

1 *TMC Title 12*

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*STEEETS, SIDEWALKS AND PUBLIC PLACES*

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7 **CHAPTERS:**

8

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**Notes for this proposed draft (Generally):**

1. Double Underline and Blue = Proposed change
2. ~~Strike through in Red~~ = Proposed deletion
3. Underline and Blue = Hyperlinks to internal points or websites
4. *(Italic)* = Staff comment
5. **Highlighted** = Staff/Commission/Public questions for research

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**GENERAL PROVISIONS**

49 **Sections:**

50 **12.01.010 Authority**

51 **12.01.020 Repeal/Savings**

52 **12.01.030 Severability and Validity**

53 **12.01.040 Scope and Compliance**

54 **12.01.050 Conflict Provisions**

55 **12.01.060 Responsibility and Authority**

56 **12.01.070 Violations**

58 **12.01.010 Authority.** This Title is adopted by the City of Tenino pursuant to goals, policies  
59 and actions contained within the City of Tenino Comprehensive Plan latest edition.

61 **12.01.020 Repeal/Savings.** Title 12 of Tenino Municipal Code (TMC), known as “TMC 12 -  
62 Streets, Sidewalks and Public Places” is hereby repealed in its entirety and replaced with this Title as  
63 subsequently adopted; provided that such repeal shall not affect the validity of any permit lawfully  
64 issued thereunder, nor any pending enforcement action.

66 **12.01.030 Severability and Validity.** The sections, paragraphs, sentences, clauses, and phrases  
67 of this Title are severable. If any section, paragraph, sentence, clause, or phrase is declared  
68 unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or  
69 decree, such unconstitutionality or invalidity shall not affect any of the remaining sections,  
70 paragraphs, sentences, clauses, or phrases of this Title, which shall continue in full force and effect.  
71 Further, if any section, paragraph, sentence, clause, or phrase of this Title is adjudged invalid or  
72 unconstitutional as applied to a particular property, use, building, or other structure, the application  
73 of said portion of this Title to other property, uses, buildings, or structures shall not be affected.

75 **12.01.040 Scope and Compliance.** The provisions of this Title shall apply to all  
76 incorporated areas of the City of Tenino, Washington.

78 **12.01.050 Conflict of Provisions.** The standards, procedures and requirements of this chapter  
79 are the minimum necessary to promote the health, safety, and welfare of the residents of the City.  
80 The City is free to adopt more rigorous or different standards, procedures and requirements  
81 whenever this becomes necessary. If the provisions of this chapter conflict or overlap one with  
82 another, or if a provision of this chapter conflicts or overlaps with the provision of another ordinance  
83 of the City, the most restrictive provision or the provision imposing the highest standard prevails.

85 **12.01.060 Responsibility and Authority.**

86 A. The City is charged with the responsibility of administering the provisions of this Title.

87 B. The Designee is authorized and empowered to make administrative decisions and  
88 determinations pursuant to TMC 18.50.020, Administrative Interpretations.

89 C. The Designee is authorized to revoke any permit issued to the permit holder who fails to  
90 comply with this Code or conditions of the permit approval, or if a permit was issued based  
91 on false or misleading information.  
92

93 **12.01.070 Violation - Penalty.** Any person who violates the provisions of this Title shall be  
94 guilty of a Class 1 civil offense unless a Chapter or Section of this Title specifically provides  
95 penalties other than a Class 1 civil offense, and Section 18.30.130 Enforcement and Chapter 2.25  
96 Code Enforcement and Civil Citation Authority of the Tenino Municipal Code shall also apply.  
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*STREET CLASSIFICATION PLAN*

105 **Sections:**

106 **12.05.010 Classification of City Streets**

107 **12.05.020 Implementation Authority**

108 **12.05.030 Plan Available**

111 **12.05.010 Classification of City Streets.** Pursuant to RCW 35.78.010, all streets and alleys  
112 (except private streets and ways) within Tenino are public rights-of-way and classified as either:

113 A. **Minor arterial:** The primary transportation route within City connecting points north,  
114 east, west and south, having relatively high traffic volume compared with other City  
115 streets;

116 B. **Major collectors:** Routes that serve lesser points of traffic interest within a City and  
117 serve to collect and distribute traffic from the major arterials to the local streets;

118 C. **Local access streets:** Generally limited to providing access to abutting property, are  
119 tributary to major collector and minor arterial thoroughfares, and generally discourage  
120 through traffic;

121 D. **Private streets:** Transportation routes within the City designed and built to less than  
122 City street stands as defined within the Public Works Design Manual for the City. These  
123 streets shall not be considered for dedication to the City unless they meet City street  
124 standards in width and design specifications based on the classification as determined by  
125 the City;

126 E. **Alleys:** Generally a public or private way or easement permanently reserved as a  
127 secondary means of access to abutting property, generally running down the middle of a  
128 block of lots not intended for general circulation, designed to a minimal width.

130 **12.05.020 Implementation Authority.** The Street Classification Plan shall contain all  
131 designations and classifications, which is derived from the Transportation Element of the City's  
132 Comprehensive Plan. The Community Development Department shall cause to be implemented  
133 through review of applications and plans, the street designations described in this Chapter  
134 through the use of appropriate traffic control devices.

136 **12.05.030 Plan Available.** The most recently adopted version of the City Street Classification  
137 Plan is available for inspection during normal business hours at City Hall and may be amended  
138 from time-to-time.

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***PUBLIC & PRIVATE WORKS CONSTRUCTION***

**12.10.010 Adoption of standard plans, specifications, details, and design standards.**

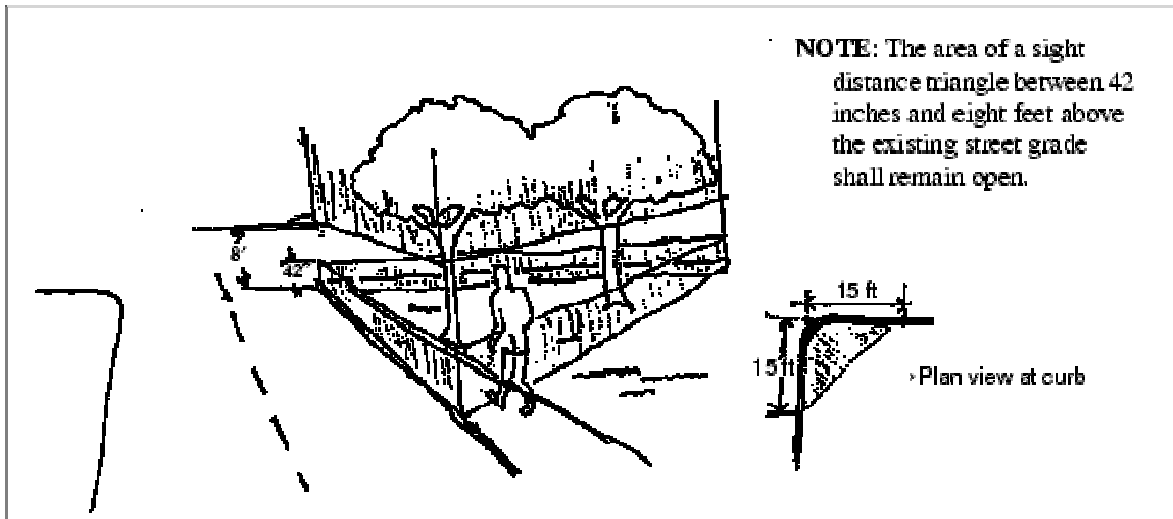
- A. ***Adopted – Standard Plans.*** A manual of specific plans or drawings developed, adopted and titled “*Standard Plans (M41-10) for Road, Bridge, and Municipal Construction 2006*” prepared by the Washington State Department of Transportation and the American Public Works Association, Washington State Chapter, the latest publication and amendments thereto, as supplemented and amended by the City for specific construction applications and for conformance with adopted City design standards, hereinafter referred to as the “Standard Plans”, which is adopted by reference.
- B. ***Adopted – Standard Specifications.*** The *Standard Specifications for Road, Bridge and Municipal Construction*, the latest (English) edition publication and amendments thereto which includes the APWA Supplement (Section 1-99), as issued by the Washington State Department of Transportation and the American Public Works Association, Washington State Chapter, as supplemented and amended by the City for specific construction applications and for conformance with adopted city design standards, hereinafter referred to as the “WSDOT/APWA Standard Plans”, which is adopted by reference.
- C. ***Adopted - Manual on Uniform Traffic Control Devices (MUTCD).*** The *Millennium Edition (ME) MUTCD* is the current adopted (on January 9, 2003) legal version of the MUTCD for use in Washington State. The *ME MUTCD* and the Washington State modifications are to be used for the installation and maintenance of traffic control devices. Proposed modifications to the *ME MUTCD* that will be in effect only in Washington State can be submitted electronically to WSDOT using the process described in Modifications to the MUTCD 2003.
- D. ***Adopted – City of Tenino Rights-of-Way Infrastructure Standards and Specifications.*** A manual that discusses details of specific plans and drawings, developed by the City of Tenino Public Works Department, showing frequently recurring components of work and infrastructure standards for each respective classification of city street and those items associated with rights-of-way, that have been standardized for repetitive use, as supplemented and amended by the City for specific construction applications and for conformance with adopted City design standards, hereinafter referred to as the “Standards”, which is adopted by reference.

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**SIGHT DISTANCE REQUIREMENTS**

184 **12.12.010 Sight Clearance Zones.** Except for utility poles, trunks of approved street trees, and  
185 traffic control signs, the following sight distance provisions shall apply to all intersections,  
186 roadways, and site access points:

- A. A sight distance triangle area as determined by subsection (B) of this section shall contain no fence, berm, vegetation, on-site vehicle parking area, signs or other physical obstruction between 42 inches and eight feet above the existing street grade.



- B. The sight distance triangle at:
  1. A street intersection shall be determined by measuring 15 feet along both street property lines beginning at their point of intersection. The third side of the triangle shall be a line connecting the endpoints of the first two sides of the triangle; or
  2. A site access point shall be determined by measuring 15 feet along the street lines and 15 feet along the edges of the driveway beginning at the respective points of intersection. The third side of each triangle shall be a line connecting the endpoints of the first two sides of each triangle.
- C. The Planning Director may require modification or removal of structures, landscaping or other objects located in required street setbacks, if:
  1. Such improvements prevent adequate sight distance to drivers entering or leaving a driveway and no reasonable driveway relocation alternative for an adjoining lot is feasible; or
  2. Clear lines of sight are obstructed by such structures, landscaping, or objects as to pose a potential public safety hazard as determined by the Planning Director.
- D. Any access or roadway where additional vehicle trips are expected to utilize that access or roadway as a result of a new or modified development shall conform to "A Policy on Geometric Design of Highways and Streets," 1994 Edition (or latest edition as may be amended hereafter) by the American Association of State Highway and Transportation Officials. Exceptions to this rule may be granted by the Public Works Director.



213 *Chapter 12.15*

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*PARKS & TRAILS*

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218 **Sections:**

219 **12.15.010 Definitions**

220 **12.15.020 Motor Vehicles - Operation Generally**

221 **12.15.030 Motor Vehicles - Speed**

222 **12.15.040 Motor Vehicles - Parking**

223 **12.15.050 Commercial Vehicles**

224 **12.15.060 Horses - Where Permitted**

225 **12.15.070 Horses - Riding and Leaving**

226 **12.15.080 Camping - Where Permitted**

227 **12.15.090 Camping - Fee**

228 **12.15.100 Campsites - Vacating**

229 **12.15.110 Campsites - Limitation on Continuous Occupancy**

230 **12.15.120 Fires**

231 **12.15.130 Refuse - Dumping From Vehicles**

232 **12.15.140 Refuse - Disposal Generally**

233 **12.15.150 Hours**

234 **12.15.160 Ballfield Reservation for Ball Playing**

235 **12.15.170 Reservations for Other than Ball Playing**

236 **12.15.180 Quarry House Rental**

237 **12.15.190 Swimming - Where Permitted**

238 **12.15.200 Swimming - Rules and Supervision**

239 **12.15.210 Game Playing - Game Areas**

240 **12.15.220 Weapons, Fireworks and Explosives**

241 **12.15.230 Noisemaking Devices**

242 **12.15.240 Loudspeaker Operation**

243 **12.15.250 Soliciting and Advertising**

244 **12.15.260 Religious Services Group Rallies**

245 **12.15.270 Metal Detectors**

246 **12.15.280 Disorderly Conduct**

247 **12.15.290 Public Disrobing**

248 **12.15.300 Alcoholic Beverages**

249 **12.15.310 Glass or Metal Containers**

250 **12.15.320 Fee Schedule Availability**

251

252

253 **12.15.010 Definitions.** In addition to definitions cited in TMC 18.20, In this chapter, unless the  
254 context otherwise requires, the following words shall have the following meanings:

255 Camping. Erecting a tent or other shelter, or arranging bedding, or parking a trailer, camper or  
256 other vehicle for the purpose of .

257 Campground. See TMC 18.20.060.

258 City Council. The Tenino City Council.

259 City Park. Any area under the management or control of the council, and includes all parks,  
260 squares, drives, parkways, trails, beaches, playgrounds and other recreational areas or  
261 facilities comprising the park and recreation system of the City.  
262 Motor vehicle. Any self-propelled device capable of being moved upon a road and  
263 transporting persons or property, and includes, but is not limited to, automobiles, trucks,  
264 buses, campers, motorcycles, motorbikes, motor scooters, jeeps and snowmobiles, whether or  
265 not they can legally be operated upon the public highways.  
266 Park employee. Includes the Public Works Director and any City employee while performing  
267 employment duties in any City Park.  
268 Person. See TMC 18.20.190.  
269 Trail. Any path or track designed for use by pedestrians or equestrians and which is not of  
270 sufficient width or grading to permit its use by standard passenger automobiles; or any other  
271 right-of-way specifically designated and posted for non-vehicular use.  
272

273 **12.15.020 Motor Vehicles - Operation Generally.** No person shall operate any motor vehicle  
274 within the boundaries of any City Park, except upon roads, streets, highways and parking areas;  
275 provided, that all-terrain vehicles (i.e., motorcycles, motorbikes, minibikes and jeeps) may be  
276 operated on park trails where such trails have been specifically designated by the City and posted  
277 for use by such vehicles.  
278

279 **12.15.030 Motor Vehicles - Speed.** No person shall operate a motor vehicle within any City  
280 Park at a speed in excess of the posted speed limit, or in excess of ten miles per hour where no  
281 speed limit is posted. The City may establish speed limits higher or lower than ten miles per hour  
282 and shall cause such limits to be posted in the area where so established if conditions so warrant.  
283

284 **12.15.040 Motor Vehicles - Parking.** No person shall park a motor vehicle in any City Park,  
285 except in a designated parking area or other area, without the permission of a City Park  
286 employee. During the period in which the park is closed, no person shall leave parked or  
287 abandoned a motor vehicle in any City Park except when camping in a designated area or with  
288 the permission of a City Park employee. Any vehicle found parked or abandoned in violation of  
289 this section may be towed away at the owner's expense.  
290

291 **12.15.050 Commercial Vehicles.** No person shall drive a motor vehicle being used for a  
292 commercial purpose into any City Park unless permission for such use has been granted by the  
293 City in advance.  
294

295 **12.15.060 Horses - Where Permitted.** No horses shall be permitted in any City Park except  
296 areas or trails designated by the City and posted to permit equestrian activities. In no event shall  
297 horses be permitted in designated swimming, camping or picnicking areas (**why not?**).  
298

299 **12.15.070 Horses - Riding and Leaving.** No person shall ride a horse or another animal in a  
300 manner which might endanger the life or limb of any person or animal, nor shall any person  
301 allow a horse or other animal, to stand unattended unless securely tethered.  
302

303 **12.15.080 Camping - Where permitted.** No person shall camp in any City Park except in  
304 specifically designated areas.

