Solid Waste Collection Franchises

Approved By: City Manager LB City Attorney

ORDINANCE NO. 245

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, EXTENDING SOLID WASTE COLLECTION FRANCHISES

WHEREAS, the City of Shoreline ("City"), has granted certain franchises for the collection of solid waste within the City; and

WHEREAS, these prior franchises will expire on August 31, 2000; and

WHEREAS, the City is evaluating its options with respect to solid waste services; and

WHEREAS, the City has initiated a Request For Proposal (RFP) process in order to potentially award a contract for solid waste collection services; and

WHEREAS, the City and the participants in the RFP process, including the current holders of City franchises to provide these services, will benefit from extending the RFP process past August 31, 2000;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Franchise Extension. The solid waste collection franchises granted pursuant to City Ordinance No. 45, Sections 1 and 2, are hereby extended through October 31, 2000.

Section 2. Transition Period. The City Manager or the Manager's designee is authorized to further extend the term of the solid waste franchises granted pursuant to Sections 1 and 2 of City Ordinance No. 45 for as many as six additional months by notifying the franchisees of the extension in writing. Any additional extension under this paragraph will be for the purpose of facilitating the transition from one service provider to another and/or due to unforeseen delay in the effective date of a new service contract.

Section 3. Effective Date. This ordinance shall be published in full and shall take effect 5 days after said publication.

PASSED BY THE CITY COUNCIL ON JULY _____, 2000

_____
Mayor Scott Jepsen

ATTEST:

_____
Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

_____
Ian Sievers
City Attorney

Date of Publication:
Effective Date:

Council Meeting Date: July 24, 2000 **Agenda Item: 8(a)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Ordinance No. 244 Establishing New Regulations For Siting Telecommunication Utilities Within The Public Rights- Of-Way.
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Kristoff T. Bauer, Assistant to the City Manager

EXECUTIVE / COUNCIL SUMMARY

As discussed with your Council at your June 19, 2000 workshop, the State Legislature recently passed a new law, ESSB 6676, relating to the management of municipal right-of-way which became effective June 8, 2000. Proposed for Council consideration is an ordinance making a number of changes in existing regulations in order to implement this new legislation. On May 8, 2000 your Council adopted a 65-day moratorium on the acceptance of new franchise applications or the processing of existing applications which as been extended through August 11, 2000. In accordance with Council's direction the Planning Commission has held a public hearing on the proposed ordinance and their recommendation and a revised ordinance are presented for Council's consideration.

The proposed ordinance (Attachment A) responds to issues raised by ESSB 6676 by doing the following:

Section 1

- Clarifying the City's franchise application process as required by new state law;
- Establishing the Right-of-Way Site Permit as an alternative to the current requirement to get a general franchise (GTE and US West refuse to get one) and subsequent specific right-of-way permits for each time they work in our right-of-way. The Right of-Way Site Permit is a marriage of the two providing the City some of the benefits of the franchise, but it is a permit (GTE and US West agree that they must comply with the City's permit requirements) that is streamlined enough to ease the administrative burden of allowing some new entrants into the right-of-way.
- Increasing the deposit for getting a franchise agreement from $1,500 to $5,000 due to additional costs incurred by staff to implement new state regulations.

Sections 2 & 3

- Adding a definition for "Right-of-Way Permit" and correcting inconsistent term usage.

Sections 4 & 5

- Extending height limitations of adjacent zones into the right-of-way to ensure any new poles are either consistent with scale of neighboring buildings or follow a variance process;

- ❖ Creating a limited exception to those height limitations for facilities placed on existing structures and that do not exceed the diameter of that structure. This allows some co-located wireless antennas into the right-of-way without a variance;
- ❖ Prohibiting new poles in the right-of-way solely to support wireless facilities thereby eliminating the potential for proliferation of new poles;
- ❖ Clarifying that a franchise (or right-of-way site permit) and other applicable permits are required for wireless facilities located in the right-of-way;
- ❖ Requiring support equipment for wireless facilities located in the right-of-way be placed underground to minimize aesthetic impact;

Section 6

- ❖ Creating a Right-of-Way Site Permit applicable to utilities that do not hold a franchise thereby providing a mechanism that is less time consuming and burdensome than a franchise while protecting the City's interest in controlling our rights-of-way;

After taking testimony on the issue, the Planning Commission passed a unanimous motion supporting approval of the ordinance as long as the following issues are addressed:

- Notice to "occupant" is provided in addition to "owner." - This clarification has been added to the proposed ordinance.
- Notice of the decision on the permit application is provided to those who submit comments. - This addition has been included in the proposed ordinance.
- Clarifying that an administrative appeal to a hearing examiner of an approval of a wireless facility permit for the right-of-way be provided. - This opportunity existed in the version of the ordinance reviewed by your Council, but has been stated more clearly in the version of the ordinance proposed.
- Incentives for co-location be provided. - Staff recommends that the proposed ordinance already includes such incentives that are described in the attached analysis.
- Incentives for replacing old technology and/or using the most current technology be provided. - Staff recommends that the proposed ordinance already includes such incentives that are described in the attached analysis.
- Permitting of wireless facilities in the right-of-way be sensitive to historical structures located in the right-of-way. - The Commission requested that staff communicate their interest in this issue to your Council, but understood that the proposed ordinance was not the appropriate medium to address this concern.

The overall tone of the discussion and testimony was supportive of the proposed legislation. With the changes and discussion described above staff believes that all issues raised by the Planning Commission are satisfied by the proposed ordinance.

RECOMMENDATION

Motion Adopting Ordinance No. 244 Establishing New Regulations For Siting Telecommunication Utilities Within The Public Rights- Of-Way

Approved By: City Manager LB City Attorney

BACKGROUND

The staff report and presentation at the June 19th workshop reviewed City policy direction and the restrictions of prior state and existing federal law relating to management of the right-of-way. A number of issues related to the change in state law wrought by ESSB 6676 were also discussed including:

1. New Definitions
2. Process Requirements
3. Coordination Requirements "Duties and Opportunities"
4. Wireless Facilities In The Right-of-Way
5. Compensation For Use Of Right-of-Way

As your Council may recall, the proposed ordinance focuses predominantly on the fourth issue, i.e. wireless facilities in the right-of-way. The first issue, New Definitions, influences the City's policies but does not require specific, substantive changes in existing City regulations. Resolution of the second issue, Process Requirements, is facilitated by clarifications and simplifications accomplished by Section 1 of the proposed ordinance and supportive administrative procedures are also being developed. Strategies for addressing the third issue, Coordination Requirements, are under development and are expected to require administrative, not regulatory, change. The potential to act upon the limited opportunity for additional compensation, discussed as the fifth issue, Compensation, is provided by the Right-of-Way Site Permit process created by the proposed ordinance. (The "Analysis" section of the June 19th staff report is attached for easy reference as Attachment B)

At the workshop, your Council concurred with staff's recommendation to request that the Planning Commission hold a public hearing on the proposed ordinance and provide a recommendation regarding those sections of that ordinance that amend the City's recently adopted development code. That public hearing was held on July 6, 2000. The scope of the hearing and the Planning Commission's recommendation focused solely on those provisions of the proposed ordinance that amend the development code including:

1 Revisions to the permitting process
   - Right-of-way site permit
2 New regulations related to wireless facilities in the right-of-way
   - Height restrictions
   - Public process
   - Undergrounding

<u>Planning Commission Recommendation</u>
After taking testimony and conducting a broad discussion on the related issues, the Planning Commission unanimously approved a motion supporting the proposed ordinance as long as the follow issues are addressed:

- Notice to "occupant" is provided in addition to "owner," e.g. renters of property rather than just owners.

- Notice of the decision on the permit application is provided to those who submit comments.
- An administrative appeal to a hearing examiner of an approval of a wireless facility permit for the right-of-way should be provided.
- Incentives for co-location should be provided.
- Incentives for replacing old technology and/or using the most current technology should be provided.
- Permitting of wireless facilities in the right-of-way should be sensitive to historical structures located in the right-of-way.

