

ORDINANCE 2021 - 03

**AN ORDINANCE OF THE CITY OF SUNNYSIDE, WASHINGTON,
ADDING CHAPTER 12.50 TO THE SUNNYSIDE MUNICIPAL CODE,
PERTAINING TO WIRELESS COMMUNICATION FACILITY
FRANCHISE REGULATIONS**

WHEREAS, pursuant to Chapter 35A.13 RCW the City Council is charged with legislative authority of the City of Sunnyside; and

WHEREAS, Chapter 12 of the Sunnyside Municipal Code governs Streets, Sidewalks and Public Places; and

WHEREAS, the City Council has held a public meeting on March 8, 2021 to consider legislative action to effect an amendment Sunnyside Municipal Code; and

WHEREAS, the City Council finds and determines that such requested amendment should be approved, and that such approval is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, as follows:

SECTION 1. Section 12.50 is added to the Sunnyside Municipal Code as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

SECTION 2. Except as amended herein, Title 12 SMC shall remain unchanged.

SECTION 3. This Ordinance shall be effective five days after passage, approval and publication as required by law.

PASSED this 8th day of March, 2021.


FRANCISCO GUERRERO, MAYOR

ATTEST:


JANETH RANGEL, DEPUTY CITY CLERK

APPROVED AS TO FORM:


KERR FERGUSON LAW, PLLC
Attorneys for the City of Sunnyside

Exhibit A

Chapter 12.50 WIRELESS COMMUNICATION FACILITY FRANCHISE REGULATIONS

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12.50.010 Short title.

This chapter shall constitute the “wireless communication facility franchise regulations” of the City of Sunnyside and may be referred to as such.

12.50.020 Purpose.

The purpose and intent of this chapter is to:

- (1) Establish a local policy concerning the use of public ways and City property by telecommunication carriers;
- (2) Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of the public ways and City property;
- (3) Promote competition in telecommunication services;
- (4) Minimize unnecessary local regulation of telecommunication carriers;
- (5) Encourage the provision of advanced and competitive telecommunication services on the widest possible basis to the businesses, institutions and residents of the City;
- (6) Permit and manage reasonable access to the public ways of the City for telecommunication purposes on a competitively neutral basis;
- (7) Conserve the limited physical capacity of the public ways held in public trust by the City;
- (8) Assure that the City's current and ongoing costs of granting and regulating private access to and use of the public ways and City property are fully paid by the persons seeking such access and causing such costs;
- (9) Secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the public ways and City property;
- (10) Assure that all telecommunication carriers and cable operators providing facilities or services within the City comply with the ordinances, rules and regulations of the City;
- (11) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare; and
- (12) Enable the City to discharge its public trust consistent with rapidly evolving Federal and State regulatory policies, industry competition and technological development.

12.50.030 Definitions.

For the purposes of this chapter, the following words, terms, phrases and their derivations have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the singular number include the plural number and words in the plural number include the singular number.

- (1) "Applicant" means any person or other legal entity that applies for an initial franchise.

(2) "City" means the City of Sunnyside, a municipal corporation of the State of Washington, and all of the area within its boundaries, as such may change from time to time.

(3) "City Council" means the Sunnyside City Council, or its successor, the governing body of the City.

(4) "FCC" means the Federal Communications Commission.

(5) "Franchise" or "master permit" or "wireless right-of-way use agreement" means an agreement adopted by ordinance that authorizes a person or entity to construct, operate, maintain or reconstruct wireless facilities in City rights-of-way. Upon the written acceptance by a franchisee, the agreement constitutes a contract between the City and franchisee.

(6) "Franchise area" means the area within the jurisdictional boundaries of the City to be served by a franchisee, including any areas annexed by the City during the term of a franchise.

(7) "Franchisee" means the person, firm, corporation or entity to whom or which a franchise, as hereinabove defined, is granted by the City Council under this chapter and the lawful successor, transferee or assignee of said person, firm, corporation or entity.

(8) "Right-of-way" or "rights-of-way" means all of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and are located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property and areas.

(9) "Site fee agreement" means the addendum to wireless right-of-way use agreement: site-specific right-of-way fee agreement for wireless facilities, which provides for site-specific authorization by, and payment to, the City for use of City right-of-way for a wireless communications facility.

(10) "Wireless communication facility" or "WCF" shall have the meaning given in Chapter 17.66 SMC.

(11) "Wireless operator" means any person or group of persons, including a franchisee, who provide(s) wireless service over a wireless communication facility and directly or through one or more affiliates owns a significant interest in such wireless communication facility or who otherwise control(s) or are (is) responsible for, through any arrangement, the management and operation of such a wireless communication facility.

(12) "Wireless service" means service through a wireless communication facility.

12.50.040 Franchise grant.

It is unlawful to engage in or commence construction, operation, or maintenance of a WCF in City rights-of-way without a franchise issued under this chapter. The City Council may, by ordinance, issue a nonexclusive franchise to construct, operate and maintain a WCF within all or any portion of the City to any person or entity, whether operating under an existing franchise or not, who applies for authority to do so in compliance with the terms and conditions of this chapter; and provided, that such person or entity also agrees to comply with all of the provisions of the franchise. However, this shall not be deemed to require the grant of a franchise to any particular person or entity. The City Council may restrict the number of franchisees should it determine such a restriction would be in the public interest.

12.50.050 Franchise purposes.

A franchise granted by the City under the provisions of this chapter shall:

- (1) Permit the franchisee to engage in or commence construction, operation, or maintenance of a WCF within the City, subject to the applicable permitting requirements found in SMC 17.44;
- (2) Permit the franchisee to erect, install, construct, repair, reconstruct, replace and retain wires, cables, related electronic equipment, conduits and other property in connection with the operation of a WCF in rights-of-way within the City, subject to the applicable permitting requirements found in SMC 17.77; and
- (3) Set forth the obligations of the franchisee under the franchise.