305 **12.15.090 Camping - Fee.** Fees for the use of overnight campsites are due and payable daily.  
306 The daily fee covers use of the facilities until the vacating time the following day. The fee  
307 schedule is adopted by Resolution and is available at City Hall during normal business hours or  
308 by visiting the City of Tenino website. Such fees are payable to the City in advance unless a  
309 sponsoring organization of an organized activity is willing to take the responsibility for  
310 collection.

311  
312 **12.15.100 Campsites - Vacating.** Occupants shall vacate campsites by removing their  
313 personal property therefrom if the applicable use fee has not been paid or if the time limit for  
314 occupancy of the campsite has expired. Vacating time shall be three p.m. unless a different time  
315 is established for a park by the City.

316  
317 **12.15.110 Campsites - Limitation on Continuous Occupancy.** Continuous occupancy of a  
318 campsite by the same person or persons shall be limited to seven days. The City Council, upon  
319 finding that conditions so warrant, may establish shorter or longer continuous occupancy limits  
320 for particular park areas.

321  
322 **12.15.120 Fires.** No person shall build a fire in any City Park except in areas specifically desig-  
323 nated by the City Council and posted for such use; nor, within such permitted areas, shall any  
324 person build a fire except in a device provided by the City for such purpose, or in a stove,  
325 charcoal brazier or other device brought by a person which is reasonably capable of containing  
326 such fire.

327  
328 **12.15.130. Refuse - Dumping from Vehicles.** No person shall drain or dump refuse or waste  
329 from any trailer, camper or motor vehicle, in any City Park, except in designated disposal areas  
330 or receptacles.

331  
332 **12.15.140 Refuse - Disposal Generally.** No person shall leave, deposit, drop or scatter any  
333 bottles, broken glass, ashes, paper, cans or other rubbish, liner or refuse in any City Park, except  
334 in a garbage can or other receptacle designated for such purposes; nor shall any person deposit  
335 household or commercial garbage, refuse, waste or rubbish, which is brought as such from any  
336 private property, in any garbage can or other receptacle located within any City Park.

337  
338 **12.15.150 Hours.** The City Council may establish times and periods when parks will be open  
339 or closed to the public. Established times or periods shall be posted at all City Parks. Where not  
340 established, City Parks shall be open daily from six a.m. until ten p.m. No person shall enter into  
341 or be present within any City Park during the time it is closed except when camping in a desig-  
342 nated campsite after having paid the applicable use fee, if so required. The park restrooms will  
343 open on or about April 1st of each year, and close on or about October 31st each year.

344  
345 **12.15.160 Ballfield Reservation for Ball Playing.** Fees to reserve and use the ballfield for ball  
346 playing purposes only, are due and payable in advance together with a completed registration  
347 form as designated by the Clerk/Treasurer. The fee schedule and forms are available at City Hall  
348 during normal business hours or by visiting the City website. All local youth athletic programs  
349 shall be exempt from any charges. Reservation and use fees are not charged to local teams for  
350 ball practice sessions.

351  
352 **12.15.170 Reservations for other than Ball Playing.** To reserve and use any park for activities  
353 other than the purpose of ball playing are due and payable in advance together with a completed  
354 registration form as designated by the Clerk/Treasurer. The fee schedule and forms are available  
355 at City Hall during normal business hours or by visiting the City website.

356  
357 **12.15.180 Quarry House Rental.** Payment is due and payable at the City Hall in advance,  
358 together with damage and/or cleaning deposit to reserve and use the Quarry House. The fee  
359 schedule and forms are available at City Hall during normal business hours or by visiting the  
360 City website. The fees do not apply to organized senior citizen functions, library meetings, or  
361 museum board meetings. Any other function seeking exception to the fee schedule requires prior  
362 approval by the City Council.

363  
364 **12.15.190 Swimming Area.** Swimming is permitted only in specifically designated areas, which  
365 are marked with buoys, log booms or other markers for such use. No person shall swim outside  
366 the boundaries of a designated swimming area, or within such designated areas when a City  
367 lifeguard is not present.

368  
369 **12.15.200 Swimming Area - Rules and Supervision.** Persons using a designated swimming  
370 area shall obey all posted beach or pool rules and/or directions of lifeguards or other City Park  
371 employees.

372  
373 **12.15.210 Game Playing - Game Areas.** No person shall practice or play golf, baseball,  
374 cricket, lacrosse, polo, archery, hockey, tennis, horseshoes, soccer or any other game of like  
375 character, or hurl, throw or propel any object or missile within any park, except in specifically  
376 designated areas. Metal cleats are prohibited from all game areas.

377  
378 **12.15.220 Weapons, Fireworks and Explosives.** No person shall possess or discharge any  
379 firearm, bow and arrow, air or gas weapon, slingshot, fireworks or explosive in the City Park  
380 except at times and in areas specifically designated by ordinance, which shall be posted for such  
381 use and times. Anyone seeking exception requires prior approval by the City Council.

382  
383 **12.15.230 Noisemaking Devices.** No person shall explode, discharge or otherwise operate any  
384 noisemaking device which substantially disrupts the peace and tranquility of any City park.

385  
386 **12.15.240 Loudspeaker Operation.** No person shall operate any loudspeaker, including any  
387 radio, television, musical instrument or other electronic amplifying device, within a City Park in  
388 a loud or raucous manner except at times and in areas specifically designated for such use, nor  
389 shall any person operate such a loudspeaker in or about a designated camping area between the  
390 hours of ten p.m. and eight a.m. unless previously authorized by the City Council.

391  
392 **12.15.250 - Soliciting and Advertising.** No person shall solicit, sell or peddle any goods or  
393 services, or circulate any commercial handbills or circulars, or post signs or notices of any type  
394 within any City Park except after prior approval by the City Council; provided, that nothing in  
395 this section shall prohibit patrons of any City Park from posting notices containing information

396 relative to use of park facilities on bulletin boards or similar devices provided by the City for  
397 such purposes.

398  
399 **12.15.260 Religious services - Group Rallies.** Religious services or group rallies may be  
400 permitted in City Parks where facilities will not conflict in any way with normal park usage. To  
401 avoid possible use conflicts, permission must be obtained in advance from the City for such  
402 activities.

403  
404 **12.15.270 Metal Detectors.** The use of any device for the detection of metal at any City park  
405 property is prohibited except by authorized employees and/or by special permission of the City.  
406

407 **12.15.280 Disorderly Conduct.** It is unlawful to use profane or abusive language or to conduct  
408 oneself in a disorderly manner in any park, or enter or remain within any park if not properly  
409 attired.

410  
411 **12.15.290 Public Disrobing.** No person shall disrobe publicly in any City park area.  
412

413 **12.15.300 Alcoholic Beverages.** Opening or consuming any alcoholic beverages in any City  
414 park area is prohibited except in the following designated areas and under the following  
415 circumstances:

- 416     A. Alcoholic beverages may be permitted within any City Park when not in violation of state  
417     law;  
418     B. In designated campgrounds, by registered campers or their guests;  
419     C. In designated picnic areas, which includes those sites within any City Park areas where  
420     picnic tables, benches, fireplaces and/or outdoor kitchens are available, even though not  
421     signed as designated picnic areas; and  
422     D. In any building operated and maintained under a concession agreement, wherein the  
423     concessionaire has been licensed to sell alcoholic beverages by the Washington State  
424     Liquor Control Board, and where the dispensation of such alcoholic beverages by such  
425     concessionaire has been approved by the City Council.  
426

427 **12.15.310 Glass or Metal Containers.** The use or possession of any food or beverage  
428 container consisting wholly or in part of glass or metal is prohibited in the fenced-in swimming  
429 pool area, where such area is designated as a swimming area, or where such area is customarily  
430 and generally used as a swimming area by park patrons though not designated by the City.  
431

432 **12.15.320 Fee Schedule Availability.** The Fee Schedule is adopted by Resolution and may be  
433 amended from time-to-time by the City Council for the use of the park and its facilities. The fee  
434 schedule is available for public inspection at City Hall and is posted on the City website, which  
435 is: [www.ci.tenino.wa.us](http://www.ci.tenino.wa.us).



*ACQUISITION OF RIGHTS-OF-WAY*

443 **Sections:**

444 **12.20.010 Records**

445 **12.20.020 Payment - Charging**

446 **12.20.030 District Street Project Number Assignment**

447 **12.20.040 Minimum Width Set**

451 **12.20.010 Records.** The City shall record in the Thurston County Auditor's Office, all  
452 deeds, waivers, easements or other conveyance of real property with respect to the acquisition of  
453 any right-of-way, street or other property right, by City, within ten days after the execution and  
454 delivery thereof.

456 **12.20.020 Payment - Charging.** As per RCW 36.85.010, all land required for right-of-way  
457 by purchase or condemnation shall be paid out of the City Public Works Fund.

459 **12.20.030 Project Number Assignment.** It is the responsibility of the Community  
460 Development Department to assign a street project number to the acquisition of any property,  
461 and all costs, including acquisition costs, shall be accumulated under this number, regardless if it  
462 is a day labor or contract project.

464 **12.20.040 Minimum Width Set.**

465 A. Pursuant to Chapter 36.86.010, Revised Code of Washington, the minimum right-of-way  
466 width for any City street shall be 60 feet, except a local street may utilize a 50-foot wide  
467 right-of-way provided all utilities are located underground.

468 B. The minimum right-of-way width for a local street, public or private, located within an  
469 approved plat may be reduced to 40 feet, provided a non-exclusive utility easement is  
470 provided abutting the right-of-way on one or both sides so that the total width of right-of-  
471 way and easement is no less than 60 feet, or 50 feet when all utilities are located  
472 underground.

473 C. All streets west of Ritter Street shall be dedicated at a width of 70-feet.

474 D. All streets east of Ritter Street shall be dedicated at a width of 60-feet, except the portion  
475 of Sussex west of Frost Street, which shall be dedicated at a width of 70-feet.

476 E. Where required, alleys shall have a minimum width of 15-feet to allow access to the rear  
477 yard of lots and to provide for undergrounding of utility services.

478 F. This Section shall not be construed to require the acquisition of increased right-of-way  
479 for any City street already established and the right-of-way for which has been secured.



***STREET / ALLEY VACATION***

488 **Sections:**

489 **12.22.010 Street/Alley Vacation by City Council.**

490 **12.22.020 Procedures**

491 **12.22.030 Compensation Based on Improvements.**

492 **12.22.040 Compensation Precedent to Vacation.**

493 **12.22.050 Administrative Costs.**

494 **12.22.060 Apportionment of Compensation Credited to Certain City Funds.**

497 **Cross-reference: Chapter 35.79 RCW**

500 **12.22.010 Street/Alley Vacation by City Council.** City rights-of-way may be vacated by the  
501 City Council either upon a citizen petition, or by its own motion, in accordance with the  
502 provisions of Chapter 35.79 RCW. After consideration of the Community Development's  
503 Report, if the Council finds that the right-of-way is not useful and the public will benefit by the  
504 vacation, the Council may vacate the right-of-way. The City shall receive compensation as  
505 provided in this Chapter.

507 **12.22.020 Procedures.**

508 A. **Council Resolution.** The petition or resolution shall be filed with the City Clerk and,  
509 if the petition is signed by the owners of more than two-thirds of the property abutting  
510 upon the part of such street or alley sought to be vacated, the City shall set a time by  
511 Resolution when the petition will be heard and determined by City. The time shall not  
512 be more than sixty days nor less than twenty days after the date of the passage of such  
513 Resolution.

514

B. **Notice of Hearing:**

- 515 1. Upon the passage of the resolution the City Clerk shall give twenty days' notice  
516 of the pendency of the petition by a written notice posted in three of the most  
517 public places in the City and in a conspicuous place on the street or alley to be  
518 vacated.
- 519 2. The notice shall contain a statement that a petition has been filed to vacate the  
520 street or alley described in the notice, together with a statement of the time and  
521 place of the hearing.
- 522 3. In all cases where the proceeding is initiated by resolution of the city or town  
523 council or similar legislative authority without a petition having been signed by  
524 the owners of more than two-thirds of the property abutting upon the part of the  
525 street or alley sought to be vacated, in addition to the notice above, notice shall be  
526 given by mail at least 15 days before the hearing date as shown on the rolls of the  
527 County Treasurer, directed to the address thereon shown.

528 4. If fifty percent or more of the abutting property owners file written objection to  
529 the proposed vacation with the Clerk prior to the time of hearing, the City shall be  
530 prohibited from proceeding with the vacation.

531 **C. Ordinance:**

532 1. If the legislative authority determines to grant said petition or any part thereof, the  
533 City shall be authorized and have authority by ordinance to vacate such street, or  
534 alley, or any part thereof.

535 2. The ordinance may provide that the City retain an easement or the right to  
536 exercise and grant easements in respect to the vacated land for the construction,  
537 repair, and maintenance of public utilities and services.

538 3. A certified copy of such ordinance shall be recorded with the Thurston County  
539 Auditor.

540

541 **12.22.030 Compensation Based on Improvements.** Appraised value of the right-of-way to be  
542 vacated, at the City's option, may be determined by an Appraiser appearing on the current  
543 Washington State Department of Transportation Fee Appraiser List. Compensation to the City  
544 for vacation of a right-of-way shall be as follows:

545 A. The ordinance may provide that it shall not become effective until the owners of property  
546 abutting upon the street or alley, or part thereof so vacated, shall compensate the City in  
547 an amount not to exceed one-half the appraised value of the area so vacated.

548 B. If the street or alley has been part of a dedicated public right-of-way for twenty-five years  
549 or more, or if the subject property or portions thereof were acquired at public expense,  
550 the City may require the owners of the property abutting the street or alley to compensate  
551 the City in an amount not to exceed the full appraised value of the area vacated.

552

553 **12.22.040 Compensation Precedent to Vacation.** The amount of compensation as determined  
554 by the City Council according to the designations above must be paid as a condition precedent to  
555 the vacation of any City right-of-way. Compensation for appraised value may, however, when it  
556 is in the best interest of the City, include real property of equivalent value to the right-of-way  
557 being considered for vacation.

558

559 **12.22.050 Administrative Costs.** A non-refundable application fee shall be paid by the  
560 applicant, as established by Resolution, prior to commencement of the vacation procedure.  
561 Vacation procedures shall be made available to applicants at City Hall.

562

563 **12.22.060 Apportionment of Compensation Credited to Certain City Funds.** One-half of the  
564 revenue received by the City as compensation for the area vacated must be dedicated to the  
565 acquisition, improvement, development, and related maintenance of public open space or  
566 transportation capital projects within the City.

***OBJECTS WITHIN CITY RIGHTS-OF-WAY***

573 **12.25.010 Permission Required - Removal.**

574 A. No person, organization, or agency shall place, erect, or install any object of any nature

575 whatsoever, within a City street right-of-way without the express permission in writing of

576 the City, and any such object now in place within a City street right-of-way without

577 written permission of the City is declared illegal; provided, that this Section shall not

578 apply to mailboxes and attached newspaper boxes, placed on the City right-of-way,

579 where these are placed as far removed from the driving portion of the right-of-way as

580 possible, except that said placement shall be subject to final approval of the City.

581 B. Any person placing any object within a City right-of-way in violation of this Section shall

582 be responsible for the removal of the object within 24 hours of receipt of written notice

583 from the City. If the object is not removed within 24 hours and it unreasonably hampers

584 or prevents the proper use of the right-of-way, it may be summarily removed by the City;

585 provided, that the notice requirement may be waived and the object may be immediately

586 removed by the City if it presents an immediate threat of physical harm to persons or

587 property.