ANALYSIS

Public Process (Notice)
Section 5 of the proposed ordinance amends the development code to add Paragraph 6 (d)(3). This paragraph contains the public process requirements specific to right-of-way permits for wireless facilities. The paragraph in the proposed ordinance has been revised to clearly outline the notifications necessary. Both recommendations of Planning Commission, i.e. notice of occupants, and notice of decision, have been incorporated in this revision including the addition of Paragraph 6(d)(5). (See Attachment A)

Public Process (Appeal)
In the version of the proposed ordinance reviewed by your Council on June 19th, the public process, notice, appeal rights, etc. was addressed by referencing the City's Conditional Use Permit process. In an internal review of that draft prior to presentation to the Planning Commission, staff felt that replacing this cross reference with a clear articulation of the process that should be utilized would improve the understandability of the ordinance. The unintended consequence of this change was a new ambiguity regarding the ability of concerned citizens to appeal the administrative decision to grant a right-of-way permit for a wireless facility.

The recommendation from staff is that an approval can be appealed to the City's hearing examiner (i.e. a citizen can request an appeal of a permit approval), but that no right to an administrative appeal of a denial be provided (i.e. a wireless company cannot administratively appeal a denial to enter our right-of-way). This differentiation in the ability to appeal the administrative decision is reflective of the unique status of the right-of-way as a public asset. The decision to allow wireless facilities into the right-of-way is discretionary within the parameters of state law. The City is acting as a fiduciary for the public owners in making that decision. An administrative appeal of an approval provides an appropriate check to the City's fulfillment of its responsibilities to those owners. A right to an administrative appeal of a denial would grant potential users the right to attempt to force the City to allow facilities in the right-of-way that have been determined to be against the interests of the owners of the right-of-way. Service Providers are already provided a right to appeal unsupported denials to the superior court by ESSB 6676.

The proposed ordinance has been revised to ensure its consistency with the above description. (See Attachment A – Section 5 addition of Paragraph 6(d)(5))

Incentives

The proposed ordinance does not allow any new poles in the right-of-way. As a result the only potential location for wireless facilities in the right-of-way is co-located on existing structures, i.e. utility poles. In addition, the 15 foot exemption to height restrictions provided in the proposed ordinance is designed to allow at least two cylindrical antennas, which are usually 6 to 8 feet long, to be attached to the top of an existing structure. Existing regulations for wireless facilities on private property provide incentives for co-location by easing the permit process for additional installations on existing structures. Given that most of the City's right-of-way is in residential areas and that the Planning Commission was minimally satisfied by the public process recommended for these facilities, staff does not recommend further differentiation in the permitting process (e.g. providing less public notice for the second facility on a pole) as an additional incentive for co-location at this time.

The Planning Commission also expressed an interest in providing incentives to replace old antenna technology with newer, less obtrusive technology. The proposed ordinance focuses exclusively on facilities in the right-of-way and does not address current regulations for private property. The only wireless facilities in the right-of-way today have been added or replaced within the last 12 months and are the low impact micro-cells. For this reason, there are no existing obtrusive facilities in the right-of-way that could be addressed through some form of regulatory obsolescence. As to future facilities, the Right-of-Way Site Permit is designed to have a specific duration. This limited duration will not only serve the purpose of sunsetting the authorization for aging or under utilized facilities, but will also provide a time frame for updating any siting fee that the City may be able to charge specific facilities.

Staff recommends that the issue of permit duration be allowed to vary depending on the size and expense of the installation, the risk of relocation, planned capital improvement projects, and other issues specific to individual applications and locations. This duration will drive equipment replacement more effectively then some form of regulatory criteria focusing on "current" or "best" technology that may be constant source of debate.

Historical Structures

The Planning Commission expressed an interest in ensuring that the siting of wireless facilities not damage historical structures in the right-of-way. Staff described current efforts to inventory historical structures as part of both the Aurora re-development and Interurban Trail projects. Staff recommended that the inventory and designation process should be completed before regulations are adopted, otherwise the basis for enforcement would be missing. It would be difficult to exclude wireless facilities from historic structures when no historic structures have been officially designated. The consensus of the Planning Commission was that their concern be communicated to your Council.

King County did perform a broad survey of structures with potential historic significance as part of the City's Comprehensive Planning process. Action to adopt a process to review these potentially historic structures in order to officially designate specific structures as "Historic" and protections for those structures once designated is scheduled to be part of the Comprehensive Plan implementation phase III scheduled for next year.

Staff recommends that protections for historic structures, including restrictions on wireless facilities, be included at the appropriate time in a comprehensive regulation related to historic preservation. This would keep the definitions, designation process, and regulations in one unified location, rather than beginning to create pockets of protection in diverse regulatory areas that may become inconsistent or difficult to administer consistently.

SUMMARY

The Planning Commission has held a public hearing on the proposed ordinance and unanimously moved to support that ordinance as long as a specific list of issues are addressed. All of these issues have been addressed either through revisions in the proposed ordinance to clarify its terms, or through illustration of the terms and policies currently incorporated in the proposed ordinance.

RECOMMENDATION

Motion Adopting Ordinance No. 244 Establishing New Regulations For Siting Telecommunication Utilities Within The Public Rights- Of-Way

ATTACHMENTS

Attachment A – Proposed Ordinance Establishing New Regulations For Siting Telecommunication Utilities Within The Public Rights- Of-Way

Attachment B – Analysis Section Of June 19, 2000 Staff Report On The Proposed Ordinance

Attachment A

ORDINANCE NO. 244

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, ESTABLISHING NEW REGULATIONS FOR SITING TELECOMMUNICATION UTILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY; AND AMENDING SHORELINE MUNICIPAL CODE CHAPTER 12.25 AND ORDINANCE 238, EXHIBIT "A" CHAPTER II AND SECTIONS III 3, IV 3 B (W) 5, 6 AND VII 5 B, D.

WHEREAS, ESSB 6676 passed by the State Legislature in the 2000 Regular Session places new restrictions on municipal authority to grant access to the City's right-of-way for telecommunication and cable utilities; and

WHEREAS, ESSB 6676 requires the City to allow wireless telecommunication facilities into the City's right-of-way in accordance with City zoning regulations, and

WHEREAS, the City Council passed a moratorium on the acceptance and processing of new franchise applications for telecommunications service providers on May 8, 2000 to allow review of right-of way franchise and permit procedures in light of ESSB 6676 requirements; and

WHEREAS, the procedures of this ordinance are consistent with the requirements of ESSB 6676 and the federal Telecommunications Act of 1996; now therefore

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Shoreline Municipal Code Chapter 12.25 is amended as set as set forth in Exhibit A attached hereto and incorporated herein.

Section 2. Amendment. Ordinance 238, Exhibit "A" Chapter II is amended as follows:

. . .

~~Right-of-Way Use Agreement~~	~~A contractual agreement between a utility and the City setting forth the terms and conditions under which the City grants the utility authority to install and maintain facilities in the public right-~~
Right of Way Permit	A class of permit issued by the City prior to any construction, use, or activity performed at a specific location in the City's public right-of-way. Permits may include long term installation of a facility or improvement in the absence of a franchise (Right of Way Site Permit) or standard maintenance operations by a franchise holder (Right of Way Blanket Permit).

. . .