588 C. Abatement of any object or encroachment in City right-of-way which does not interfere

589 with the proper and legitimate use of such right-of-way may be effected through an

590 injunctive suit by City authorities.

591 D. Encroachment exceptions. Items encroaching within the City's right-of-way, such as

592 small rockeries, decorative fences, or other such objects that do not present an immediate

593 health or life safety issue may be permitted to remain in that area of the right-of-way until

594 such time that the City requires the use of that section of the right-of-way. When a right-

595 of-way encroachment is identified by the City, the owner is required to either apply for a

596 Miscellaneous Street Use permit (depending upon the nature of the encroachment and at

597 the discretion of the City), or remedy the encroachment by its removal.



601 *Chapter 12.30*

602

603

604 ***FRANCHISES AND PERMITS FOR PUBLIC AND PRIVATE UTILITIES***

605 ***STREETS AND PUBLIC WAYS***

606

607 **Sections:**

608 **12.30.010 Purpose**

609 **12.30.020 Franchises Required**

610 **12.30.030 Nonexclusive Grant**

611 **12.30.040 Term of Grant**

612 **12.30.050 Eminent Domain**

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614 **12.30.070 Franchise Fees**

615 **12.30.080 Review of Application - Hearing**

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617 **12.30.100 Criteria for Approval - All Other Franchise Applicants**

618 **12.30.110 Utility Right-of-Way Permit Required**

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620 **12.30.130 Utility Right-of-Way Permit Fees**

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623 **12.30.160 Exemption from Permit Fees**

624 **12.30.170 Interference with the Right-of-Way**

625 **12.30.180 Damage to Property**

626 **12.30.190 Relocation or Removal of Facilities**

627 **12.30.200 Removal of Unauthorized Facilities**

628 **12.30.210 Failure to Relocate**

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632 **12.30.250 Duty to Provide Information**

633 **12.30.255 Grantee Insurance**

634 **12.30.256 General Indemnification**

635 **12.30.257 Performance and Restoration Surety**

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637 **12.30.260 Other Remedies**

638 **12.30.270 Severability**

639

640 **Cross Reference: RCW 35A.47.040**

641

642 **12.30.010 Purpose.** The purpose of this Chapter is to regulate the granting of City right-of-  
643 way franchises for public and private utilities, and to ensure consistency of such franchises with  
644 the City Comprehensive Plan, judicious engineering, proper design standards, meeting health and  
645 sanitation regulations requirements, and serves the public interest.

646

647 **12.30.020 Franchises Required.** Persons and private or municipal corporations are  
648 required, in accordance with RCW 35A.47.040, to obtain a right-of-way franchise approved by  
649 the City Council in order to use the right-of-way of City streets for the construction and  
650 maintenance of water-works, gas pipes, telephone, telegraph, electric lines, sewers, cable TV,  
651 petroleum products, and any other such public and private utilities, except that the City and any  
652 entity under contract with the City shall be exempted from this requirement.

653  
654 **12.30.030 Nonexclusive Grant.** No franchise granted hereunder shall confer any exclusive  
655 right or authorization to occupy or use the right-of-way.

656  
657 **12.30.040 Term of Grant.** Unless otherwise specified in the franchise, or unless otherwise  
658 renewed, a franchise granted hereunder shall be in effect for a term of not more than five years.

659  
660 **12.30.050 Eminent Domain.** Nothing herein shall be deemed or construed to impair or  
661 affect in any way or to any extent, the City's power of eminent domain.

662  
663 **12.30.060 Application.** Applications for right-of-way franchises shall be submitted in the  
664 form approved by the Community Development Department.

665  
666 **12.30.070 Franchise Application Fees.** There is established a fee for each franchise  
667 application, established by City Resolution, with said fee to provide reimbursement to the  
668 Community Development Department for the administrative costs and expenses of processing  
669 the application. The fee shall be payable in its entirety at the time each separate application for a  
670 new franchise or for a franchise renewal, amendment, supplement, or assignment is filed with the  
671 Department and shall be non-refundable. In addition, each applicant shall reimburse the City for  
672 public notice advertising and publication costs incurred in respect to each application in addition  
673 to the application fee. Further, all Grantees, except Telecommunications Grantees, shall, within  
674 30-days after written demand thereof, reimburse the City for all direct and indirect costs and  
675 expenses, over and above the application fee incurred by the City in connection with any grant,  
676 modification, amendment, renewal, or transfer of any franchise.

677  
678 **12.30.080 Review of Applications - Hearing.**

679 A. The Community Development Department shall be responsible for the administration  
680 and enforcement of franchises and Right-of-Way Permits.

681 B. In accordance with RCW 35A.47.040, the City shall set a time and place for a public  
682 hearing on each franchise application and shall notice such hearing pursuant to Section  
683 18.40.180 TMC.

684  
685 **12.30.090 Reserved.**

686  
687 **12.30.100 Criteria for Approval - All Other Franchise Applicants.** Prior to granting any  
688 City franchise, the criteria stated in TMC 12.35.410, where applicable, shall be considered. In  
689 addition, the following criteria shall also be considered:

690 A. The financial capability of the franchise applicant, except a telecommunications  
691 applicant, to adequately install and maintain the proposed facility;

692 B. The adequacy of the franchise applicant's expertise to install and maintain the proposed

693 facility; and  
694 C. Any potential hazards and risks which would be created by the installation of the  
695 proposed facility.  
696

697 **12.30.110 Utility Right-of-Way Permit Required.** Persons and private or municipal  
698 corporations are required to obtain a Utility Right-of-Way Permit approved by the City in order  
699 to work in the right-of-way of City streets for the construction and maintenance of utility  
700 facilities as outlined in TMC 12.30.020, except as noted in TMC 12.30.130 and 12.30.160.  
701

702 **12.30.120 Application.** Applications for Utility Right-of-Way Permits shall be submitted in  
703 the form approved by the City.  
704

705 **12.30.130 Utility Right-of-Way Permit Fees.** Permit fees provide reimbursement to the  
706 City for the administration, engineering costs, expenses of processing the Utility Right-of-Way  
707 Permit and inspecting the permitted work. Fees for Utility Right-of-Way Permits are established  
708 by Resolution:

709 A. **Class A Work.** Class “A” work has little or no effect on the right-of-way such as  
710 trenching the right-of-way for 25 lineal feet or less outside of the paved area, making an  
711 initial pavement cut of 4 square feet or less, or installing 5 or fewer new utility poles.  
712 Some examples of Class “A” work include stringing cables on utility poles; accessing  
713 existing manholes, handholes and vaults; installing short side services and hydrants while  
714 breaking 4 square feet or less of pavement; raising valves; trimming trees; providing  
715 cathodic protection; replacing above-ground meters, transformers, closures and pedestals;  
716 installing 2.5 by 2.5 feet or smaller splice boxes; and installing water sampling stations.  
717 No breaking of any City curb, gutter or sidewalk is allowed. No permit or permit fee is  
718 required for this type of work.

719 B. **Class B Work.** Class “B” work has a moderate effect on the right-of-way such as  
720 trenching between 25 and 100 linear feet of right-of-way, making an initial pavement cut  
721 of between 4 and 15 square feet, removing 2 or fewer panels of TMC sidewalk and  
722 associated curb and gutter, installing more than 5 new utility poles, or replacing any  
723 utility poles. Some examples of Class “B” work includes installing short side utility  
724 services while disturbing between 4 and 15 square feet of pavement, pushing under a  
725 street, installing underground vaults, and constructing splice pits. The fee for each permit  
726 application for Class “B” work is established by Resolution (**\$200 Pierce County Fee**).  
727

728 C. **Class C Work.** Class “C” work has a major impact on the right-of-way such as  
729 constructing any CRP related work, trenching 100 lineal feet or more in the right-of-way,  
730 making an initial pavement cut of 15 square feet or more, removing more than 2 panels of  
731 sidewalk and associated curb and gutter, or attaching to any bridge structure. Some  
732 examples of Class “C” work include constructing a main line or any open cut street  
733 crossing. The fee for each permit application for Class “C” work is established by  
734 Resolution (**\$600 Pierce County Fee**).

735 D. **Pavement Cutting.** The City promotes a coordinated planning effort between the Public  
736 Works Department and the franchised utility to minimize the need for cutting of  
737 pavement which is less than 36 months old. The fee for permission to cut pavement  
738 which is less than 36 months old is established by Resolution and based on per linear foot  
of disturbed pavement (**\$10/sq ft Pierce County fee**).

- 739 E. Any Utility Right-of-Way Permit fee shall be payable to the City in accordance with  
740 administrative procedures developed by the Public Works Department.  
741

742 **12.30.140 Utility in Good Standing.** In order to facilitate installation of utilities within  
743 street rights-of-way and in order to ensure that the City’s program for capital improvements,  
744 operation, and maintenance is enhanced, the City establishes the designation of “Utility in Good  
745 Standing.” All utilities that have less than three violations of the provisions of this Chapter  
746 during any preceding 12-month period, and upon written request to the City, will be eligible to  
747 receive a designation of “Utility in Good Standing” if certified by the City.  
748

749 **12.30.150 Criteria for Determination - Utility in Good Standing.**

750 The Community Development Department shall keep and review records of performance for  
751 each utility to monitor compliance to City Code. Noncompliance with the “Utility in Good  
752 Standing” certification provisions can include, but is not limited to the following. Failure to:

- 753 A. Comply with the provisions of the franchise agreement;
- 754 B. Comply with the Manual on Accommodating Utilities in City Right-of-Way;
- 755 C. Comply with the latest edition of the MUTCD;
- 756 D. Comply with Washington State Labor and Industry rules;
- 757 E. Comply with the provisions and conditions on an approved right-of-way permit;
- 758 F. Actively coordinate with City street construction projects, including attending any  
759 required design and pre-construction meetings;
- 760 G. Actively coordinate with other utilities on utility-initiated projects;
- 761 H. Respond to reasonable requests for relocation information when requested by the City;
- 762 I. Relocate utility facilities, in a timely manner, consistent with approved construction  
763 schedules;
- 764 J. Construct utility facilities with an approved deviation when compliance with City  
765 standards can not be achieved;
- 766 K. Obtain a permit, as required, before working in the right-of-way;
- 767 L. Notify the City before starting work;
- 768 M. Notify the appropriate fire department of a street closure;
- 769 N. Notify the Engineer of canceled or completed work in a timely manner;
- 770 O. Complete all work within approved working days from the start of work;
- 771 P. Permanently repair a pavement patch within 30 working days after placing temporary  
772 patching;
- 773 Q. Restore the roadway and pavement in accordance with approved provisions and  
774 conditions;
- 775 R. Leave the project site in a manner which is safe and protected;
- 776 S. Minimize the need for cutting of pavement less than 36 months old;
- 777 T. Maintain temporary pavement restorations;
- 778 U. Remove abandoned above ground facilities in the required time frames;
- 779 V. Pay permit fees in a timely manner.  
780

781 **12.30.160 Exemption from Permit Fees.**

- 782 A. Any utility having a valid designation of “Utility in Good Standing” as certified by the  
783 City shall be exempt from obtaining a permit, and from the permit application fee for  
784 Class “B” work, and any pavement cutting fee. Additionally, a “Utility in Good

- 785 Standing” shall pay one-sixth the fee set for Class “C” work.  
786 B. Any utility performing work as a result of a City construction or maintenance project  
787 shall be exempt from any applicable permit fee.  
788 C. Any utility performing emergency work shall be exempt from any applicable permit  
789 application fee.  
790

791 **12.30.170 Interference with the Right-of-Way.** No utility may locate or maintain its  
792 facilities so as to unreasonably interfere with the use of the right-of-way by the City or the  
793 general public authorized to use or be present in or upon the right-of-way. All such facilities  
794 shall be moved by and at the expense of the utility, temporarily or permanently, as determined by  
795 the City.  
796

797 **12.30.180 Damage to Property.** No utility or any person acting on a utility’s behalf shall  
798 take any action or permit any action to be done which may impair or damage any right-of-way,  
799 including specifically City Property, real or personal, or other property located in, on or adjacent  
800 thereto.  
801

802 **12.30.190 Relocation or Removal of Facilities.** Within 30 days, or such longer period as  
803 may be specified by the City, following written notice, a utility shall, at its own expense,  
804 temporarily or permanently remove, relocate, change or alter the position of any facilities within  
805 the right-of-way whenever the City shall have determined that such removal, relocation, change  
806 or alteration is reasonably necessary for:

- 807 A. The construction, repair, maintenance or installation of any City or other public  
808 improvement in or upon the right-of-way.  
809 B. The operations of the City or other governmental entity in or upon the right-of-way.  
810

811 **12.30.200 Removal of Unauthorized Facilities.** Within 30 days following written notice  
812 from the City, any utility or other person that owns, controls, or maintains any unauthorized  
813 facility or related appurtenances within the rights-of-way shall, at its own expense, remove such  
814 facilities or appurtenances from the right-of-way. If such utility fails to remove such facilities or  
815 appurtenances, the City may cause the removal and charge the utility for the costs incurred. A  
816 facility is unauthorized and subject to removal in the following circumstances:

- 817 A. Upon expiration or termination of the Grantee’s franchise.  
818 B. Upon abandonment of a facility within the right-of-way.  
819 C. If the system or facility was constructed or installed without the prior grant of a  
820 franchise.  
821 D. If the system or facility was constructed or installed without the prior issuance of a  
822 required Utility Right-of-Way Permit.  
823 E. If the system or facility was constructed or installed at a location not permitted by the  
824 utility's franchise.  
825 F. Any such other reasonable circumstances deemed necessary by the City.  
826

827 **12.30.210 Failure to Relocate.** If a utility is required to relocate, change or alter the  
828 facilities constructed, operated and/or maintained hereunder and fails to do so, the City may  
829 cause such to occur and charge the utility for the costs incurred.  
830

831 **12.30.220 Emergency Removal or Relocation of Facilities.** The City retains the right and  
832 privilege to cut or move any facilities located within the rights-of-way as the City may determine  
833 to be necessary, appropriate or useful in response to any public health or safety emergency.  
834

835 **12.30.230 Damage to Utility's Facilities.** Unless directly and proximately caused by the  
836 willful, intentional or malicious acts of the City, the City shall not be liable for any damage to or  
837 loss of any facility within rights-of-way as a result of or in connection with any public works,  
838 public improvements, construction, excavation, grading, filling, or work of any kind in the  
839 rights-of-way by or on behalf of the City.  
840

841 **12.30.240 Restoration of Right-of-Way or Other Private Property.**

- 842 A. When a utility, or any person acting on its behalf, does any work in or affecting any  
843 right-of-way, or any other property, it shall at its own expense, promptly remove any  
844 obstructions therefrom and restore such ways or property to the same condition which  
845 existed before the work was undertaken.
- 846 B. If weather or other conditions do not permit the complete restoration required hereunder,  
847 the utility shall temporarily restore the affected right-of-way or other property. Such  
848 temporary restoration shall be at the utility's sole expense and the utility shall promptly  
849 undertake and complete the required permanent restoration when the weather or other  
850 conditions no longer prevent such permanent restoration.
- 851 C. A utility or other person acting on its behalf shall use suitable barricades, flags, flaggers,  
852 lights, flares and other measures as required for the safety of all members of the general  
853 public and to prevent injury or damage to any person, vehicle or property by reason of  
854 such work in or affecting rights-of-way or any other property.  
855

856 **12.30.250 Duty to Provide Information.** Within ten days of a written request from the  
857 City, each utility shall furnish the City with information sufficient to demonstrate:

- 858 A. That utility has complied with all requirements of this Chapter.
- 859 B. That all fees due the City in connection with the facilities provided by the utility have  
860 been properly collected and paid by the utility.
- 861 C. That all books, records, maps and other documents maintained by the utility with respect  
862 to its facilities within right-of-way shall be made available for inspection by the City at  
863 reasonable times and intervals.
- 864 D. That "as-built" drawings have been completed of the work and are on file with the  
865 Grantee.  
866

867 **12.30.255 Grantee Insurance.** Unless otherwise provided, each Grantee shall secure and  
868 maintain the following liability insurance policies insuring both the Grantee and the City, and its  
869 elected and appointed officers, officials, agents, representatives, and employees as additional  
870 insured individuals:

- 871 A. Comprehensive general liability insurance with limits not less than:
- 872 1. \$2,000,000 for bodily injury or death to each person;
- 873 2. \$2,000,000 for property damage resulting from any one accident; and
- 874 3. \$2,000,000 for all other types of liability.
- 875 B. Automobile liability for owned, non-owned, and hired vehicles with a limit of  
876 \$1,000,000 for each person and \$3,000,000 for each accident.