Section 3. Amendment. Ordinance 238, Exhibit "A" Section III 3 (a) is amended to read as follows:

Table 1
Summary of Type A Actions and Target Time Limits for Decision

Action Type	Target Time Limits for Decision	Code-Pg. # (after codified-Section #) **(listed # refers to the Draft Dev. Code issued Jan. 2000)**
Type A:		
1. Accessory Dwelling Unit	30 days	pp. 100, 103 & 104
2. Lot Line Adjustment including Lot Merger	30 days	pp. 65 & 66
3. Building Permit	120 days	All applicable standards
4. Final Short Plat	30 days	p. 69
5. Home Occupation, Bed & Breakfast, Boarding House	120 days	pp. 100, 107, 108, 111 & 112
6. Interpretation of Development Code	15 days	pp. 2, 3, & 43
7. Right-of-Way ~~Use~~ Permit	30 days	pp. 256-260
8. Shoreline Exemption Permit	15 days	Shoreline Master Program
9. Sign Permit	30 days	pp. 219-224
10. Site Development Permit	30 days	p. 68
11. Variances from Engineering Standards	30 days	pp. 58 & 59
12. Temporary Use Permit	15 days	p. 116

Section 4. Amendment. Ordinance 238, Exhibit "A" Section IV 3 B (W) 5 is amended by adding a new subsection 5 b to read as follows:

5. GROUND-MOUNTED WIRELESS TELECOMMUNICATION FACILITIES STANDARDS.

a. [unchanged]

b. No new ground-mounted wireless telecommunication facilities are allowed within the City rights-of-way.

~~c.~~b [unchanged]

Section 5. Amendment. Ordinance 238, Exhibit "A" Section IV 3 B (W) 6 is amend to read as follows:

6. STRUCTURE-MOUNTED WIRELESS TELECOMMUNICATION FACILITIES STANDARDS.

a. Wireless telecommunication facilities located on structures other than buildings, such as light poles, flag poles, transformers, existing monopoles, towers and/or tanks shall be designed to blend with these structures and be mounted on them in an inconspicuous manner. (Figures 9 and 10.)

b. The maximum height of structure-mounted facilities shall not exceed the base height limits specified for each zoning designation in this title regardless of exceptions for the particular mounting structure; provided the facility may extend up to 15 feet above the top of the structure on which the facility is installed, including those built at or above the maximum height allowed in a specific zone, so long as the diameter of any portion of a facility in excess of the allowed zoning height does not exceed the shortest diameter of the structure at the point of attachment. The height and diameter of the existing structure

prior to replacement or enhancement for the purposes of supporting wireless facilities shall be utilized to determine compliance with this paragraph.

c. Wireless telecommunication facilities located on structures other than buildings shall be painted with nonreflective colors in a color scheme that blends with the background against which the facility will be viewed.

d. Wireless telecommunication facilities located on structures within the City of Shoreline rights-of-way shall ~~comply with right-of-way use permit requirements (Chapter 12.25 SMC)~~ satisfy the following requirements and procedures:

(1) Only wireless telecommunication providers holding a valid franchise in accordance with Chapter 12.25.030 shall be eligible to apply for a Right-of-Way Permit, which shall be required prior to installation in addition to other permits specified in this chapter. Obtaining a Right-of-Way Site Permit in accordance with Title 20 may be an alternative to obtaining both a franchise and a Right-of-Way Permit for a single facility at a specific location.

(2) All supporting ground equipment locating within a public right-of-way shall be placed underground, or if located on private property shall comply with all development standards of the applicable zone.

(3) Right-of-Way Permit applications are subject to public notice by mailing to property owners and occupants within 500 feet of the proposed facility, posting the site and publication of a notice of application, except permits for those facilities that operate at 1 watt or less and are less than 1.5 cubic feet in size proposed by a holder of a franchise that includes the installation of such wireless facilities as part of providing the services authorized thereby.

(4) To determine allowed height under subsection 6(b) above, the zoning height of the zone adjacent to the right-of-way shall extend to the centerline except where the right-of-way is classified by the zoning map. An applicant shall have no right to appeal an administrative decision denying a variance from height limitations for wireless facilities to be located within the right-of-way.

(5) A Notice of Decision issued for a Right-of-Way Permit shall be distributed using procedures for an application. Parties of record may appeal the approval to the Hearing Examiner but not the denial of a permit.

Section 6. Amendment. Ordinance 238, Section VII 5 B *Regulated Activities* is amended to read as follows:

B. ~~Regulated Activities~~ Right-of-Way Permit Issuance

B-1 Applicability. A Right-of-Way ~~right-of-way~~ Permit shall be required for all construction and usage activities within the public right-of-way as described in this section. Additional requirements for the construction and usage of the right-of-way by utility providers are located in Section 6 *Utility Standards* ~~the utilities standards in the Engineering Section~~. A financial guarantee for all construction and activities within the right-of-way shall be required, unless the director determines such a guarantee to be unnecessary.

a. A Right-of-Way Site Permit is a specific class of Right-of-Way Permit that may be available for utilities or other parties who do not hold a valid City franchise in accordance with SMC 12.25 and are not exempted from that requirement by City regulations. The applicability of a Right-of-Way Site Permit to a particular activity proposed for the City's right-of-way or to a particular applicant shall be an ministerial decision without appeal right based upon the following criteria:

(1) The scope of the activities included in the requested permit;

i. Will the use exceed 1 year;

ii. Is the facility or use at a single specific location or for a limited installation path;

iii. Will there be little or no need for ongoing entry right to maintain installed facilities;

iv. Is the need for the applicant to obtain future permits to enter the right-of-way limited, or does the applicant not desire to obtain a City franchise;

(2) The impact of these activities on the right-of-way;

(3) The ease of resolving issues related to proposed activities in the conditions of the requested permit; and

(4) State and federal law.

B-2 Nonexclusive Right. City right-of-way shall not be privately improved or used for access or other purposes ~~and no development approval shall be issued that requires use of privately maintained city right-of-way~~ unless a permit has been issued for such use. Permits issued pursuant to this section shall not be construed to convey any vested right or ownership interest in any City right-of-way. Every R~~r~~ight-of-W~~w~~ay permit shall state on its face that any City right-of-way subject to the permit ~~opened pursuant to this section~~ shall be open to use by the general public except in those cases where specific conditions require the closure of the right-of-way to the public for safety reasons.

B-3 Right-of-Way Site Permit Conditions. A Right-of-Way Site Permit shall include at a minimum the following terms and conditions:

a. Scope, nature, and process for permitting future maintenance activities associate with the facilities installed pursuant to this type of permit;

b. Insurance, indemnification, relocation, and removal and restoration upon termination or abandonment;

c. Compensation for use of the right-of way consistent with SMC 12.25.090, and for personal wireless facilities, such additional compensation allowed by state law;

d. A financial guarantee for all construction and activities within the right-of-way shall be required, unless the director determines such a guarantee to be unnecessary; and

e. Duration of the permit grant to occupy the right-of-way and removal and restoration conditions upon the end of that duration, and/or a renewal process.

Section 7. Amendment. Ordinance 238, Section VII 5 D is amended as follows:

D. Usage of Right-of-Way

The purpose of this section is to ensure that structure or activities do not unreasonably obstruct, hinder, jeopardize, injure, or delay the use of the right-of-way for its primary functions: vehicular and pedestrian travel.

D-1.1 [No Change]

D-1.2 Specific activities requiring Right of Way Ppermits include, but are not limited to, the following:

. . .

a. Special and unique structures, such as fountains, clocks, flag poles, wireless telecommunication facilities, awnings, marquees, street furniture, kiosks, signs, banners, mailboxes, and decorations;

. . .

Section 8. Severability. Should 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 pre-empted 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 9. Effective Date and Publication. A summary of this Ordinance consisting of the title shall be published in the official newspaper and the Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON JULY __, 2000

_____
Mayor Scott Jepsen

ATTEST:

_____
Sharon Mattioli
City Clerk

APPROVED AS TO FORM:

_____
Ian Sievers
City Attorney

Date of Publication: _____, 2000
Effective Date: _____, 2000

Exhibit A

Chapter 12.25

RIGHT-OF-WAY ~~USE AGREEMENTS~~ FRANCHISES

Sections:

12.25.010 Policy.

It is the policy of the city of Shoreline to require all entities installing or maintaining facilities in, on, above or below the public right-of-way to comply with an orderly process for obtaining a franchise agreement ~~or right-of-way use agreement~~ from the city. [Ord. 83 § 1, 1996]

12.25.020 Definitions.

The following terms used in this chapter ~~contained herein~~, unless otherwise indicated, shall be defined as follows:

A. "Activities" includes the installation or maintenance of any assets, structures, or facilities in the public right-of-way~~, but shall specifically not include activities authorized by a "special limited use permit" or a "limited right-of-way permit."~~.

B. "Applicant" means the entity requesting the grant of a franchise ~~or right-of-way use~~ agreement. The applicant shall identify itself as requested herein by providing the following information:

1. Identification of a natural person shall include:

a. Name;

b. Title, if appropriate;

c. Business address;

d. Phone number;

e. Fax number if available.

2. Identification of an entity that is not a natural person:

a. Official name (i.e., the name used to identify the entity in the records of the Washington Secretary of State, or under which the entity has been granted a federal tax identification number if it is not required to file with the Secretary of State);

b. Name and address of agent registered with the Secretary of State for the acceptance of legal service if applicable;

c. Washington State unified business identifier or, if that is not available, federal tax identification number.

C. "Demonstration" means the presentation of any of the following as evidence tending to support the satisfaction of the enumerated requirement:

1. Verifiable historical data;

2. Studies or reports based upon disclosed data sources;

3. Other forms of demonstrations specifically enumerated in this chapter.

D. "Facility" includes, but is not limited to, all structures, equipment, and assets for the operation of railroads and other routes for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated systems for public service.

E. "Franchise" means a contractual agreement, under the authority of RCW 35A.47.040, between a utility and the city setting forth the terms and conditions under which the city grants the utility authority to install and maintain facilities in the public right-of-way.

F. "Grantee" means an applicant that has been granted a franchise ~~or right-of-way use~~ agreement.

~~G. "Right-of-way use agreement" means a contractual agreement between a utility and the city setting forth the terms and conditions under which the city grants the utility authority to install and maintain facilities in the public right-of-way.~~

~~G~~H. "Utility" means persons or private or municipal corporations owning or operating, or proposing to own or operate, facilities that comprise a system or systems for public service. [Ord. 83 § 2, 1996]

12.25.030 Franchise ~~or right-of-way use agreement~~ required.

It shall be unlawful to construct, install, maintain or operate any facility in, on, above or below the public right-of-way without a valid franchise ~~or right-of-way use~~ agreement obtained pursuant to the provisions of this chapter and subsequent amendments. No one ~~utility~~ shall be permitted to perform activities in the public right-of-way without first obtaining a permit pursuant to ~~Chapter 12.10 SMC, Roads and bridges, or pursuant to~~ the city of Shoreline Development Code~~, when adopted~~. No ~~utility~~ one shall be granted a permit to perform any activities in, on, under, or above the public right-of-way without first obtaining and maintaining a valid franchise ~~or right-of-way use~~ agreement. All permits to work in, on, under, or above the

public right-of-way will be restricted to those practices specifically enumerated in the applicant's franchise ~~or right-of-way use~~ agreement except:

A. A permit to perform activities in the right-of-way other than the installation, construction or maintenance of Facilities or to satisfy conditions of any land-use approval related to private property adjacent to the right-of-way,

B. Entities without a valid City franchise may still be granted a Right-of-way Site Permit pursuant to Title 20.

~~A. In regards to any entity exempted from municipal franchising authority by the operation of state or federal law. Said entity must still comply with the permit requirements established by Chapter 12.10 SMC, and shall be eligible for permits as required by that chapter only if it has obtained from the city a valid "right-of-way use agreement." The procedures for gaining a "right-of-way use agreement" shall be those set out in this chapter including any applicable fee.~~

~~B. The city council may, by resolution, authorize the city manager, or his/her designee, to execute a letter of agreement exempting entities operating in the city on the effective date of the ordinance codified in this chapter from the franchise or right-of-way use agreement requirements of this section for a period not greater than one year from the effective date of the ordinance codified in this chapter. [Ord. 83 § 3, 1996]~~

12.25.040 Filing of applications.

Applications for a franchise ~~or right-of-way use~~ agreement will be considered pursuant to the procedures set forth in this chapter and amendments hereto. For good cause the city council may elect by resolution to waive any requirement set forth herein unless otherwise required by applicable law.

~~A. An application may be filed at any time or pursuant to a request for Proposals ("RFP") issued by the city.~~

~~B. The city may request additional information from an applicant for a franchise or right-of-way use agreement at any time.~~

~~C~~A. Applications shall be delivered to the city clerk, and shall be accompanied by a deposit of ~~$1,~~5,000 or, if the application is in response to a Request For Proposals (RFP) issued by the city, such other amount as set forth in the RFP. The city will apply the proceeds of the deposit, ~~or any other filing fees received~~, against the costs associated with the city's evaluation of the pending application to the extent such is required by RCW 35.21.860. The applicant shall be liable to the city for all costs reasonably associated with the processing of its application. The city shall invoice the applicant for such costs at least on a quarterly basis. All invoiced costs must be paid in full prior to the effective date of any franchise ~~or right-of-way use~~ agreement or other agreement entered into pursuant to this chapter. Nothing in this subsection will have the effect of limiting the applicant's liability for application review costs to the amount of the deposit.

D. If required by RCW 35.21.860, the city shall prepare a statement of the amount of deposit funds applied to the costs of application review as of the date the franchise ~~or right-of-way use~~ agreement is granted, or otherwise ruled on, by the Shoreline city council and refund any deposit amount in excess of costs as of that date within ~~3~~60 days thereof. The refund shall be in the form of a check or other draft on city accounts and, unless otherwise requested in writing by the

applicant, payable and mailed to the person or entity designated by the applicant. [Ord. 83 § 4, 1996]

12.25.050 Content of application.

An application made pursuant to a RFP shall contain all the information required thereby. Where an application is not filed pursuant to an RFP, it shall contain, at a minimum, the following:

A. All applicants that are not fully owned by, or a division of, a governmental agency, whether municipal, state, or federal, shall provide the following:

1. Identification of the applicant and proposed system owner, and, if the applicant or proposed owner is not a natural person, a list of all partners or stockholders holding 10 percent or more ownership interest in a grantee and any parent corporation; provided, however, that when any parent corporation has in excess of 1,000 shareholders and its shares are publicly traded on a national stock exchange, then identification of the parent corporation and its relationship to the subsidiary, if any, shall be provided.~~a list of the 20 largest stockholders of the voting stock of such corporation shall be disclosed. An application shall also include, if applicable, the identification of all officers and directors and shall state any other primary business affiliation of each.~~

2. An affirmed statement of whether the applicant, or any person controlling the applicant, or any affiliate of said controlling person, including any officer of a corporation or major stockholder thereof, 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 filed against it pursuant to the Bankruptcy Code, been subject of any state law insolvency proceeding such as a transfer for the benefit of creditors, had a franchise~~or right-of way use~~ agreement revoked, or has been found guilty by any court or administrative agency in the United States of:

a. A violation of a security or antitrust law; or

b. A felony or any other crime involving moral turpitude.

If so, the application shall identify any such person and fully explain the circumstances.

3. A demonstration of the applicant's ~~technical, legal and~~ financial ability to construct and operate the proposed system, including, at the city's option:

a. For a sole proprietorship or partnership:

i. A detailed, complete, and audited financial statement of the applicant, duly certified as true and correct by an executive officer of the company, for the five fiscal years last preceding the date of the application hereunder (three years may be substituted if five years of data is not available); or

~~b~~ii. A letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the city, setting forth the basis of a study performed by such lending institution or funding source, a statement of the criteria used to evaluate that basis, and a clear statement of its intent as a lending institution or

funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the city; or

eiii. A statement from an independent certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed system in the city.

b. For a corporation publicly traded on a national stock exchange:

i. The most recent public annual report filed with the Securities Exchange Commission, or

ii. For a wholly owned subsidiary, the most recent public annual report filed with the Securities and Exchange Commission of the parent corporation along with a statement of the parents responsibility for the obligations of the subsidiary.

c. For any applicant, demonstration of an ability to obtain a bond sufficient, as determined by the Director, to ensure adequate performance under the terms of the franchise.