- 877 C. Worker’s compensation within statutory limits and employer’s liability insurance with  
878 limits of not less than \$1,000,000.
- 879 D. Comprehensive form premises-operations, explosions and collapse hazard, underground  
880 hazard and products completed operation hazard policies with limits of not less than  
881 \$2,000,000.
- 882 E. The liability insurance policies required by this Section shall be maintained at all times  
883 by the Grantee. Each such insurance policy shall contain the following endorsement:  
884 “It is hereby understood and agreed that this policy may not be canceled nor the  
885 intention not to renew be stated until 90 days after receipt by the City, by registered  
886 mail, of a written notice addressed to the City Risk Manager of such intent to cancel or  
887 not to renew.”
- 888 F. Within 60 days after receipt by the City of said notice, and in no event later than 30 days  
889 prior to said cancellation, the Grantee shall obtain and furnish to the City replacement  
890 insurance policies meeting the requirements of this Chapter.
- 891 G. If Grantee can show to the City Risk Manager’s satisfaction that an entity is  
892 financially able to self insure the exposures, a substitution for insurance will be  
893 considered.

894  
895 **12.30.256 General Indemnification.** In addition to and distinct from the insurance  
896 requirements of this Chapter, each Grantee shall agree in writing to defend, indemnify, and hold  
897 the City and its officers, officials, employees, agents, and representatives harmless from and  
898 against any and all damages, losses and expenses, including reasonable attorneys’ fees and costs  
899 of suit or defense, arising out of, resulting from, or alleged to arise out of or result from the acts,  
900 omissions, failure to act, or misconduct of the Grantee or its affiliates, officers, employees,  
901 agents, contractors, or subcontractors in the construction, operation, maintenance, repair, or  
902 removal of it facilities and in providing or offering services over the facilities or network,  
903 whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a  
904 grant agreement made or entered into pursuant to this Chapter.

905  
906 **12.30.257 Performance and Restoration Surety.** Before a franchise granted pursuant to  
907 this Chapter is effective, and as necessary thereafter, the Grantee shall provide and deposit such  
908 monies, bonds, letters of credit, or other instruments in form and substance acceptable to the City  
909 as may be required by this Chapter, or by an applicable franchise or other applicable code,  
910 ordinance, or rules and regulations of the City.

911  
912 **12.30.258 Restoration Bond.** Unless otherwise provided in a franchise, a restoration bond  
913 written by a surety acceptable to the City equal to at least 100 percent of the estimated cost of  
914 restoration as required as a result of constructing the Grantee’s facilities within rights-of-way  
915 shall be deposited before construction is commenced. An applicant’s status as a “Utility in Good  
916 Standing” pursuant to TMC 12.30.140 may be considered in setting, or reducing below 100  
917 percent of the estimated cost of the restoration bond amount.

- 918 A. The restoration bond shall remain in force until 60 days after substantial completion of  
919 the work, as determined by the City, including restoration of all rights-of-way and other  
920 property affected by the construction.
- 921 B. The restoration bond shall guarantee, to the satisfaction of the City:
- 922 1. timely completion of restoration;

- 923           2. restoration in compliance with applicable plans, permits, technical codes, and  
924           standards;  
925           3. proper restoration of the facilities as specified by the City; and  
926           4. Restoration of the rights-of-way and any other property affected by the construction.  
927

928 **12.30.260     Other Remedies.** Nothing in this Chapter shall be construed as limiting any  
929 judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.  
930

931 **12.30.270     Severability.** If any Section, subsection, sentence, clause, phrase, or other  
932 portion of this Chapter, or its application to any person is, for any reason, declared invalid, in  
933 whole or in part by any court or agency of competent jurisdiction, said decision shall not affect  
934 the validity of the remaining portions hereof.  
935

936 *Chapter 12.35*

937

938 ***TELECOMMUNICATIONS USERS OF CITY RIGHTS-OF-WAY***

939

940

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942

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950

951

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952

953

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954

955

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956

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971

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|      |                  |  |
|------|------------------|--|
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| 986  |                  |  |
| 987  | <b>12.35.600</b> | <b>General Duties</b>  |
| 988  | <b>12.35.602</b> | <b>Interference with the Rights-of-Way</b>                           |
| 989  | <b>12.35.604</b> | <b>Damage to Property</b>  |
| 990  | <b>12.35.606</b> | <b>Notice of Work</b>  |
| 991  | <b>12.35.608</b> | <b>Repair and Emergency Work</b>                                     |
| 992  | <b>12.35.610</b> | <b>Maintenance of Facilities</b>                                     |
| 993  | <b>12.35.612</b> | <b>Relocation or Removal of Facilities</b>                           |
| 994  | <b>12.35.614</b> | <b>Removal of Unauthorized Facilities</b>                            |
| 995  | <b>12.35.616</b> | <b>Failure to Relocate</b>   |
| 996  | <b>12.35.618</b> | <b>Emergency Removal or Relocation of Facilities</b>                 |
| 997  | <b>12.35.620</b> | <b>Damage to Grantee's Facilities</b>                                |
| 998  | <b>12.35.622</b> | <b>Restoration of Rights-of-Way or other Property</b>                |
| 999  | <b>12.35.624</b> | <b>Facilities Maps</b>   |
| 1000 | <b>12.35.626</b> | <b>Duty to Provide Information</b>                                   |
| 1001 | <b>12.35.628</b> | <b>Leased Capacity</b>   |
| 1002 | <b>12.35.630</b> | <b>Grantee Insurance</b>   |
| 1003 | <b>12.35.632</b> | <b>General Indemnification</b>                                       |
| 1004 | <b>12.35.634</b> | <b>Performance and Restoration Surety</b>                            |
| 1005 | <b>12.35.638</b> | <b>Restoration Bond</b>  |
| 1006 | <b>12.35.640</b> | <b>Coordination of Construction Activities</b>                       |
| 1007 | <b>12.35.642</b> | <b>Assignments or Transfers of Grant of Cable Franchise</b>          |
| 1008 | <b>12.35.644</b> | <b>Transactions Affecting Control of Grant of Cable Franchise</b>    |
| 1009 | <b>12.35.646</b> | <b>Revocation or Termination of Grant</b>                            |
| 1010 | <b>12.35.648</b> | <b>Notice and Duty to Cure</b>                                       |
| 1011 | <b>12.35.650</b> | <b>Hearing</b>   |
| 1012 | <b>12.35.652</b> | <b>Standards for Revocation or Lesser Sanction</b>                   |
| 1013 |                  |  |
| 1014 |                  | <b>Article VII - Construction</b>                                    |
| 1015 |                  |  |
| 1016 | <b>12.35.700</b> | <b>Construction Standards</b>  |
| 1017 | <b>12.35.705</b> | <b>Construction Codes</b>  |
| 1018 | <b>12.35.710</b> | <b>Utility Right-of-Way Permits</b>                                  |
| 1019 | <b>12.35.715</b> | <b>Applications</b>  |
| 1020 | <b>12.35.720</b> | <b>Construction Surety</b>   |
| 1021 | <b>12.35.725</b> | <b>Location of Facilities</b>  |
| 1022 | <b>12.35.730</b> | <b>Conduit Occupancy</b>   |
| 1023 | <b>12.35.735</b> | <b>Franchisee Occupancy of City Owned Conduit</b>                    |
| 1024 |                  |  |
| 1025 |                  |  |
| 1026 |                  | <b>Article VIII - Fees</b>   |
| 1027 |                  |  |

- 1028 **12.35.810** **Deposit Fee**
- 1029 **12.35.850** **Reserved Compensation for Use of Rights-of-Way**
- 1030 **12.35.860** **Compensation for City Property**
- 1031 **12.35.870** **Construction Permit Fee**
- 1032 **12.35.880** **Regulatory Fees and Compensation Not a Tax**

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**Article IX - Miscellaneous**

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- 12.35.900** **Context**

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**Article I - Telecommunications**

1041 **12.35.010** **Purpose.** The purpose of this Chapter is to:

- 1042 A. Establish a local policy concerning telecommunications providers and services;
- 1043 B. Establish clear and nondiscriminatory local guidelines, standards, and time frames for
- 1044 the exercise of local authority with respect to the regulation of the use of public rights-
- 1045 of-way and/or public property by telecommunications providers;
- 1046 C. Minimize unnecessary local regulation of telecommunications providers and services;
- 1047 D. Encourage the provision of advanced and competitive telecommunications services on
- 1048 the widest possible basis to the businesses, institutions, and residents of the City;
- 1049 E. Permit and manage reasonable access to the public rights-of-way of the City for
- 1050 telecommunications purposes on a competitively neutral basis;
- 1051 F. Conserve the limited physical capacity of the public rights-of-way held in public trust by
- 1052 the City;
- 1053 G. Assure that the City's current and ongoing costs of granting and regulating private
- 1054 access to and use of the public rights-of-way are fully paid by the persons seeking such
- 1055 access and causing such costs;
- 1056 H. Secure fair and reasonable compensation to the City and the residents of the City,
- 1057 consistent with 47 U.S.C. sec. 253, in a non-discriminatory manner, for permitting
- 1058 private use of the public rights-of-way and/or public property;
- 1059 I. Assure that all telecommunications carriers placing facilities within the City rights of
- 1060 way comply with the ordinances, rules, and regulations of the City;
- 1061 J. Assure that the City can continue to fairly and responsibly protect the public health,
- 1062 safety, and welfare; and
- 1063 K. Enable the City to discharge its public trust consistent with rapidly evolving federal and
- 1064 state regulatory policies, industry competition, and technological development.

1065  
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**12.35.020** **Definitions.** Terms used in this Chapter shall have the following meanings:

- 1067 A. **Affiliate.** A person that (directly or indirectly) owns or controls, is owned or controlled
- 1068 by, or is under common ownership or control with another person.
- 1069 B. **Cable Acts.** The Cable Communications Policy Act of 1984, as amended by the Cable
- 1070 Television Consumer Protection and Competition Act of 1992, as amended by portions of
- 1071 The Telecommunications Act of 1996, and as hereafter amended.
- 1072 C. **Cable Operator.** A Telecommunications Carrier providing or offering to provide "Cable
- 1073 Service" within the City as that term is defined in the Federal Cable Acts.

- 1074 D. Cable Service. The same meaning as defined in the Federal Cable Acts.  
1075 E. City. The City of Tenino, State of Washington.  
1076 F. City Property. Any real property owned by City, whether in fee or other ownership estate  
1077 of interest.  
1078 G. Excess Capacity. The volume or capacity in any existing or future duct, conduit,  
1079 manhole, handhole or other Utility Facility within the right-of-way that is or will be  
1080 available for use for additional Telecommunications Facilities.  
1081 H. Federal Communications Commission or FCC. The federal administrative agency, or  
1082 lawful successor, authorized to regulate and oversee Telecommunications Carriers,  
1083 Services and providers on a national level.  
1084 I. Grantee. Encompasses those franchisees granted certain rights and obligations as more  
1085 fully described herein.  
1086 J. Washington Utilities and Transportation Commission or WUTC. The state  
1087 administrative agency, or lawful successor, authorized to regulate and oversee  
1088 Telecommunications Carriers, Services, and Providers in the State of Washington to the  
1089 extent prescribed by law.  
1090 K. Overhead Facilities. Utility Facilities and Telecommunications Facilities located above  
1091 the surface of the ground, including the underground supports and foundations for such  
1092 facilities.  
1093 L. Person. See TMC 18.20.190 Person.  
1094 M. Public Ways. Includes the surface of and space above and below any real property in the  
1095 City in which the City has an ownership interest, or interest as a trustee for the public,  
1096 including but not limited to all public streets, highways, roads, alleys, sidewalks, tunnels,  
1097 viaducts, bridges, skyways, or any other public place, area, or property under control of  
1098 City, and any public or utility easements established, dedicated, or devoted for public  
1099 utility purposes.  
1100 N. Rights-of-Way. All City Property and Public Ways, collectively, within the City.  
1101 O. State. The State of Washington.  
1102 P. Surplus Space. That portion of the usable space on a utility pole which has the necessary  
1103 clearance from other pole users, as required by the orders and regulations of regulatory  
1104 agencies with applicable jurisdiction, to allow its use by a Telecommunications Carrier  
1105 for a pole attachment.  
1106 Q. Telecommunications Carrier. Includes every person that directly or indirectly owns,  
1107 controls, operates or manages plant, equipment or property within the City, used or to be  
1108 used for the purpose of offering Telecommunications Service.  
1109 R. Telecommunications Facilities or Telecommunications System. The plant, equipment  
1110 and property including, but not limited to, cables, wires, conduits, ducts, pedestals,  
1111 antennae, electronics, and other appurtenances used or to be used to transmit, receive,  
1112 distribute, provide or offer Telecommunications Service.  
1113 S. Telecommunications Provider. Includes every person who provides Telecommunications  
1114 Service over Telecommunications Facilities.  
1115 T. Telecommunications Service. See TMC 18.20.230.  
1116 U. Underground Facilities. Utility and Telecommunications Facilities located under the  
1117 surface of the ground, excluding the underground foundations or supports for Overhead  
1118 Facilities.  
1119 V. Usable Space. The total distance between the top of a utility pole and the lowest possible

1120 attachment point that provides the minimum allowable vertical clearance as specified in  
1121 the orders and regulations of the WUTC.

1122 W. Utility Facilities. The plant, equipment, and property including, but not limited to, the  
1123 poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on  
1124 or above the surface of the ground within rights-of-way and used or to be used for the  
1125 purpose of providing utility services or Telecommunications Services including  
1126 Telecommunication Facilities.

1127  
1128 **12.35.030 Franchise and Fees.** Except as otherwise provided herein, any  
1129 Telecommunications Carrier who desires to construct, install, operate, maintain, or otherwise  
1130 locate Telecommunications Facilities in rights-of-way shall first obtain a franchise granting the  
1131 use of such rights-of-way from the City pursuant to this Chapter and Chapter 35A.47.040 RCW  
1132 and pay all applicable fees.

1133  
1134 **12.35.040 Cable Franchise and Fees.** Except as otherwise provided herein, any  
1135 Telecommunications Carrier who desires to construct, install, operate, maintain, or locate  
1136 Telecommunications Facilities in rights-of-way for the purpose of providing Cable Services shall  
1137 first obtain a cable franchise from the City pursuant to this Chapter and pay all the fees as  
1138 provided herein and in the cable franchise.