~~4. A complete list of all systems in which the applicant, controlling entity of applicant, subsidiary or affiliate of applicant or its controlling entity, or a principal thereof, holds an equity interest. For each system listed, provide the following information as appropriate:~~

~~a. Name of the system operator and location of franchise;~~

~~b. Relationship to the applicant;~~

~~c. Franchise term;~~

~~d. Date of expiration;~~

~~e. Number of subscribers;~~

~~f. Number of dwelling units passed;~~

~~g. Number of route miles;~~

~~h. Name of franchising authority, including the address, phone number, and name of the person responsible for oversight of the franchise or right-of-way use agreement.~~

B. All applicants shall provide the following:

1. A description of the physical facility proposed, the area to be served, a description of the technical characteristics of the existing service facilities and a map in a digital format acceptable to the city of the proposed and existing service system and distribution scheme.

~~C~~2. A description of how any construction will be implemented, identification of areas having above ground or below ground facilities and the proposed construction schedule.

~~D~~3. A description of the proposed services to be provided over the system.

~~E~~4. Information as necessary to demonstrate compliance with all relevant requirements contained in this chapter.

~~F. A demonstration of how the proposal is reasonable to meet current and future community needs and interests.~~

~~G. A demonstration that the proposal is designed to be consistent with all federal and state requirements.~~

~~H~~5. An affidavit of the applicant, or duly authorized person, certifying, in a form acceptable to the city, the truth and accuracy of the information contained in the application and acknowledging the enforceability of application commitments.

~~I~~C. In the case of an application by an existing grantee for a renewed franchise ~~or right of way use~~ agreement, a demonstration that said grantee has substantially complied with the material terms of the existing agreement and with applicable law.

~~J~~D. Other information that the city, or its agents, may reasonably request of the applicant in a timely manner. [Ord. 83 § 5, 1996]

12.25.060 Applicant representatives.

Any person or entity who submits an application under this chapter shall have a continuing obligation to notify the city, in writing, of the names, addresses and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application. The requirement to make such disclosure shall continue until the city has approved or disapproved an applicant's application or until an applicant withdraws its application. [Ord. 83 § 6, 1996]

12.25.070 Consideration of applications.

A. The city will consider each application for a new or renewed franchise ~~or right of way use~~ agreement where the application is found to be in substantial compliance with the requirements of this chapter and any applicable RFP. In evaluating an application, the city will consider, among other things: (1) the applicant's past service record in the city and in other communities, (2) the nature of the proposed facilities and services, (3) the proposed area of service, (4) the proposed rates (if applicable), (5) and whether the proposal would ~~adequately~~ serve the public needs and the overall interests of the city residents.

In addition, where the application is for a renewed franchise ~~or right of way use~~ agreement, the city shall consider whether: (1) the applicant has substantially complied with the material terms of the existing franchise ~~or right of way use~~ agreement and with applicable law, (2) the quality of the applicant's service, response to consumer complaints, and billing practices, (3) the applicant has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the application, and (4) the applicant's proposal is reasonable to meet the future community needs and interests, taking into account the cost of meeting such needs and interests.

B. If the city determines that an applicant's proposal, including the proposed service area, would serve the public interest, it may grant a franchise ~~or right of way use~~ agreement to the applicant, subject to terms and conditions as agreed upon between the applicant and the city. No franchise ~~or right of way use~~ agreement shall be deemed granted unless and until an agreement has been

fully executed by all parties. The franchise ~~or right-of-way use~~ agreement will constitute a contract, freely entered into, between the city and the grantee. Any such franchise ~~or right-of-way use~~ agreement must be approved by ordinance of the city council in accordance with applicable law.

C. In the course of considering an application for a renewed franchise ~~or right-of-way use~~ agreement, the city council shall adhere to all requirements of applicable state and federal law. ~~Any denial of an application for a renewed franchise or right-of-way use agreement shall be based on one or more adverse findings made with respect to the factors described in subsection A of this section, pursuant to the requirements of then-applicable federal law.~~ Neither grantee nor the city shall be deemed to have waived any right it may have under federal or state law by participating in a proceeding pursuant to this subsection. [Ord. 83 § 7, 1996]

12.25.080 Length of agreement.

The period of a franchise ~~or right-of-way use~~ agreement shall be as specified in the specific agreement, but it shall not exceed 15 years. If a grantee seeks authority to operate in the city beyond the term of its franchise ~~or right-of-way use~~ agreement, it shall file an application for a new agreement not earlier than 36 nor later than 30 months prior to the expiration of its term. [Ord. 83 § 8, 1996]

12.25.090 Franchise ~~and right-of-way use agreement~~ fee.

A. All franchises ~~or right-of-way use~~ agreements executed by the city shall include terms requiring a grantee to pay a fee in consideration of the privilege granted under a franchise ~~or right-of-way use~~ agreement to use the public right-of-way and the privilege to construct and/or operate in the city. Said franchise fee shall provide the city with compensation equal to six percent of the gross revenues generated by the grantee within the city unless limited by state or federal law; provided, however, that this fee may be offset by any utility tax paid by grantee or in-kind facilities or services provided to the city. Any grantee that does not provide revenue-generating services within the city shall provide alternate compensation as set out in the franchise ~~or right-of-way use~~ agreement.

~~B. A grantee shall file, no later than May 30th of each year, the grantee's financial statements for the preceding year. If the city reasonably determines, after examination of the financial statements provided, that a material underpayment of franchise fees may exist, the city may require a grantee to submit a financial statement audited by an independent public accountant. If the city's determination of underpayment is ultimately correct, the grantee shall bear the cost of such audit.~~

~~C. The city shall have the right, upon reasonable notice and consistent with the provisions of SMC 12.25.100, to inspect a grantee's income records, to audit any and all relevant records, and to recompute any amounts determined to be payable under a franchise and this chapter.~~

~~D~~B. In the event that any franchise payment is not received by the city on or before the applicable due date, interest shall be charged from such date at the statutory rate for judgments.

~~E~~C. In the event a franchise is revoked or otherwise terminated prior to its expiration date, a grantee shall file with the city, within 90 days of the date of revocation or termination, a verified

or, if available, an audited financial statement showing the gross revenues received by the grantee since the end of the previous year and shall make adjustments at that time for the franchise fees due up to the date of revocation or termination.

~~F~~D. Nothing in this chapter shall limit the city's authority to tax a grantee, or to collect any fee or charge permitted by law, and no immunity from any such obligations shall attach to a grantee by virtue of this chapter. [Ord. 221 § 1, 1999; Ord. 83 § 9, 1996]

~~12.25.100 — Required reports.~~

~~To facilitate timely and effective enforcement of this chapter and any franchise or right-of-way use agreement, and to develop a record for purposes of determining whether to renew any franchise or right-of-way use agreement, the city may, upon reasonable notice, require reports as specified in this section or as otherwise provided in the franchise or right-of-way use agreement.~~

~~A. Annual Report. Unless otherwise set forth in the franchise or right-of-way use agreement, no later than May 30th of each year, if requested by the city, a grantee shall file a written report with the city, which may include:~~

~~1. A summary of the previous calendar year's activities in development of its system.~~

~~2. A verified or, if available, an audited financial statement, which may include at the city's request a statement of income, a statement of retained earnings, a balance sheet, a statement of sources and applications of funds, a fixed asset statement showing for each account or category, the original cost and accumulated depreciation balances and activity, and a depreciation statement showing the detailed calculation of depreciation expense for the year. The statement shall include notes that specify all significant accounting policies and practices upon which it is based (including, but not limited to, depreciation rates and methodology, overhead and intrasystem cost allocation methods, and basis for interest expense). A summary shall be provided comparing the current year with previous years since the beginning of a franchise or right-of-way use agreement. The statement shall contain a summary of franchise fee payments and any adjustment thereto. In any year the city requires an audited financial statement pursuant to this subsection, and an audited financial statement in compliance with this subsection is provided by a grantee, that grantee shall not be required to submit another audited financial statement for that year which otherwise may be required by SMC 12.25.090. If reasonably deemed necessary by the city, it may request additional financial information reviewed or prepared by an independent auditor approved by the city. If the city's determination of a financial error is ultimately correct, the grantee shall bear the cost of such audit.~~