1139  
1140 **12.35.050 Application to Existing Franchise Ordinances and Agreements.** This Chapter  
1141 shall have no effect on any franchise agreement in effect on December 16, 1997, until:

- 1142 A. The expiration of said franchise agreement; or  
1143 B. An amendment to an unexpired franchise agreement, unless both parties agree to defer  
1144 full compliance to a specific date not later than the present expiration date.

1145  
1146 **12.35.060 Severability.** If any Section, subsection, sentence, clause, phrase, or other  
1147 portion of this Chapter, or its application to any person is, for any reason, declared invalid, in  
1148 whole or in part by any court or agency of competent jurisdiction, said decision shall not affect  
1149 the validity of the remaining portions hereof.

1150  
1151 **Article II - Reserved**

1152  
1153 **Article III - Reserved**

1154  
1155 **Article IV - Franchises**

1156  
1157 **12.35.400 Franchise.** A franchise shall be required of any Telecommunications Provider  
1158 who desires to place Telecommunications Facilities in the rights-of-way.

1159  
1160 **12.35.405 Franchise Application.** Any person who desires a franchise hereunder shall file  
1161 an application in accordance with TMC 12.30.060, 12.30.070 and 12.30.080, which shall include  
1162 the applicable portions of the required franchise application information.

1163  
1164 **12.35.410 Determination by the City.** As soon as is practicable after receiving a complete  
1165 application in the form approved by and submitted to the City pursuant to TMC 12.30.060

1166 hereunder, the Community Development Department shall make a recommendation to the City  
1167 Council which, in accordance with TMC 12.30.080B, shall set a time and place for a public  
1168 hearing on whether to grant or deny the application in whole or in part. If the decision is to deny,  
1169 the record shall include the reasons for denial. The standards enumerated herein and in TMC  
1170 12.30.100 shall apply when determining whether to grant or deny the application. The criteria  
1171 which shall be considered are:

- 1172 A. The capacity of the rights-of-way to accommodate the applicant's facilities;
- 1173 B. The capacity of the rights-of-way to accommodate additional utility and  
1174 Telecommunications Facilities if the application is granted;
- 1175 C. The damage or disruption, if any, of public or private facilities, improvements, service,  
1176 travel or landscaping if the application is granted, giving consideration to an applicants  
1177 willingness and ability to mitigate and/or repair same;
- 1178 D. The public interest in minimizing the cost and disruption of construction within the  
1179 rights-of-way;
- 1180 E. The availability of alternate routes or locations for the proposed facilities; and
- 1181 F. Applicable federal, state, and local laws, regulations, rules, and policies.

1182  
1183 **12.35.415 Agreement.** No franchise shall take effect hereunder unless the applicant and the  
1184 City have executed a written agreement setting forth the particular terms and provisions under  
1185 which the franchise to occupy and use rights-of-way will be granted and said agreement has been  
1186 recorded in accordance with RCW 35A.47.040. All franchises granted pursuant to this Article  
1187 shall contain substantially similar terms and conditions, which, taken as a whole and considering  
1188 relevant characteristics of the applicants, do not provide more or less favorable terms and  
1189 conditions than those required of similarly situated franchisees.

1190  
1191 **12.35.420 Nonexclusive Grant.** No franchise granted hereunder shall confer any exclusive  
1192 right, privilege or franchise to occupy or use the rights-of-way for delivery of  
1193 Telecommunications Services or any other purposes.

1194  
1195 **12.35.425 Rights Granted.**

- 1196 A. No franchise granted hereunder shall convey any right, title or interest in the rights-of-  
1197 way but shall be deemed a franchise only to use and occupy the rights-of-way for the  
1198 limited purposes and term stated in the grant.
- 1199 B. No franchise granted hereunder shall authorize or excuse a franchisee from securing such  
1200 further easements, leases, permits or other approvals as may be required to lawfully  
1201 occupy and use Rights-of-Way Excess Capacity in an Underground Facility or Surplus  
1202 Space in an Overhead Facility.
- 1203 C. No franchise granted hereunder shall be construed as any warranty of title.

1204  
1205 **12.35.430 Term of Grant.** Unless otherwise specified in a franchise or unless otherwise  
1206 renewed, a franchise granted hereunder shall be valid for a term of not more than five years.

1207  
1208 **12.35.435 Utility Right-of-Way Permits.** All franchisees are required to obtain utility  
1209 right-of-way permits as required in TMC 12.30.110 and pay all fees for Telecommunications  
1210 Facilities as required in TMC 12.30.130.

1211

1212 **12.35.440 Compensation to City.** Each franchise granted hereunder is subject to the City's  
1213 right, which is expressly reserved, to annually fix by ordinance a fair and reasonable  
1214 compensation for use of property pursuant to a franchise, provided nothing in this Chapter shall  
1215 prohibit the City and a franchisee from agreeing to the compensation to be paid.

1216  
1217 **12.35.455 Amendment of Grant.** If a Grantee is ordered by the City to locate or relocate  
1218 its Telecommunications Facilities in rights-of-way not included in a previously granted  
1219 franchise, the City shall grant a franchise amendment, if necessary, without further application.

1220  
1221 **12.35.460 Renewal Applications.**

- 1222 A. A franchisee that desires to renew its franchise hereunder shall, not more than 180 days  
1223 nor less than 90 days before expiration of the current franchise, file an application with  
1224 the City for renewal of its franchise which shall include the following information:  
1225 B. The applicable information required pursuant to the franchise.  
1226 C. Any other information required by the City consistent with federal law.

1227  
1228 **12.35.465 Renewal Determinations.** As soon as is practicable after receiving a complete  
1229 application in the form approved by the City Engineer and submitted to the City pursuant to  
1230 TMC 12.30.060, the City Council, in accordance with TMC 12.30.080B, and Chapter  
1231 35A.47.040 RCW, shall set a time and place for a public hearing on whether to grant or deny the  
1232 renewal application in whole or in part. If the decision is to deny, the record shall include the  
1233 reasons for non-renewal. When determining whether to recommend granting or denying the  
1234 application, the following criteria shall be considered:

- 1235 A. The standards enumerated in TMC 12.35.410,  
1236 B. The criteria set forth in TMC 12.30.100, and  
1237 C. The applicant's compliance with the requirements of this Chapter and the franchise.

1238  
1239 **12.35.470 Obligation to Cure as a Condition of Renewal.** No franchise shall be renewed  
1240 until any ongoing violations or defaults in the franchisee's obligations under the franchise or the  
1241 requirements of this Chapter, and all applicable laws, statutes, codes, ordinances, rules and  
1242 regulations have been cured, or a plan detailing the corrective action to be taken by the  
1243 franchisee has been approved by the City.

1244  
1245 **Article V - Cable Franchises**

1246  
1247 **12.35.500 Grant of Cable Franchise.** The City may grant one or more cable franchises  
1248 containing such provisions as are reasonably necessary to protect the public interest, and each  
1249 such cable franchise shall be awarded in accordance with and subject to the provisions of this  
1250 Chapter. This Chapter may be amended from time to time, and in no event shall this Chapter be  
1251 considered a contract between the City and a cable franchisee such that the City would be  
1252 prohibited from amending any provision hereof, provided no such amendment shall in any way  
1253 impair any contract right or increase obligations of a cable franchisee under an outstanding and  
1254 effective cable franchise except in the lawful exercise of the City's police power.

1255  
1256 **12.35.505 Cable Franchise Required.**

- 1257 A. No person may construct, operate or maintain a cable system or provide Cable Service

1258 over a cable system within the City without a cable franchise granted by the City  
1259 authorizing such activity. No person may be granted a cable franchise without having  
1260 entered into a cable franchise agreement with the City pursuant to this Chapter. For the  
1261 purpose of this provision, the operation of part or all of a cable system within the City  
1262 means the use or occupancy of rights-of-way by facilities used to provide Cable Service.  
1263 B. Telecommunications Facilities used to provide telephone service, which are also used to  
1264 provide Cable Service, shall be subject to this Chapter and shall also require a cable  
1265 franchise. Use of such facilities to provide services similar to Cable Service, such as  
1266 Open Video Service, shall be subject to this Chapter to the extent provided by law. A  
1267 system shall not be deemed as operating within the City even though service is offered or  
1268 rendered to one or more subscribers within the City, if no rights-of-way by facilities used  
1269 to provide Cable Service are used or occupied. All cable franchises granted pursuant to  
1270 this Article shall contain substantially similar terms and conditions, which, taken as a  
1271 whole and considering relevant characteristics of the applicants, do not provide more or  
1272 less favorable terms and conditions than those required of other cable franchisees.  
1273

1274 **12.35.510 Length of Cable Franchise.** Unless otherwise specified in a cable franchise, or  
1275 unless otherwise renewed, no cable franchise shall be granted for a period of more than five  
1276 years.  
1277

1278 **12.35.515 Cable Franchise Characteristics.**

- 1279 A. A cable franchise authorizes use of rights-of-way for installing, operating and  
1280 maintaining cables, wires, lines, optical fiber, underground conduit and other devices  
1281 necessary and appurtenant to the operation of a cable system to provide Cable Services  
1282 within the City, but does not expressly or implicitly authorize a cable franchisee to  
1283 provide service to, or install a cable system on private property without owner consent, or  
1284 to use publicly or privately owned poles, ducts or conduits without a separate agreement  
1285 with the owners.
- 1286 B. A cable franchise shall not mean or include any exclusive right or authorization for the  
1287 privilege of transacting and carrying on a business within the City as generally required  
1288 by the ordinances and laws of the City. A cable franchise shall not confer any authority  
1289 to provide Telecommunications Services or any other communications services besides  
1290 Cable Services. A cable franchise shall not confer any implicit rights other than those  
1291 mandated by federal, state or local law.
- 1292 C. A cable franchise is nonexclusive and will not explicitly or implicitly: preclude the  
1293 issuance of other cable franchises to operate cable systems within the City; affect the  
1294 City's right to authorize use of rights-of-way by other persons to operate cable systems or  
1295 for other purposes as it determines appropriate; or affect the City's right to itself  
1296 construct, operate or maintain a cable system, with or without a cable franchise.
- 1297 D. Once a cable franchise has been accepted and executed by the City and a cable  
1298 franchisee, such cable franchise shall constitute a valid and enforceable agreement  
1299 between the cable franchisee and the City, and the terms, conditions and provisions of  
1300 such franchise, subject to this Chapter and all other duly enacted and applicable laws and  
1301 regulations shall define the rights and obligations of the cable franchisee and the City  
1302 relating to the cable franchise.
- 1303 E. All privileges prescribed by a cable franchise shall be subordinate to any prior lawful

1304 occupancy of the rights-of-way and the City reserves the right to reasonably designate  
1305 where a cable franchisee's facilities are to be placed within the rights-of-way through its  
1306 generally applicable permit procedures.

1307 F. A cable franchise shall be a privilege that is in the public trust and personal to the original  
1308 cable franchisee. No cable franchise transfer shall occur without the prior written consent  
1309 of the City upon application made by the cable franchisee pursuant to this Chapter and  
1310 the cable franchise, which consent shall not be unreasonably withheld, and any purported  
1311 cable franchise transfer made without application and prior written consent shall be void  
1312 and shall be cause for the City to revoke the cable franchise.

1313  
1314 **12.35.520 Cable Franchisee Subject to Other Laws, Police Powers.**

1315 A. A cable franchisee shall at all times be subject to and shall comply with all applicable  
1316 federal, state and local laws and regulations, including this Chapter. A cable franchisee  
1317 shall at all times be subject to all lawful exercise of the police power of the City  
1318 including, but not limited to, all rights the City may have under the Cable Acts, all  
1319 powers regarding zoning, supervision of construction, control of rights-of-way and  
1320 consumer protection.

1321 B. The City shall have full authority to regulate cable systems, cable franchisees and cable  
1322 franchises as may now or hereafter be lawfully permissible.

1323  
1324 **12.35.525 Interpretation of Cable Franchise Terms.**

1325 A. In the event of a conflict between this Chapter and a cable franchise, the provisions of  
1326 this Chapter control except where the conflict arises from the lawful exercise of the  
1327 City's police power.

1328 B. The provisions of this Chapter and a cable franchise will be liberally construed in  
1329 accordance with generally accepted rules of construction to promote the public interest.

1330  
1331 **12.35.530 Operation of a Cable System without a Cable Franchise.** Any person who  
1332 occupies rights-of-way for the purpose of operating or constructing a cable system or provides  
1333 Cable Service over a cable system and who does not hold a valid cable franchise from the City  
1334 shall be subject to all requirements of this Chapter. At its discretion, the City at any time may by  
1335 ordinance: require such person to enter into a cable franchise within 30 days of receipt of a  
1336 written notice to such person from the City that a cable franchise is required; require such person  
1337 to remove its property and restore the affected area to a condition satisfactory to the City; direct  
1338 City personnel to remove the property and restore the affected area to a condition satisfactory to  
1339 the City and charge the person the costs therefore, including by placing a lien on the person's  
1340 property; or take any other action it is entitled to take under applicable law. In no event shall a  
1341 cable franchise be created unless it is issued by the City pursuant to this Chapter and subject to a  
1342 written cable franchise.

1343  
1344 **12.35.535 Acts at Cable Franchisee's Expense.** Any act that a cable franchisee is or may  
1345 be required to perform under this Chapter, a cable franchise or applicable law shall be performed  
1346 at the cable franchisee's expense.

1347  
1348 **12.35.540 Eminent Domain.** Nothing herein shall be deemed or construed to impair or  
1349 affect, in any way or to any extent, the City's power of eminent domain.

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**12.35.545 Exclusive Contracts and Anti-Competitive Acts Prohibited.**

- A. No cable franchisee or other multi-channel video programming distributor shall enter into or enforce an exclusive contract for the provision of Cable Service or other multi-channel video programming with any person, or demand the exclusive right to serve a person or location, as a condition of extending service to that or any other person or location.
- B. No cable franchisee or other multi-channel video programming distributor shall engage in acts that have the purpose or effect of limiting competition for the provision of Cable Services or services similar to Cable Service in the City.

**12.35.550 Cable Franchise Fees.** Cable franchisees shall be subject to the cable franchise fees, payments and costs provided in their cable franchise and herein. For purpose of cable franchise fees, “Gross revenues” shall mean all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent and/or any person in which the grantee has a financial interest, from providing cable television services within the City, including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes on services furnished by the grantee which are imposed directly upon any subscriber or user by the State of Washington, local or other governmental unit and collected by the grantee on behalf of said governmental unit.

**Article VI - Conditions to Grant Franchise or Cable Franchise**

**12.35.600 General Duties.**

- A. All Grantees, before commencing any construction in the rights-of-way shall comply with all requirements of the City of Tenino Rights-of-Way Standards Manual and Chapter 12.35.
- B. All Grantees shall provide, upon request, written confirmation sufficient for customary land survey and land title insurance purposes concerning the location of its facilities in rights-of-way and disclaiming any interest in rights-of-way where it has no franchise to construct or operate its facilities.

**12.35.602 Interference with the Rights-of-Way.** No Grantee may locate or maintain its Cable or Telecommunications Facilities so as to unreasonably interfere with the use of the rights-of-way by the City or other persons authorized to use or be present in or upon the rights-of-way. All such facilities shall be moved by and at the expense of the Grantee, temporarily or permanently, as determined by the City.

**12.35.604 Damage to Property.** No Grantee or any person acting on a Grantee’s behalf shall take any action or permit any action to be done which may impair or damage any rights-of-way, including specifically City Property, real or personal, or Public Ways or other property located in, on or adjacent thereto except in accordance with TMC 12.35.622.

**12.35.606 Notice of Work.** Unless otherwise provided in a franchise agreement, no Grantee, or any person acting on the Grantee’s behalf, shall commence any non-emergency work

1396 in or about rights-of-way unless work is conducted in accordance with TMC 12.30.110. Any  
1397 private property owner whose property will be affected by a Grantee's work shall be afforded ten  
1398 days advance written notice of such work.

1399  
1400 **12.35.608 Repair and Emergency Work.** In the event of an emergency or an emergency  
1401 repair necessary to protect the public, restore service or mitigate further damage to the system, a  
1402 Grantee may commence such repair and emergency response work as required under the  
1403 circumstances, provided the Grantee shall notify the City as promptly as possible, before such  
1404 repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

1405  
1406 **12.35.610 Maintenance of Facilities.** Each Grantee shall maintain its facilities in a good  
1407 and safe condition and in a manner that complies with all applicable federal, state and local  
1408 requirements.

1409  
1410 **12.35.612 Relocation or Removal of Facilities.** Within 30 days, or such longer period as  
1411 may be specified by the City, following written notice from the City, a Grantee shall, at its own  
1412 expense, temporarily or permanently remove, relocate, change or alter the position of any  
1413 Facilities within the rights-of-way whenever the City shall have determined that such removal,  
1414 relocation, change or alteration is reasonably necessary for:

- 1415 A. The construction, repair, maintenance or installation of any City or other public  
1416 improvement in or upon the rights-of-way.  
1417 B. The operations of the City or other governmental entity in or upon the rights-of-way.  
1418 C. The vacation of a street or the release of a utility easement.

1419  
1420 **12.35.614 Removal of Unauthorized Facilities.** Within 30 days following written notice  
1421 from the City, any Grantee, Telecommunications Carrier, or other person that owns, controls or  
1422 maintains any unauthorized Telecommunications System, Facility or related appurtenances  
1423 within the rights-of-way shall, at its own expense, remove such facilities or appurtenances from  
1424 the rights-of-way. If such Grantee fails to remove such facilities or appurtenances, the City may  
1425 cause the removal and charge the Grantee for the costs incurred. A Cable System,  
1426 Telecommunications System, or facility is unauthorized and subject to removal in the following  
1427 circumstances:

- 1428 A. Upon expiration or termination of the Grantee's franchise.  
1429 B. Upon abandonment of a facility within the rights-of-way.  
1430 C. If the system or facility was constructed or installed without the prior grant of a  
1431 franchise.  
1432 D. If the system or facility was constructed or installed without the prior issuance of a  
1433 required utility right-of-way permit.  
1434 E. If the system or facility was constructed or installed at a location not permitted by the  
1435 Grantee's franchise.  
1436 F. Any such other reasonable circumstances deemed necessary by the City engineer or  
1437 designee.

1438  
1439 **12.35.616 Failure to Relocate.** If a Grantee is required to relocate, change or alter the  
1440 Cable or Telecommunications Facilities constructed, operated and/or maintained hereunder and  
1441 fails to do so, the City may cause such to occur and charge the Grantee for the costs incurred.

1442  
1443 **12.35.618 Emergency Removal or Relocation of Facilities.** The City retains the right and  
1444 privilege to cut or move any Cable or Telecommunications Facilities located within the rights-of-  
1445 way as the City may determine to be necessary, appropriate or useful in response to any public  
1446 health or safety emergency.

1447  
1448 **12.35.620 Damage to Grantee's Facilities.** Unless directly and proximately caused by the  
1449 willful, intentional or malicious acts of the City, the City shall not be liable for any damage to or  
1450 loss of any Cable or Telecommunications Facility within rights-of-way as a result of or in  
1451 connection with any public works, public improvements, construction, excavation, grading,  
1452 filling, or work of any kind in the rights-of-way by or on behalf of the City.

1453  
1454 **12.35.622 Restoration of Rights-of-Way or Other Property.** Restoration shall comply  
1455 with the requirements outlined in TMC 12.30.240.

1456  
1457 **12.35.624 Facilities Maps.** Each Grantee shall provide the City with an accurate as-built  
1458 map or maps certifying the location of all Cable or Telecommunications Facilities within City  
1459 rights-of-way.

1460  
1461 **12.35.626 Duty to Provide Information.** Within ten days of a written request from the  
1462 City, each Grantee shall furnish the City with information sufficient to demonstrate:  
1463 A. That Grantee has complied with all requirements of this Chapter.  
1464 B. That all fees due the City in connection with the Cable Services and Cable or  
1465 Telecommunications Facilities provided by the Grantee have been properly paid.  
1466 C. That all books, records, maps and other documents maintained by the Grantee with  
1467 respect to its facilities within rights-of-way shall be made available for inspection by the  
1468 City at reasonable times and intervals.  
1469 D. That "as built" drawings have been completed of the work and are on file with the  
1470 Grantee.

1471  
1472 **12.35.628 Leased Capacity.** Subject to the provisions of TMC 12.35.642, a Grantee shall  
1473 have the right to offer or provide capacity to another, provided that the proposed lessee or person  
1474 complies with all of the requirements of this Chapter and furnishes reasonable information upon  
1475 request to ensure compliance with this Chapter.

1476  
1477 **12.35.630 Grantee Insurance.** Unless otherwise provided, each Grantee shall, as a  
1478 condition of the grant, secure and maintain the following liability insurance policies insuring  
1479 both the Grantee and the City, and its elected and appointed officers, officials, agents,  
1480 representatives and employees as additional insured individuals:

1481 A. Comprehensive general liability insurance with limits not less than:  
1482 1. 2,000,000.00 for bodily injury or death to each person;  
1483 2. \$2,000,000.00 for property damage resulting from any one accident; and  
1484 3. \$2,000,000.00 for all other types of liability.  
1485 B. Automobile liability for owned, non-owned and hired vehicles with a limit of  
1486 \$1,000,000.00 for each person and \$3,000,000.00 for each accident.  
1487 C. Workers' compensation within statutory limits and employer's liability insurance with

- 1488 limits of not less than \$1,000,000.00.
- 1489 D. Comprehensive form premises-operations, explosions and collapse hazard, underground
- 1490 hazard and products completed operation hazard policies with limits of not less than
- 1491 \$2,000,000.00.
- 1492 E. The liability insurance policies required by this Section shall be maintained at all times
- 1493 by the Grantee. Each such insurance policy shall contain the following endorsement:
- 1494 "It is hereby understood and agreed that this policy may not be canceled nor the
- 1495 intention not to renew be stated until 90 days after receipt by the City, by registered
- 1496 mail, of a written notice addressed to the City Risk Manager of such intent to cancel
- 1497 or not to renew."
- 1498 F. Within 60 days after receipt by the City of said notice, and in no event later than 30 days
- 1499 prior to said cancellation, the Grantee shall obtain and furnish to the City replacement
- 1500 insurance policies meeting the requirements of this Chapter.
- 1501 G. If Grantee can show to the City Risk Manager's satisfaction that an entity is
- 1502 financially able to self insure the exposures, a substitution for insurance will be
- 1503 considered.
- 1504

1505 **12.35.632 General Indemnification.** In addition to and distinct from the insurance

1506 requirements of this Chapter, each Grantee hereby agrees to defend, indemnify and hold the City

1507 and its officers, officials, employees, agents and representatives harmless from and against any

1508 and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or

1509 defense, arising out of, resulting from or alleged to arise out of or result from the acts, omissions,

1510 failure to act or misconduct of the Grantee or its affiliates, officers, employees, agents,

1511 contractors or subcontractors in the construction, operation, maintenance, repair or removal of its

1512 Cable or Telecommunications Facilities, and in providing or offering Cable Services over the

1513 facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this

1514 Chapter or by a grant agreement made or entered into pursuant to this Chapter.

1515

1516 **12.35.634 Performance and Restoration Surety.** Before a franchise granted pursuant to

1517 this Chapter is effective, and as necessary thereafter, the Grantee shall provide and deposit such

1518 monies, bonds, letters of credit or other instruments in form and substance acceptable to the City

1519 as may be required by this Chapter, or by an applicable franchise or other applicable code,

1520 ordinance, or rules and regulations of the City.

1521

1522 **12.35.638 Restoration Bond.** Unless otherwise provided in a franchise, a restoration bond

1523 written by a surety acceptable to the City equal to at least 100 percent of the estimated cost of

1524 restoration as required as a result of constructing the Grantee's Cable or Telecommunications

1525 facilities within rights-of-way shall be deposited before construction is commenced. An

1526 applicant's status as a "Utility in Good Standing" pursuant to TMC 12.30.140 may be considered

1527 in setting, or reducing below 100 percent of the estimated cost of restoration, the appropriate

1528 restoration bond amount.

1529 A. The restoration bond shall remain in force until 60 days after substantial completion of

1530 the work, as determined by the City Engineer or designee, including restoration of all

1531 rights-of-way and other property affected by the construction.

1532 B. The restoration bond shall guarantee to the satisfaction of the City:

1533 1. Timely completion of restoration;

- 1534 2. Restoration in compliance with applicable plans, permits, technical codes and  
1535 standards;  
1536 3. Proper restoration of the facilities as specified by the City; and  
1537 4. Restoration of the rights-of-way and any other property affected by the construction.  
1538

1539 **12.35.640 Coordination of Construction Activities.** All Grantees are required to cooperate  
1540 with the City and with each other. Therefore, coordination of all work shall be in accordance  
1541 with Chapter 12.30 TMC and the project coordination provisions contained in the City of Tenino  
1542 Right-of-Ways Standards Manual.  
1543

1544 **12.35.642 Assignments or Transfers of Grant of Cable Franchise.** Ownership or control of a  
1545 Cable Television System or franchise or any part of transmission capacity may not directly or  
1546 indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation, or other  
1547 act of the Grantee, by operation of law or otherwise, nor may there be a transfer of working  
1548 control (which includes not only actual control, but also the ability to affect or influence  
1549 decisions) without the prior written consent of the City, which consent shall not be unreasonably  
1550 withheld or delayed, as expressed by ordinance and then on such conditions as may be prescribed  
1551 therein and:

- 1552 A. No grant shall be assigned or transferred in any manner within 12 months after the initial  
1553 grant of the franchise, unless otherwise provided by law.  
1554 B. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part  
1555 of a system shall be assigned or transferred before construction of the Cable Television  
1556 System has been completed, unless otherwise provided by law.  
1557 C. The Grantee and the proposed assignee or transferee of the grant or system shall provide  
1558 and certify the following information to the City Executive or designee.  
1559 1. Information setting forth the nature, terms and conditions of the proposed transfer or  
1560 assignment;  
1561 2. All information required of a franchise applicant pursuant to this Chapter with respect  
1562 to the proposed transferee or assignee;  
1563 3. All information required by federal, state and local law or regulation. [For Example,  
1564 Federal Communication Commission Form 394];  
1565 4. Any other information reasonably required by the City Executive or designee. If the  
1566 City requests a copy of the deed, agreement, or other written instrument from the  
1567 Grantee evidencing such sale, merger, consolidation, or other instrument evidencing  
1568 transfer of actual or working control, such document may be redacted to delete  
1569 monetary compensation terms. However, this provision does not limit or waive the  
1570 City's authority to require disclosure of monetary compensation terms or other  
1571 financial information from the transferee or assignee prior to City consent in order to  
1572 evaluate its financial condition and ability to meet its compliance obligations under  
1573 this Chapter and any franchise agreement.  
1574 D. No transfer shall be approved unless the assignee or transferee has the legal, technical,  
1575 financial, and other qualifications in City's reasonable discretion to own, hold and  
1576 operate the Cable Television System pursuant to this Chapter.  
1577 E. The Grantee shall reimburse the City for all direct and indirect fees, costs and expenses  
1578 incurred by the City in considering a request to transfer ownership in or assign a  
1579 franchise.

- 1580 F. Any transfer of ownership in or assignment of a franchise, system or integral part of a  
1581 system without prior approval of the City under this Chapter shall be void and is cause  
1582 for revocation of the grant.
- 1583 G. Upon receipt of all information required herein, and any other information required by  
1584 the City, the City shall have 120 days to review and approve or deny the requested  
1585 assignment or transfer, unless such period is extended by agreement of the City and  
1586 Grantee.

1587

1588 **12.35.644 Transactions Affecting Control of Grant of Cable Franchise.** Unless  
1589 otherwise provided in the franchise, any transaction which results in any change of the  
1590 ownership or in any manner the working control of the Grantee, of the ownership or working  
1591 control of a franchise, of the ownership or working control of affiliated entities having ownership  
1592 or working control of the Grantee or of a Cable Television System, or of control of the capacity  
1593 or bandwidth or any part of the transmission capacity of the Grantee's Cable Television System,  
1594 Facilities or any parts thereof, all defined as 5 percent or more ownership or control, shall be  
1595 considered an assignment or transfer requiring City approval hereunder. Transactions between  
1596 wholly owned subsidiaries or affiliated entities are exempt from City approval.

1597

1598 **12.35.646 Revocation or Termination of Grant.** A franchise granted by the City to use or  
1599 occupy rights-of-way may be revoked for any one or more of the following reasons:

- 1600 A. Construction or operation at an unauthorized location.  
1601 B. Unauthorized transfer of control of the Grantee of a cable franchise.  
1602 C. Unauthorized assignment of a cable franchise.  
1603 D. Unauthorized sale, assignment or transfer of the Grantee's cable franchise assets or an  
1604 interest therein.  
1605 E. Misrepresentation by or on behalf of a Grantee in any application to the City.  
1606 F. Abandonment of Telecommunications Facilities in the rights-of-way.  
1607 G. Failure to relocate or remove facilities as required in this Chapter.  
1608 H. Failure to pay taxes, compensation, fees or costs when and as due the City.  
1609 I. Insolvency or bankruptcy of the Grantee.  
1610 J. Violation of a material provision of this Chapter.  
1611 K. Violation of a material term of a franchise.

1612

1613 **12.35.648 Notice and Duty to Cure.** In the event that the City believes that grounds exist  
1614 for revocation of a franchise, the Grantee shall be given written notice of the apparent violation  
1615 or noncompliance, be provided a short and concise statement of the nature and general facts of  
1616 the violation or noncompliance, and be given a reasonable period of time not exceeding 30 days  
1617 to furnish evidence:

- 1618 A. That corrective action has been, or is being actively and expeditiously pursued, to remedy  
1619 the violation or noncompliance.  
1620 B. That rebuts the alleged violation or noncompliance.  
1621 C. That it would be in the public interest to impose some monetary damages, penalty or  
1622 sanction less than revocation.

1623

1624 **12.35.650 Hearing.** In the event that a Grantee fails to provide evidence reasonably  
1625 satisfactory to the City designee as provided hereunder, the City shall refer the apparent violation

1626 or noncompliance to the City Council. The City shall provide the Grantee with notice and a  
1627 reasonable opportunity to be heard concerning the matter.

1628  
1629 **12.35.652 Standards for Revocation or Lesser Sanctions.** If persuaded that the Grantee  
1630 has violated or failed to comply with a material provision of this Chapter or of a franchise or  
1631 applicable codes, ordinances, statutes, rules, or regulations, the City Council shall determine  
1632 whether to revoke the franchise, and issue a written decision relating thereto, or to establish some  
1633 monetary damages, penalty, lesser sanction and cure, considering the nature, circumstances,  
1634 extent and gravity of the violation as reflected by one or more of the following factors, whether:

- 1635 A. The misconduct was egregious.
- 1636 B. Substantial harm resulted.
- 1637 C. The violation was intentional.
- 1638 D. There is a history of prior violations of the same or other requirements.
- 1639 E. There is a history of overall compliance.
- 1640 F. The violation was voluntarily disclosed, admitted or cured.