~~3. A current statement of cost of any construction by component category.~~

~~4. Information reasonably requested by the city for the purpose of enforcing any consumer protection and customer service requirements applicable to grantees, including a summary of complaints by subscribers and users, identifying the number and nature of complaints and their disposition.~~

~~5. If a grantee is a corporation, a list of officers and members of the board and the officers and board members of any parent corporation.~~

~~6. A list of all partners or stockholders holding 10 percent or more ownership interest in a grantee and any parent corporation; provided, however, that when any parent corporation has in~~

~~excess of 1,000 shareholders and its shares are publicly traded on a national stock exchange, then a list of the 20 largest stockholders of the voting stock of such corporation shall be disclosed.~~

~~7. A copy of a grantee's written customer service rules and regulations, as well as technical requirements applicable to users of the system.~~

~~8. Any additional information related to the operation of the grantee's system as reasonably requested by the city based on demonstrated legitimate need.~~

~~B. Unless otherwise set forth in the franchise or right-of-way use agreement, the city may specify the form and details of all reports, with grantee given an opportunity to comment in advance upon such forms and details. The city may change the filing dates for reports upon reasonable request of a grantee.~~

~~C. A grantee shall, annually, make available to the city for inspection a construction plan and schedule for the following 24 months.~~

~~D. Unless otherwise specified in the franchise or right-of-way use agreement, a grantee shall make available to the city for inspection and copying, as the city may request, a copy of all maps and charts of asset and system locations prepared by or for the grantee during the duration of the franchise or right-of-way use agreement.~~

~~E. The city shall have the right to inspect all construction and installation work performed by a grantee subject to this chapter as it shall find necessary to insure compliance with governing ordinances and the franchise or right-of-way use agreement, and shall have the right to inspect a grantee's system during normal business hours and upon reasonable advance notice to the grantee. [Ord. 83 § 10, 1996]~~

12.25.11~~0~~0 Franchise ~~or right-of-way use~~ agreement revocation.

A. In addition to all other rights and powers retained by the city under this chapter and any franchise ~~or right-of-way use~~ agreement issued pursuant thereto, the city council reserves the right to revoke and terminate a franchise ~~or right-of-way use~~ agreement and all rights and privileges of a grantee in the event of a substantial violation or breach of its terms and conditions. A substantial violation or breach by a grantee shall include, but shall not be limited to, the following:

1. An uncured violation of any material provision of this chapter or an uncured breach of any material provision of a franchise ~~or right-of-way use~~ agreement or other agreement issued thereunder, or any material rule, order or regulation of the city made pursuant to its power to protect the public health, safety and welfare;

2. An intentional evasion or knowing attempt to evade any material provision of a franchise ~~or right-of-way use~~ agreement or practice of any fraud or deceit upon the system customers or upon the city;

3. Failure to begin or substantially complete any system construction or system extension as set forth in a franchise ~~or right-of-way use~~ agreement;

4. Failure to provide the services promised in the application or specified in a franchise ~~or right-of-way use~~ agreement, or a reasonable substitute therefor;

5. Failure to restore service after 10 consecutive days of interrupted service, except when approval of such interruption is obtained from the city;

6. Misrepresentation of material fact in the application for, or during negotiations relating to, a franchise ~~or right-of-way use~~ agreement;

7. A continuous and willful pattern of grossly inadequate service and failure to respond to legitimate customer complaints;

8. An uncured failure to pay franchise ~~or right-of-way use~~ agreement fees as required by the franchise ~~or right-of-way use~~ agreement.

B. None of the foregoing shall constitute a substantial violation or breach if a violation or breach occurs which is without fault of a grantee or occurs as a result of circumstances beyond a grantee's reasonable control. A grantee shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees; provided, however, that damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond a grantee's control if it is caused by any negligent act or unintended omission of its employees (assuming proper training) or agents (assuming reasonable diligence in their selection), or sabotage or vandalism or malicious mischief by its employees or agents. A grantee shall bear the burden of proof in establishing the existence of such conditions.

C. Except in the case of termination pursuant to subsection (A)(5) of this section, prior to any termination or revocation, the city shall provide a grantee with detailed written notice of any substantial violation or material breach upon which it proposes to take action. A grantee shall have a period of 60 days following such written notice to cure the alleged violation or breach, demonstrate to the city's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the city to correct the violation or breach. If at the end of said 60-day period the city reasonably believes that a substantial violation or material breach is continuing and a grantee is not taking satisfactory corrective action, the city may declare a grantee in default, which declaration must be in writing. Within 20 days after receipt of a written declaration of default from the city, a grantee may request, in writing, a hearing before a "hearing examiner" as described in Chapter 2.15 SMC. The hearing examiner shall conduct a full public proceeding in accordance with applicable procedures. The hearing examiner's decision may be appealed to any court of competent jurisdiction.

The City may, in its discretion, provide an additional opportunity for a grantee to remedy any violation or breach and come into compliance with this chapter so as to avoid the termination or revocation. [Ord. 83 § 11, 1996]

12.25.11~~2~~0 Enforcement.

Any violation of any provision, or failure to comply with any of the requirements of this chapter, shall be a civil violation subjecting the offender to a civil penalty of up to $100.00 for each of the first five days that a violation exists and up to $500.00 for each subsequent day that a violation exists. Notice and order and hearing procedures, other than civil penalties, shall correspond to those established for the enforcement of Development Code violations under Title 20 ~~land use regulations by Chapter 12.10 SMC~~. Payment of any such monetary penalty shall not relieve any person of the duty to correct the violation as set forth in the applicable notice and order. Any

violation existing for a period greater than 30 days may be remedied by the city at the violator's expense. [Ord. 83 § 12, 1996]

~~12.25.1320 Notice.~~

~~All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified or registered mail, return receipt requested, and shall be deemed received on the date of personal delivery or five days after being deposited in the mail, postage prepaid. [Ord. 83 § 13, 1996]~~

12.25.12430 Federal pre-emption.

Nothing in this chapter shall authorize the city to impose burdens or apply standards on the applicant beyond those permitted by federal law. [Ord. 83 § 14, 1996]

~~12.25.1540 Conflicts of law.~~

~~This chapter shall control over any conflicting provision of any ordinance passed prior to the effective date of the ordinance codified in this chapter. The Shoreline City Development Code, when adopted, shall control over any conflicting provision(s) of this chapter.~~ [Ord. 83 § 16, 1996]

Attachment B

Analysis Section Of June 19, 2000 Staff Report On The Proposed Ordinance

ANALYSIS

ESSB 6676 – The New "Right-of-Way Bill"

The telecommunications and Cable TV industries had a number of complaints that they used to argue in support of restricting municipal authority to regulate right-of-way. These arguments can be summarized by one word, "uncertainty." Uncertainty in requirements for access to municipal right-of-way, uncertainty and inconsistency in the requirements placed upon them, and uncertainty in the availability and timing of permits to operate in the right-of-way, were all key issues raised by these industries. Their attempts to address these concerns focused in 1999 on legislation removing local regulatory authority over the right-of-way. The failure of that effort resulted in some compromise in the 2000 legislation, but the goal of increased clarity and certainty did not change. Unfortunately, while these industries sought clarity in municipal processes and timelines, they were not interested in clarifying municipal authority.

The following analysis is divided into two sections. The first identifies issues raised by the change in state law and the second describes how the proposed City ordinance responds to those issues raised that can be addressed through changes in City regulations.

Impacts and Issues Created by ESSB 6676

New Definitions

ESSB 6676 introduces a number of new terms into the dialogue of right-of-way management that are not consistent with the City's past regulations and creates some additional ambiguities in state regulations.

"Master Permit" is a new term defined as "the agreement ... whereby a city ... grant[s] general permission to a service provider to enter, use, and occupy the right-of-way..." According to this definition our City franchises and the right-of-way use agreement provided for by SMC 12.25 are both "Master Permits."