1641  
1642 **Article VII - Construction**

1643  
1644 **12.35.700 Construction Standards.** No person shall commence or continue with the  
1645 construction, installation or operation of Cable or Telecommunications Facilities within the City  
1646 except as provided in Chapter 12.30 TMC.

1647  
1648 **12.35.705 Construction Codes.** Cable or Telecommunications Facilities shall be  
1649 constructed, installed, operated and maintained in accordance with all applicable federal, state  
1650 and City codes, rules and regulations including, but not limited to, the National Electrical Safety  
1651 Code.

1652  
1653 **12.35.710 Utility Right-of-Way Permits.** No person shall construct or install any Cable or  
1654 Telecommunications Facilities within the City without first obtaining a utility right-of-way  
1655 permit therefore, provided, however:

- 1656 A. No permit shall be issued for the construction or installation of Cable or  
1657 Telecommunications Facilities within the City unless the Grantee has filed a  
1658 registration statement with the City pursuant to this Chapter.
- 1659 B. No permit shall be issued for the construction or installation of Cable or  
1660 Telecommunications Facilities in rights-of-way unless the Grantee has applied for and  
1661 received a franchise pursuant to this Chapter.
- 1662 C. No permit shall be issued for the construction or installation of Cable or  
1663 Telecommunications Facilities without payment of all fees pursuant to this Chapter.

1664  
1665 **12.35.715 Applications.** Applications for permits to construct Cable or  
1666 Telecommunications Facilities shall be submitted in accordance with Chapter 12.30 TMC. The  
1667 applicant shall pay all associated fees and shall include any additional information necessary to  
1668 process the permit as requested by the City. The application shall be accompanied by drawings,  
1669 plans, and specifications in sufficient detail to demonstrate:

- 1670 A. That the facilities will be constructed in accordance with all applicable codes, rules and  
1671 regulations.

- 1672 B. The location and route of all facilities to be installed on existing utility poles.
- 1673 C. The location and route of all facilities to be located under the surface of the ground,
- 1674 including the line and grade proposed for the burial at all points along the route which are
- 1675 within the rights-of-way.
- 1676 D. The location of all other facilities to be constructed within the City, but not within rights-
- 1677 of-way.
- 1678 E. The construction methods to be employed for protection of existing structures, fixtures
- 1679 and facilities within or adjacent to rights-of-way.

1680  
1681 **12.35.720 Construction Surety.** Prior to issuance of a utility right-of-way permit, the  
1682 permittee shall provide a restoration bond, as provided in TMC 12.35.638.

1683  
1684 **12.35.725 Location of Facilities.** Unless otherwise specified in a franchise or cable  
1685 franchise, all facilities shall be constructed, installed and located in accordance with the  
1686 following terms and conditions:

- 1687 A. Cable or Telecommunications Facilities shall be installed within an existing City owned
- 1688 underground duct or conduit whenever Excess Capacity exists. Otherwise, installation of
- 1689 such facilities shall be done using methods consistent with the standards, codes, and
- 1690 regulations applicable to the type of facilities being installed and City’s “Manual on
- 1691 Accommodating Utilities in City Right-of-Way”.
- 1692 B. A franchisee with written authorization to install Overhead Facilities shall install its
- 1693 facilities on pole attachments to existing utility poles only, and then only if Surplus Space
- 1694 is available. Installation of new poles may be approved by the City Engineer on a case-
- 1695 by-case basis.
- 1696 C. Whenever all existing telephone, electric utilities, cable facilities and Cable or
- 1697 Telecommunications Facilities are located underground within rights-of-way a restricted
- 1698 franchisee with written authorization to occupy the same rights-of-way must also locate
- 1699 its Telecommunications Facilities underground.
- 1700 D. Whenever all new or existing telephone, electric utilities, cable facilities and
- 1701 Telecommunications Facilities are located or relocated underground within rights-of-
- 1702 way, a franchisee that currently occupies the same rights-of-way shall concurrently
- 1703 relocate its facilities underground at its expense.

1704  
1705 **12.35.730 Conduit Occupancy.** In furtherance of the public purpose of reduction of right-

1706 of-way excavation, it is the goal of the City to encourage both the shared occupancy of

1707 underground conduit as well as the construction, whenever possible, of excess conduit capacity

1708 for occupancy of future right-of-way occupants.

1709  
1710 **12.34.735 Franchisee Occupancy of City Owned Conduit.** If the City owns conduit in the

1711 path of Franchisee’s proposed Cable or Telecommunications Facilities, and provided it is

1712 technologically feasible for Franchisee to occupy the conduit owned by City, Franchisee shall be

1713 required to occupy the conduit owned by the City in order to reduce the necessity to excavate the

1714 right-of-way. Franchisee shall pay to the City a fee for such occupancy which shall be the cost

1715 Franchisee would have expended to construct its own conduit from the outset, as certified by the

1716 Franchisee’s engineer and approved by the City. The City and the Franchisee may agree to

1717 amortize the fee through annual payments to the City over the term of the Franchise, including

1718 the time value of money.

## 1719 **Article VIII - Fees**

1720

1721 **12.35.810 Application and Review Fee.** Any applicant for a franchise pursuant to this  
1722 Chapter shall pay an application review and processing fee pursuant to TMC 12.30.070. This fee  
1723 covers the costs incurred by the Department in reviewing and processing a franchise application.

1724

1725 **12.35.850 Reserved Compensation for Use of Rights-of-Way.** The City reserves its right  
1726 to fix a fair and reasonable compensation to be paid for the authorization granted to a Grantee.  
1727 Nothing in this Chapter shall prohibit the City and Grantee from agreeing to said compensation.

1728

1729 **12.35.860 Compensation for use of City Property.**

1730

1731 A. If the right is granted by lease, franchise or other manner, to use and occupy City Property  
1732 for the installation or use of Cable or Telecommunications Facilities, the compensation to  
1733 be paid shall be fixed solely by the City.

1734 B. All franchises agreements executed by the City shall include terms requiring a grantee to  
1735 pay a fee in consideration of the privilege granted under a franchise agreement to use the  
1736 public right-of-way and the privilege to construct and/or operate in the City. Said  
1737 franchise fee shall provide the City with compensation equal to six percent of the gross  
1738 revenues generated by the grantee within the City unless limited by state or federal law;  
1739 provided, however, that this fee may be offset by any utility tax paid by grantee or in-kind  
1740 facilities or services provided to the City. Any grantee that does not provide revenue-  
1741 generating services within the city shall provide alternate compensation as set out in the  
1742 franchise agreement.

1743 C. In the event that any franchise payment is not received by the city on or before the  
1744 applicable due date, interest shall be charged from such date at the statutory rate for  
1745 judgments.

1746 D. In the event a franchise is revoked or otherwise terminated prior to its expiration date, a  
1747 grantee shall file with the city, within 90 days of the date of revocation or termination, a  
1748 verified or, if available, an audited financial statement showing the gross revenues  
1749 received by the grantee since the end of the previous year and shall make adjustments at  
1750 that time for the franchise fees due up to the date of revocation or termination.

1751 E. Nothing in this chapter shall limit the city's authority to tax a grantee, or to collect any fee  
1752 or charge permitted by law, and no immunity from any such obligations shall attach to a  
1753 grantee by virtue of this chapter.

1754

1755 **12.35.870 Utility Right-of-Way Permit Fee.** Prior to issuance of a utility right-of-way  
1756 permit, the permittee shall pay a permit fee in accordance with TMC 12.30.130.

1757

1758 **12.35.880 Regulatory Fees and Compensation Not a Tax.** The regulatory fees and costs  
1759 provided for in this Chapter, and any compensation charged and paid for use of rights-of-way  
1760 provided for herein, are to the extent provided by law, separate from, and additional to, any and  
1761 all federal, state, local and City taxes as may be levied, imposed or due from a Cable or  
1762 Telecommunications Carrier or Provider, its customers or subscribers, or on account of the lease,  
1763 sale, delivery or transmission of Cable Services.

**Article IX - Miscellaneous**

1764  
1765  
1766  
1767  
1768  
1769  
1770  
1771

**12.35.900 Context.**

- A. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.
- B. This Chapter shall be in full force and effect from and after its passage, approval and publication in the form as provided by law.



1773 *Chapter 12.40*

1774

1775

*REFUSE ON RIGHT-OF-WAY*

1776

1777 **Sections:**

1778 **12.40.010 Vehicles - Escape of Load**

1779 **12.40.020 Unlawful to Deposit Material on Right-of-Way**

1780 **12.40.030 Identification of Owner - Evidence of Dumping Material**

1781 **12.40.040 Obstructing or Impairing Use of Streets**

1782

1783

1784

1785 **12.40.010 Vehicles - Escape of Load.** No vehicle shall be driven or moved on a City public  
1786 right-of-way unless such vehicle is so constructed or loaded as to prevent any of its load from  
1787 dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for  
1788 the purpose of securing traction, or water may be sprayed on roadways in the cleaning and  
1789 maintaining of such roadways by public authority having such jurisdiction. Any person  
1790 operating a vehicle from which any objects have fallen or escaped shall immediately cause the  
1791 street and rights-of-way to be cleaned of all such objects.

1792

1793 **12.40.020 Unlawful to Deposit Material on Right-of-Way.** It is unlawful for any person  
1794 to deposit or allow to be deposited any material upon any public City right-of-way, or upon  
1795 private or public property adjoining the public right-of-way, on either side of the right-of-way,  
1796 except at duly designated dumping places as set out and so marked and authorized by the City or  
1797 otherwise permitted by the owners of adjoining private property or by constituted public  
1798 authority. Any person violating this Section shall be responsible for the removal of the material  
1799 within 24 hours of the receipt of written notice from the City. If the material(s) are not removed  
1800 within 24 hours, the violator shall be responsible for all costs incurred by the City to remove the  
1801 materials.

1802

1803 **12.40.030 Identification of Owner - Evidence of Dumping Material.** Identification of the  
1804 owner and location of any material of any nature found upon private or public property adjoining  
1805 or on any City right-of-way shall be considered as prima facie evidence of its having been  
1806 illegally deposited upon the public or private property or public highway by the identified owner  
1807 of the material, as designated in Section 12.40.020.

1808

1809 **12.40.040 Obstructing or Impairing Use of Streets.** It is unlawful for any person to  
1810 deposit any material, rubbish, trash or vehicles, operable or otherwise, to encumber any of the  
1811 streets or alleys of the City, by placing or leaving thereon any material, rubbish, trash or vehicles,  
1812 operable or otherwise, that will in any way encumber the streets or alleys, or make them less  
1813 easy of access than they are, or in any way make them unusable for travel, except at provided by  
1814 TMC Section 12.25.010D.

1815



1817 *Chapter 12.45*

1818

1819

1820

***STREET NAMING AND HOUSE NUMBERING***

1821

1822

1823 **Sections:**

1824 **12.45.010 Map and Street List**

1825 **12.45.020 System Generally**

1826 **12.45.030 Street Signs**

1827 **12.45.040 Street Designations**

1828 **12.45.050 Grid Numbering System**

1829 **12.45.060 Multiple Occupancies**

1830 **12.45.070 Posting of Building Numbers**

1831 **12.45.080 Street Names**

1832 **12.45.090 Changes to Names and/or Numbers**

1833 **12.45.100 Newly Annexed Areas**

1834

1835

1836 **12.45.010 Map and Street List.** The Public Works Department shall develop and maintain  
1837 maps indicating street names and house numbering. The department shall maintain a file of  
1838 existing street names and be responsible for ensuring that proposed street names are in  
1839 conformance with this chapter and do not duplicate existing street names. Such map or maps  
1840 shall be adopted by the City Council; provided, however, that the Council may modify such  
1841 maps as it deems appropriate.

1842

1843 **12.45.020 System Generally.**

1844 A. The system starts at the intersection of Sussex Avenue and Hodgden Street, going to the  
1845 four general compass points (north, east, west, and south).

1846 B. Each block or equivalent shall be allotted one hundred numbers, to be prorated according  
1847 to the length of each block.

1848

1849 **12.45.030 Street Signs.**

1850 A. The Public Works Department shall provide new street signs in areas annexed to the city,  
1851 provided that the Council may require the property owners in the annexation area to pay  
1852 the cost of such signs as a condition of annexation.

1853 B. All repairs and replacements of street signs will be accomplished by the City. If a street  
1854 sign needs repair or replacement as a result of negligence or willful action of a person,  
1855 the cost of the repair or replacement shall be paid by the person legally responsible.

1856 C. All new street and road signs in the City shall display street names, then the direction  
1857 (north, east, west, or south) as the suffix. Signs shall display the 100 block number.

1858

1859 **12.45.040 Street Designations.** The following street designations shall apply to street and  
1860 road names, streets, road signs and to addresses:

1861 A. Avenues. All east-west trending thoroughfares.

1862 B. Streets. All north-south trending thoroughfares.

- 1863 C. Road. Determined by the Council where the name has longstanding meaning or public  
1864 sentiment.  
1865 D. Places. All north-south trending streets parallel to, but between avenues.  
1866 E. Courts. Cul-de-sacs which cannot be extended.  
1867 F. Loops. Small loop-type streets to carry the name of the street from which they originate.  
1868 G. Lanes. Private streets or streets in subdivisions.  
1869 H. Alleys. A hyphenated name using the parallel streets on either side of that alley.

1870

1871 **12.45.050 Grid numbering system.**

- 1872 A. One Hundred Grid Block. The one hundred block for street naming and house  
1873 numbering shall be determined by consulting the official grid map. Grid maps indicating  
1874 the location of one-hundred block grid lines shall be prepared at a one inch to four  
1875 hundred foot scale map and made available for use at a later date.

- 1876 B. Numbering Interval.

- 1877 1. A number shall be assigned to each city lot counted from the initial point of each  
1878 block, which point shall be the center of the adjoining right-of-way; provided, that  
1879 where a street is not cut through a block, thereby making an incomplete intersection,  
1880 the next higher centennial number shall be used (beginning at the center of such  
1881 intersection).  
1882 2. The assignment of a number to a specific property location shall be determined by  
1883 measuring distances from the one-hundred block grid lines.  
1884 3. A number shall be assigned each space of twenty feet, as measured from the one-  
1885 hundred block grid line.  
1886 4. Measurements shall be taken from the grid line to the main entrance of the building or  
1887 property for the purpose of assigning numbers.