"Use Permit" is defined as the specific authorization to do work in the right-of-way at a specific location. This is the same as the "right-of-way permit" utilized by our code. ESSB 6676 establishes different process requirements for "Master Permits" (franchises) and "Use Permits" (right-of-way permits) that are discussed in the next section.

"Service Provider" is a new term in ESSB 6676 generally defining entities affected by that bill. It is a very broad definition that is not consistent with existing definitions of "Telephone Business" or other definitions related to telecommunications already included in state law. ESSB 6676 incorporates this new term into a number of existing state law provisions, including the provisions that restrict municipal authority to charge a franchise fee, that also reference "Telephone Business." Inconsistencies between these definitions are not resolved, creating new ambiguities in state regulation and municipal authority.

During bill drafting sessions on the definition "Service Provider," cities added language indicating that only entities actually providing service within the city would be "Service Providers." This was done to exclude pass through conduit or fiber optic companies from this

definition thereby excluding them from the terms of the bill. The position of cities at the table was that a company should either be a Telephone Business and a Service Provider subject to a utility tax, or be neither a Telephone Business nor a Service Provider and be subject to a franchise fee. Unfortunately, the final language apparently is not as clear on this issue as the cities hoped. Shoreline has already been contacted by a company, Metromedia, stating the position that this definition gives it the opportunity to be a Service Provider and not a Telephone Business and, therefore, exempt from both utility taxes and franchise fees. A number of cities are considering legal action to clarify this definition.

Process Requirements

ESSB 6676 establishes new franchise and right-of-way permit processing restrictions. During discussions on this bill, the industry argued for a 30-day limit on the time to process all permitting actions including franchises and right-of-way permits. Cities stuck to the distinction between franchises (Master Permits) and right-of-way or construction permits (Use Permits) making it clear that franchises, which are adopted by an ordinance, could not be provided in a 30-day period because of their complexity and the legislative process. As a result, separate sets of requirements for Master Permits (franchises) and Use Permits (right-of-way permits) are established by ESSB 6676.

Master Permit Process Requirements: ESSB 6676 affirms municipal authority to require a service provider to obtain a master permit (franchise), except those service providers with an existing statewide franchise grant[1]. In order to do so, however, a city must meet the following conditions:

- Application requirements must be available in writing:
- A completed application must be acted upon within 120 days, except:
  - With agreement of the applicant; or
  - If Council action on the application cannot be obtained within that period.
- Denial of a master permit must be supported by substantial evidence in a written record.

Service providers are also given the right to seek injunctive relief to enforce these requirements.

Use Permit Process Requirements: In regards to a Use Permit, the City must "act" upon a complete application within 30 days unless:

- The applicant agrees otherwise; or
- The applicant does not hold a Master Permit (franchise agreement).

"Act," however, is defined as either:

- A final decision to grant, condition, or deny the permit; or
- A written notice to the applicant of the time required to make a final decision and why the additional time is needed.

The City has a pretty good record of providing these right-of-way permits within 30 days and the notice option provides a safety valve for unusual situations or periods of high demand.

ESSB 6676 also has language allowing the service provider to request that a right-of-way permit application be acted upon in less than 30 days if the City's master permit (franchise) does not

[1] GTE and US West assert that they have an existing statewide franchise grant. ESSB 6676 does not say that they do, but will exempt them from municipal authority to require a Master Permit if they prove that they do have an existing statewide franchise grant.

contain procedures for expedited approvals. All of Shoreline's franchises contain standard language regarding "emergency" permits.

The bill also contains a general statement that cities cannot "unreasonably deny the use of the right-of-way." This is the industry's attempt to gain a basis to challenge any city regulation that they find too onerous. The scope and impact of this general restriction is unknown.

Coordination Requirements "Duties and Opportunities"

ESSB 6676 confirms municipal authority and responsibility to coordinate and manage activities in the right-of-way. It places a new duty on cities to notify current and potential utilities the use municipal right-of-way of projects that may affect their future use of that right-of-way. If that notice and an opportunity to coordinate are not provided, then the City cannot deny a future application for a use permit based upon the failure to coordinate with city projects. To illustrate, the proposed development code contains a restriction on the cutting of asphalt within 5 years of its installation. This restriction could not provide a basis to deny permits requested by entities not notified in advance of the original pavement installation and who are not provided an opportunity to get their infrastructure in place prior to that paving. While the City already notifies franchise holders of overlay projects, the adequacy of that notice procedure and how best to ensure coordination between roads management (Public Works) and right-of-way permitting (PADS) are operational issues under review.

ESSB 6676 also clarifies some of the responsibilities of service providers. The most notable clarification is a duty to provide cities information and plans reasonably necessary to satisfy their duty to manage the right-of-way, i.e. comply with the notice and coordination duty discussed above. Taking advantage of this opportunity will require the City to begin to develop a resource of information regarding the use of the right-of-way. The new state law gives the City new leverage in attempts to get GTE and US West to provide the City information about the location of their poles, wires, and equipment as this database of information is developed and utilized to manage the right-of-way.

ESSB 6676 also clarifies the authority of cities to require utilities to relocate their facilities in the right-of-way. US West has been intermittently refusing to relocate its facilities and/or sending cities bills for the cost of relocating its facilities over the last few years. Shoreline joined a number of cities in a lawsuit against US West seeking to clarify that they did not have the right to seek recovery from cities[2]. In addition, many cities have had difficulty getting utilities to relocate facilities in a timely manner leading to delays in capital improvement projects.

The bill clarifies that the City has the authority to require service providers to relocate their facilities within the right-of-way as of a specific date at the service provider's expense. The only exceptions to this authority are for underground relocations, and for relocations within 5 years of a previous relocation. If the service provider owns the utility pole, then the city requiring underground relocation must pay the difference between aerial relocation and underground relocation. If a city requires a second relocation within a 5-year period, then it must pay for the second relocation. This also places additional importance on the City's ability to track permit applications and coordinate utility construction activities with City capital improvement projects.

Wireless Facilities In The Right-of-Way

Regarding wireless telecommunication facilities, ESSB 6676 places two limitations on municipal authority stating that a city may not adopt regulations that:

- Prohibit all wireless or wireline facilities within the City: or

[2] The cities prevailed at the trial court and the issue is currently on review by the 9th Circuit Court of Appeals.

- ❖ Prohibit all wireless or wireline facilities within the City's right-of-way.

The City is in compliance with the first restriction through the adoption of wireless regulations relating to zoned property that does allow wireless facilities. Shoreline, also, does not currently prohibit the location of wireless facilities in the right-of-way, but the process for gaining authority to do so and applicable regulations are unclear.

Compensation For Use Of Right-of-Way

ESSB 6676 impacts compensation for use of the right-of-way in three ways. First, it amends RCW 35.21.860, which contains existing restriction on municipal authority to charge franchise fees, adding "Service Providers" to the existing list (electrical, gas, and telephone business) of those who cannot be charged a franchise fee as discussed above. Our position is that, in the application of this section, a "Service Provider" is a "Telephone Business."

Second, it provides a limited new authority to charge a site-specific fee for the utilization of the right-of-way for the installation of wireless facilities. This fee can be charged on:

- ❖ New structures in the right-of-way for providing wireless services (examples include a new monopole, and/or support equipment for an antenna):
- ❖ Replacement structures greater than 60 feet in height (if they have to replace an existing utility pole to make it strong enough to support the wireless facility, and the combined height of pole and antenna exceeds 60 feet): or,
- ❖ Facilities attached to structures owned by the City.

Other than a few street lights and some intersection signal poles, which are owned by the City, all of the utility poles are owned by Seattle City Light, GTE, or US West.

Third, it allows cities to require service providers to install conduit for the benefit of the city, but requires that the city pay for the cost of that installation and guarantee that the conduit will not be used by the city to provide Cable TV or telecommunications services as a subsidized competitor of the private providers. In addition, if the city allows another company to utilize the conduit to provide Cable TV or telecommunications service, then it must charge a rate above a minimum rate set by the installer. This could make future agreements like that between Shoreline and US Crossing for the installation of conduit without charge or restriction unlawful. If, however, cities are successful in asserting that pass through companies, like US Crossing, are not "Service Providers," then the City could seek to duplicate this arrangement with similar companies in the future.

Proposed Ordinance

The proposed ordinance enacts recommended changes in City regulations in response to the issues raised by ESSB 6676. Not all of the issues discussed above can be addressed with new or amended regulations. These issues may require operational or administrative changes, both the subject of continued staff exploration, or may persist pending clarification through legal action or future legislative action.

New Definitions

The first section of the proposed ordinance includes several changes to SMC 12.25. One significant change is the removal of the potential for a right-of-way use agreement. We initially considered replacing this term with the new term included in ESSB 6676, "Master Permit." GTE contacted staff shortly after the bill was signed asking about ways to improve their relationship with our permitting department. We recommended that they enter into a Master Permit and, at their request, developed a draft document for their review. They cancelled meetings set to

discuss the draft and the City eventually received a letter stating GTE has an existing state-wide grant and that they "will not sign the master agreement or agree to its terms." The letter does state that GTE will comply with the City's site specific permitting requirements. This is similar to the City's experience with US West, discussed above, regarding efforts to develop a right-of-way use agreement.

US West and GTE are the only companies that refuse to get a standard franchise. Given the City's experience with these companies, staff believes that the right-of-way use agreement has proved to be a failed attempt at compromise and that creating a Master Permit alternative to a franchise would be similarly unsuccessful at getting either GTE or US West to form a general agreement with the City. Given that the City's current terminology (i.e. franchises and right-of-way permit) are consistent with the new state definitions of Master Permit and Use Permit, no changes in existing terminology are recommended.

Process Requirements

As discussed above, ESSB 6676 requires that the franchise application process and requirements be available in written form. To facilitate the administrative development of a written application packet consistent with ESSB 6676, the proposed ordinance revises SMC 12.25 clarifying the City's franchising process, removing sections that, through experience of the last few years, have proved unworkable or are best covered by tailored language included in specific franchise agreements.

The requirement of ESSB 6676 that all franchise applications be acted upon within 120 days does raise operational issues. Currently all franchises are processed by staff in the City Manager's office. As such, this process is not tracked by the City's permit tracking system and processes for determining application completeness and tracking costs have not been created. In addition, while City staff does make a concerted effort to be responsive to requests for franchises and has received positive feedback from a number of utilities, meeting this time requirement in the face of other City priorities and the increasing number of franchise applicants is problematic.

Staff is working on developing a proposal to add operational resources and change administrative procedures to address these concerns for discussion with your Council at a future workshop meeting. In addition, the proposed ordinance creates a new alternative process expected to be less administratively burdensome.

Current regulations require a general permission (franchise) and a specific site authorization (right-of-way permit). The general permission deals with general terms and conditions, indemnification, ongoing commitments to repair, requirements to provide information, or pay fees for example. The specific site authorization deals with specific traffic control requirements, and time, place, and manner restrictions. This two step process works well for most utilities, because it reduces the scope and, therefore, the effort required to process day to day right-of-way permits by placing general term and conditions in the franchise.

This process does not work for those who will not get the general permission (GTE & US West) because the City never gets the ongoing commitments normally provided by a franchise. Nor does it function efficiently for those who plan to enter the right-of-way only once or very rarely (a wireless provider planning only one antenna within the City for example). The proposed ordinance creates a new process that combines the parts of the two step process into a single step process, called a Right-of-Way Site Permit. Obtaining this permit will be more cumbersome than a standard right-of-way permit, but less cumbersome then the existing two step process.

For GTE and US West, the Right-of-Way Site Permit will include ongoing commitments similar to those provided by other utilities on all new activities in the right-of-way. This permit will be more administratively burdensome, so is likely to cost more (fees are based on actual time spent processing each application and these types of permits are expected to take longer to process). While the City's goal of a 30-day processing time for right-of-way permits remains, the 120-day or 30-day state time limits included in ESSB 6676 are not applicable to Right-of-Way Site Permits. Applicants for this kind of permit will not hold a Master Permit (franchise), so the 30 day limit to act on a Use Permit included in ESSB 6676 does not apply.

For single facility operators, the Right-of-Way Site Permit, which does not require Council action on an ordinance or publication, provides an opportunity to get through the process quicker, with less expense consistent with the goals of ESSB 6676. Staff would be responsible to ensure that activities permitted through this process are conditioned and approved in accordance with City policy. The burden on City resources would also be reduced.

The proposed changes to SMC 12.25 also include an increase in the deposit required with a franchise application from $1,500 to $5,000. This increase is in recognition of past costs associated with the adoption of a new franchise (publishing a standard franchise agreement as required by state law costs about $2,500 depending on length) and the potential need for additional resources to meet the required timeline. Since this amount is a deposit against actual processing costs for most applicants rather than a flat fee, it is believed to be fairly safe from an I-695 challenge. Even for those applicants for whom this amount would be a fee, it appears unlikely that this change could be successfully challenged [3].

Coordination Requirements "Duties and Opportunities"

The issues raised by ESSB 6676 discussed in this section above cannot be addressed by new or amended regulation. They will require changes in management practices and resource allocations currently that are currently under development.

Wireless Facilities In The Right-of-Way

Sections 2 & 3 of the proposed ordinance amend existing City wireless facility siting regulations scheduled to be re-enacted as part of the City's proposed Development Code. The proposed changes clarify the application of these siting procedures to proposed facilities in the public right-of-way making it clear that applicants for these facilities must comply with the City's franchise requirements (SMC 12.25) or the new Right-of-Way Site Permit process and building code and/or environmental regulations.

The proposed ordinance also extends the height limitations of adjacent zones into the right-of-way and requires public notice procedures for right-of-way permits for all but the smallest wireless facilities[4]. The intent of these provisions is to ensure the public an opportunity to comment on proposed facilities and to subject high impact facilities to the same variance procedures as utilized on adjacent private property. The only difference being that no administrative appeal of a denial is provided for the applicant. The rationale for not providing an appeal is that a denial of a permit to utilize public property does not interfere with a private property ownership interest. The City is simply deciding how its property can be used. An appeal of an approval by a citizen (an owner, if you will) is still provided for as a check of the administrative process.

---

[3] Current law has invalidated the public vote requirement of this initiative. Should the lower court's ruling be overturned, a retroactive order would be unlikely. Should this still occur refunding the few deposits that we may get between now and then would not be administratively difficult.

[4] The City has never received a complaint regarding the shoebox size radios utilized by Metricom.

An exemption to the height restriction of the adjacent zone is provided for wireless facilities attached to existing structures in the right-of-way that exceed those limitations. This exemption is only available to wireless facilities that do not exceed the diameter of the pole to which they are attached and don't extend the height by more than 15 feet. The City's policy of promoting co-location and camouflage, and reasonably supporting the improvement of service to the community as embodied in the prior regulation form the basis for this exemption. Most utility poles already exceed the height limitation of the adjacent zone. Without this exemption, every facility proposed to be located on top of an existing utility pole would require a variance. With this exemption, facilities that resemble an extension of the pole will not require a variance, but will still be subject to the standard permit requirements.

Consistent with the City's undergrounding ordinance, no new poles are allowed in the right-of-way, thus requiring new facilities to be located on existing structures. In addition support equipment is required to be placed underground.

Compensation For Use Of Right-of-Way

ESSB 6676 does provide a limited opportunity for a new fee on wireless facilities. Your Council previously amended SMC 12.25.090 in late 1999 to clearly require compensation for use of the right-of-way when consistent with state law. Opportunities to assess this fee, however, are expected to be limited. The proposed ordinance does not allow new poles and supporting equipment is often placed on adjacent private property, and the City owns very few structure of sufficient height to be attractive to wireless providers. Regardless, provisions for this fee, when appropriate, will be included in the wireless provider's franchise agreement or right-of-way site permit.