- 1888 C. Number Assignment. Number assignment shall be as follows:

- 1889 1. Even numbers shall be assigned to north and east sides of streets; odd numbers shall  
1890 be assigned to south and west sides of streets. Determination of street direction,  
1891 north-south or east-west, can be decided by observing the overall length of a street  
1892 and noting its general direction. The even and odd numbers shall be assigned  
1893 consecutively and opposite one another wherever possible. Neither numeric fractions  
1894 nor alphabetical letters shall be assigned as part of the unique address for stand-alone  
1895 structures. All quadrant directionals (NW, SW, NE, SE) shall appear only after the  
1896 street name. There will be no double directionals (e.g., S. Hodgden Street S.). Where  
1897 a street is prevented from being continuous by a natural barrier the addressing will be  
1898 broken off at the barrier and continued again at the other side of the barrier consistent  
1899 with the appropriate 100 grid block on the official grid map as described above.  
1900 2. Short loops and cul-de-sacs shall be numbered consecutively from that point where  
1901 they originate and proceeding progressively around the loop or cul-de-sac.  
1902 3. Each building of multi-family developments will have assigned a numbered address  
1903 taken from the street each building fronts. Interior streets within multi-family  
1904 developments will be named and such names will be approved as defined in this  
1905 Chapter. Each of the multi-family buildings fronting an interior street will be  
1906 numbered from said street. Each unit within a multi-family building will also be  
1907 identified (e.g., 1015 Private Lane E, Unit #101). The unit numbering will be from  
1908 left to right as seen facing the building. The first digit of each unit number will

- 1909 indicate on which floor of the building each unit is located (i.e., #101 first floor, #201  
1910 second floor, etc.).
- 1911 4. In large commercial development projects with a single access from a main street and  
1912 a shared parking lot each building will be individually numbered from the main street.  
1913 For those projects fronting on intersecting streets each building will be individually  
1914 numbered from the intersecting street of which it fronts. Each tenant suite within a  
1915 commercial building will also be identified (e.g., 1013 Sussex Ave E Suite #201).  
1916 The suite numbering will be from left to right as seen facing the building. The first  
1917 digit of each suite number will indicate on which floor of the building each suite is  
1918 located (i.e., #101 first floor, #201 second floor, etc.).
- 1919 5. If a building covers more than one designate space, the number shall be determined  
1920 by the space on which the principal entrance is located.
- 1921 D. Extension of Grid System. The grid system shall be extended at the rate of ten blocks per  
1922 mile, or as determined by the grid pattern as shown on the official map. The grid shall  
1923 increase by one-thousand at section lines, or as shown on the official map.
- 1924 E. In case of doubt, or where a question arises as to the proper number to be assigned to any  
1925 lot or building, the building official shall designate the number of such lot or building.  
1926

1927 **12.45.060 Multiple Occupancies.** Where more than one occupancy occurs in a city lot,  
1928 both shall bear the same number but the farthest one from the preceding occupancy shall have ½  
1929 added thereto.

1930  
1931 **12.45.070 Posting of Building Numbers.**

- 1932 A. It is the duty of the owners or occupants of all dwellings, apartments, hotels, commercial  
1933 establishments, and other buildings to number such buildings with numerals, and/or  
1934 letters, not less than 3.5 inches in height, or of such contrasting color and so located as to  
1935 be readily visible from the street in daylight or when a light is shined upon it at night.  
1936 This requirement also applies to such buildings that have access to an alley.
- 1937 B. The building department shall, on all building permits for new residences, building,  
1938 structures or places of business, with exception to sheds and other accessory buildings,  
1939 assign an address number consistent with this chapter. On building permits other than  
1940 new construction, the building department shall ensure that the address listed thereon is  
1941 consistent with this chapter.
- 1942 C. If the owner or occupant of any building fails, refuses or neglects to post the number as  
1943 required or replace it when necessary, a written notice shall be provided to same,  
1944 directing that the numbers and/or letters be properly posted or replaced within 10-days  
1945 after receipt of the notice or be in violation of this chapter.  
1946

1947 **12.45.080 Street Names.** Prior to assigning street names, all proposals will be provided by  
1948 the City to the Thurston County Department of Communications for concurrence that the street  
1949 name does not conflict or have similarity to existing names anywhere within Thurston County.  
1950

1951 **12.45.090 Changes to Names and/or Numbers.**

- 1952 B. Minor changes, or corrections, to numbers can be made administratively by the  
1953 community development department following the written request of a residential or

1954 commercial occupant. Minor changes can also be initiated by staff when in the interest of  
1955 public safety.

1956 C. Major changes, such as 100 block re-numbering or street name changes may be initiated  
1957 by a written request from a residential or commercial occupant, or by the Community  
1958 Development Department in the interest of public safety and/or public benefits. In either  
1959 case, the building official shall convene a review committee to include, but not limited to,  
1960 representative of the Police, Fire, Public Works and Planning Department.

1961 D. If the committee determines that a change should be made, a proposed plan shall be  
1962 prepared and the affected neighborhood or commercial area notified for comment. The  
1963 committee shall review any comments received and determine if the public safety interest  
1964 is best served by the proposed change. Such determination must be made prior to any  
1965 such change being effected.

1966  
1967 **12.45.100 Newly Annexed Areas.** All newly annexed areas will be re-addressed if it is  
1968 determined that the existing addressing is inconsistent with the standards set forth in this  
1969 Chapter, the 100 grid block designations are inconsistent with the existing city 100 block grid  
1970 system, or street names duplicate existing City street names.  
1971

*STREET CLOSURES*

1977 **Sections:**

1978 **12.50.010 Purpose**

1979 **12.50.020 Vehicle Presence as Evidence**

1980 **12.50.030 Authority of Public Works Director**

1981 **12.50.040 Barriers and Markers**

1982 **12.50.050 Prior Notice**

1983 **12.50.060 Driving on Closed Streets**

1986 **12.50.010 Purpose.** The purpose of this Chapter is to protect persons and property from  
1987 injury or damage when the Council finds, after a survey, that it is necessary to close certain  
1988 streets within the City against partial or complete vehicular travel.

1990 **12.50.020 Authority of Public Works Director.** Whenever any street, alley or public way,  
1991 or part thereof in the City, is undergoing construction work, repairs or improvement to the  
1992 surface of, or excavation over, across or near any street, alley or public way, or whenever for any  
1993 reason any such street, alley or public way is in a condition which renders traffic thereon  
1994 dangerous to persons or property, or whenever such traffic would materially interfere with such  
1995 construction work or repairs, or cause damage to any such street, alley or public way, then the  
1996 Public Works Director, by the direction of the City Council, shall have power and authority to  
1997 temporarily close to traffic such streets, alleys or public ways, or to limit the character of the  
1998 traffic thereon, for such length of time and in such manner as in their judgment is necessary.

2000 **12.50.030 Barriers and markers.** Whenever the City Council deems it necessary to close  
2001 any street, alley or public way or to limit the traffic thereon, as provided in Section 12.20.020,  
2002 the Public Works Director shall erect suitable barriers indicating the part or parts of such streets,  
2003 alleys or public ways as are affected, together with a sign or signs sufficient in number and  
2004 character to give reasonable notice to the public that such street, alley or public way is closed, or  
2005 traffic thereon restricted, and shall cause to be placed at the entrance or approach to any part of  
2006 the street, alley or public way, so temporarily closed, and maintain thereon, at all hours between  
2007 dark and daylight, sufficient number of red lights or beacons, to give warning to the public of the  
2008 condition of such street, alley or public way.

2010 **12.50.040 Prior notice.** Before any street, alley or public way is closed to any vehicle or  
2011 class of vehicles, as provided in this chapter, a notice of the date on and after which the same, or  
2012 any part thereof, shall be closed, and the definite period of closing, and whether it shall be closed  
2013 to all vehicles or to vehicles of a particular class or classes, shall be published in one issue of a  
2014 newspaper of general circulation in the City, and like notices shall be posted on, or prior to the  
2015 date of publication of such notice, in a conspicuous place at each end of the portion to be closed;  
2016 provided, that no such street, alley or public way, or portion thereof, shall be closed sooner than  
2017 three days after publication and posting of the notice provided for in this section; provided,

2018 however, that in case of emergency, the Public Works Director, by order of the City Council  
2019 may, without publication or delay, close such streets, alleys or public ways temporarily by  
2020 posting notices at each end of the closed portion thereof and at all intersecting highways and at  
2021 all intersecting city streets. In all emergency cases, as provided in this chapter, the orders of the  
2022 City Council and Public Works Director shall be immediately effective.  
2023

2024 **12.50.050 Driving on Closed Streets.** Any person, firm or corporation who drives upon  
2025 any part of any street, alley or public way that has been closed to traffic, or on which traffic has  
2026 been restricted by order of the City Council and the Public Works Director, or who removes,  
2027 tears down or molests any barriers, signs, lights or signals placed upon any such street, alley or  
2028 public way by the Public Works Director, which are intended to give notice to the public of the  
2029 closing of such street, alley or public way, or warning of its condition, is subject to the provisions  
2030 of Section 12.20.070 below.  
2031

2032 **12.50.060 Vehicle Presence as Evidence.** The presence of any person upon any part of  
2033 such street, alley or public way, which has been closed by the Public Works Director upon order  
2034 of the City Council, with any vehicle, is prima facie evidence that the person has violated the  
2035 provisions of this chapter.  
2036  
2037  
2038

2039 *Chapter 12.55*

2040

2041

**WAR MEMIORIAL SWIMMING POOL**

2042

2043

2044 **Sections:**

2045 **12.55.010 Definitions**

2046 **12.55.020 Pool rules**

2047

2048

2049 **12.55.010 Definitions:**

2050 D. Adult pool. The pool located at the west end of the park and with depth of more than  
2051 eight feet.

2052 E. Bathhouse. Buildings used for the pool facilities dressing rooms and lavatories.

2053 F. Children’s pool. That portion of the pool at the east end of the park with a depth of from  
2054 one to three feet as used in this chapter.

2055 G. Fences. Any and all fences which enclose the War Memorial Swimming Pool.

2056 H. Lifeguard and/or Instructor. A person hired or appointed by the City to supervise Pool  
2057 activities and swimmers.

2058 I. War Memorial Swimming Pool. The entire pool and grounds located on Lot 3, S19,  
2059 T16N, R01W, known as the Old Tenino Quarry.

2060

2061 **12.55.020 Pool Rules.** The City has equipped and maintains the War Memorial Swimming  
2062 Pool for the pleasure and benefit of a wide range of citizens as a regional activity center. The  
2063 following rules and regulations shall apply for its use:

2064 A. The fee for use of this facility is established by Resolution of the City Council, which  
2065 may be amended from time-to-time.

2066 B. It is unlawful for anyone to make use of any portion of the pool during hours when the  
2067 designated City lifeguard or instructor is not on duty.

2068 C. It is unlawful for anyone to enter the adult pool unless they are an experienced swimmer  
2069 or under the supervision of an experienced swimmer and/or guardian.

2070 D. It is unlawful for any adult to use the children’s pool except for the purpose of instruction  
2071 or supervision of children.

2072 E. It is unlawful for anyone to bring into the pool area any object or material which annoys  
2073 or renders unsafe for use either the pool or its adjacent grounds.

2074 F. Animals are not allowed in the pool area except for authorized guide animals for the  
2075 visually impaired and these guide animals are not allowed in the pool.

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2079 *Chapter 12.60*

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***STATE HIGHWAY ACCESS MANAGEMENT***

2083

2084

2085

2086 **Sections:**

2087 **12.60.010 Highway Access Management**

2088 **12.60.020 Highway Access Permits-Administrative Process**

2089 **12.60.030 Highway Access Control Classification System and Standards**

2090 **12.60.040 Severability**

2091

2092

2093

2094 **12.60.010 Highway Access Management.** There is adopted by this reference and made a  
2095 part of this Chapter, 47.50 RCW, as if set forth in full in this Chapter, together with any new  
2096 Section to, or amendment or repeal of any sections of said statutes adopted by the State  
2097 Legislature after the effective date of this Chapter.

2098

2099 **12.60.020 Highway Access Permits - Administrative Process.** There is adopted by this  
2100 reference and made a part of this Chapter, 468-51 WAC, as if set forth in full in this Chapter,  
2101 together with any new Sections to, or Amendment or Repeal of any Sections of said Statutes  
2102 adopted by the State Legislature after the effective date of this Chapter.

2103

2104 **12.60.030 Highway Access Control Classification System and Standards.** There is  
2105 adopted by this reference and made a part of this Chapter, 468-52 WAC, as if set forth in full in  
2106 this Chapter, together with any new Sections to, or Amendment or Repeal of any Sections of said  
2107 Statutes adopted by the State Legislature after the effective date of this Chapter.

2108

2109 **12.60.040 Severability.** If any Section, sentence, clause or phrase of this Chapter should be  
2110 held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or  
2111 unconstitutionality shall not affect the validity or constitutionality of any other Section, sentence,  
2112 or clause or phrase of this Chapter.

2113



2115 *Chapter 12.65*

2116  
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2121

**TREES AND SHRUBS**

2122 **Sections:**

- 2123 **12.65.010 Planting or Removing From Public Places**  
2124 **12.65.020 Species and Location in Public Places**  
2125 **12.65.030 Prohibited Species**  
2126 **12.65.040 Maintenance Responsibility in Public Place**  
2127 **12.65.050 Dangerous Trees and Vegetation-Property Owner Responsibility**  
2128 **12.65.060 Appeal Of Orders**  
2129 **12.65.070 Harming Trees, Shrubs or Plants in Public Place**

2130  
2131

2132 **12.65.010 Planting or Removing From Public Places.** No trees or shrubs shall be planted  
2133 in or removed from any public parking strip or other public place in the City without prior  
2134 authorization from the City.

2135

2136 **12.65.020 Species and Location in Public Places.** All trees and shrubs planted in any  
2137 public parking strip or other public place in the City shall conform to species and location of the  
2138 adopted street tree plan, which is hereby made a part of this Chapter.

2139

2140 **12.65.030 Prohibited Species.**

2141 A. It is unlawful to plant in any public parking strip the following trees:

- 2142 1. Poplar;  
2143 2. Willow;  
2144 3. Conifer;  
2145 4. Ailanthus;  
2146 5. Cottonwood;  
2147 6. Fruit trees; or  
2148 7. Nut trees.

2149 B. Unless prior approval by the City is obtained, it is unlawful to plant willow, cottonwood  
2150 or poplar trees in any location due to the possible interference with public sewer,  
2151 watermain, sidewalks or pavement infrastructure due to root growth.

2152

2153 **12.65.040 Maintenance Responsibility in Public Place.** The Public Works Director, or  
2154 representative may cause to be trimmed, pruned or removed any trees, shrubs, plants or  
2155 vegetation in any parking strip or other public place, or may require any property owner to trim,  
2156 prune or remove any trees, shrubs, plants or vegetation in a parking strip abutting upon the  
2157 owner's property, and failure to comply therewith, after notice by the City Clerk, is a violation of  
2158 this Chapter.

2159 **12.65.050 Dangerous Trees and Vegetation - Property Owner Responsibility.** Any trees,  
2160 shrubs, bushes, grass, weeds or vegetation growing in a parking strip or any public place, or in

2161 private property, which is endangering or which in any way may endanger the security or  
2162 usefulness of any public street, sewer, or sidewalk, is a public nuisance, and the City may  
2163 remove or trim such tree, shrub, bush, grass, weeds or vegetation, or may require the property  
2164 owner to remove or trim any such tree on private property, or in a parking strip abutting upon the  
2165 owner's property. Failure of the property owner to remove or trim such tree after notice by the  
2166 City Clerk is a violation of this chapter, and the street superintendent may then remove or trim  
2167 the tree and assess the cost against the property.  
2168

2169 **12.65.060 Appeal of Orders.** Appeals an order made under this Chapter may be made by  
2170 filing written notice with the City Clerk pursuant to appeal provisions of TMC Section 18.40.080  
2171 within ten days after such order is received. The Community Development Director or designee  
2172 shall call such appeal to the attention of the City Council at the next regular meeting, at which  
2173 meeting the appellant may present evidence. Action taken by the City Council after such hearing  
2174 shall be conclusive. An aggrieved party may appeal a Council decision to a court of jurisdiction.  
2175

2176 **12.65.070 Harming Trees, Shrubs or Plants in Public Place.** It is a violation of this  
2177 Chapter to abuse, destroy or mutilate any tree, shrub or plant in a public parking strip or any  
2178 public place, or to attach or place any rope or wire (other than one used to support a young or  
2179 broken tree), sign, poster, handbill or other thing to or on any tree growing in a public place, or  
2180 to cause or permit any wire charged with electricity to come in contact with any such tree, or  
2181 allow any gaseous, liquid or solid substance, which is harmful to such trees, to come in contact  
2182 with their roots or leaves.  
2183  
2184