12.50.060 Nonexclusive franchises.

Any franchise granted pursuant to this chapter shall be nonexclusive and not preclude the city from granting other or future franchises or permits.

12.50.070 Application.

- (1) An applicant for an initial franchise with the City shall submit to the City a written application in a format provided by the City at the time and place specified by the City for accepting applications, and accompanied by the designated application fee. An application fee shall accompany the application to cover costs associated with processing the application, including, without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, the costs of consultants, notice and publication requirements, and document preparation expenses. In the event such costs exceed the application fee, the applicant shall pay the difference to the City within 30 days following receipt of an itemized statement of such costs. Conversely, if such costs are less than the application fee, the City shall refund the difference to the applicant.

(2) Application – Contents. An application for an initial franchise with the City for a WCF shall contain, at a minimum:

- (a) A statement as to the proposed franchise and information relating to the characteristics and location of the proposed WCF;
- (b) A resume of prior history of the applicant, including the expertise of the applicant in the wireless field;
- (c) Information demonstrating the applicant's legal, technical and financial ability to construct and operate the proposed WCF;
- (d) A list of the partners, general and limited, of the applicant, if a partnership; members, if a limited liability company; or the percentage of stock owned or controlled by each stockholder having a five percent or greater interest, if a corporation;
- (e) A list of officers, directors and key employees of the applicant, together with a description of the background of all such persons;
- (f) The names and addresses of any parent entity or subsidiary of the applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;
- (g) A proposed construction and service schedule;
- (h) Any other reasonable information that the City may request.

The City shall be allowed the opportunity to ask relevant follow-up questions and obtain further information from whatever source. A refusal by an applicant to cooperate or provide requested information is sufficient grounds for the City to deny an application.

(3) Consideration of Initial Franchise. Upon receipt of an application for an initial franchise with the City and after obtaining any additional information the City in its sole discretion deems appropriate from any source, a hearing shall be scheduled to allow public comment. At the hearing, the City Council shall receive public comment regarding the following:

- (a) Public Benefit. Whether the public will benefit from granting a franchise to the applicant;
- (b) Qualifications. Whether the applicant appears to have adequate legal, financial and technical qualifications and capabilities to build, operate and maintain a WCF in the City;

(c) **No Conflicting Interests.** Whether the applicant has any conflicting interests, either financial or commercial, that will be contrary to the interests of the City;

(d) **Compliance with the Franchise and Local Laws.** Whether the applicant will comply with all of the terms and conditions placed upon a franchisee by the franchise, this chapter, customer service standards and other applicable local laws and regulations;

(e) **Compliance with Other Requirements.** Whether the applicant will comply with all relevant federal and state laws and regulations pertaining to the construction, operation and maintenance of the WCF.

(4) Within the timeframes outlined in SMC 17.66 after the submission of a complete application, the City Council shall decide whether to grant a franchise and on what conditions. The City Council's decision shall be based upon the application, any additional information submitted by the applicant or obtained by the City from any source, and public comments.

The City Council may grant one or more franchises, or may decline to grant any franchise.

12.50.080 Duration.

The term of any franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall be specified in the franchise. The effective date of any franchise shall be as specified in the franchise.

12.50.090 Franchise area.

Any franchise granted hereunder shall be valid for those geographic areas specified in the franchise.

12.50.100 Police powers.

In accepting any franchise, the franchisee acknowledges that its rights thereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary for the health, safety and welfare of the public, and it agrees to comply with all applicable laws enacted by the City pursuant to such power.

12.50.110 Use of rights-of-way.

For the purposes of operating and maintaining a system in the City, a franchisee may place and maintain within the rights-of-way such property and equipment as are necessary and appurtenant to the operation of the WCF. Prior to construction or alteration of the WCF in the rights-of-way, the franchisee shall procure all necessary permits, pay all applicable fees in connection therewith, and comply with all applicable laws,

regulations, resolutions and ordinances, including, but not limited to, the requirements in Chapter 17.66 SMC.

12.50.120 Site fee agreements.

The franchisee shall comply with all obligations set forth in site fee agreements, as provided in, and attached to, the franchise.

12.50.130 Franchise fees.

The franchisee shall pay the City franchise fees in accordance with the terms of the franchise.

12.50.140 Taxes.

The fees, charges and fines provided for in this chapter and any compensation charged and paid for the public ways provided for herein, whether monetary or in-kind (to the extent permitted by law), are separate from, and in addition to, any and all federal, State, local, and City taxes as may be lawfully levied, imposed or due from a telecommunications carrier, its customers or subscribers or on account of the lease, sale, delivery or transmission of telecommunications service.

12.50.150 Other authorizations.

The franchisee shall comply with and obtain, at its own expense, all permits, licenses and other authorizations required by federal, state and local laws, rules, regulations and applicable resolutions and ordinances which are now existing or hereafter lawfully adopted.

12.50.160 Rules and regulations of the City.

In addition to the inherent powers of the City to regulate and control any franchise it issues and those powers expressly reserved by the City, or agreed to and provided for in a franchise, the right and power is reserved by the City to promulgate such additional rules and regulations as it may find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of a franchise and this chapter, and as permitted by applicable state and federal law.

12.50.170 Delegation of powers.

Any right or power of the City may be delegated by the City to any officer, employee, department or board of the City, or to such other person or entity as the City may designate to act on its behalf.

12.50.180 Technical standards.

The franchisee shall construct, install, operate and maintain its WCF in a manner consistent with all enacted and applicable federal, state and local laws and regulations, including Chapter 17.66 SMC, FCC technical standards and any other applicable standards set forth in the franchise.

12.50.190 Safety requirements.

The franchisee shall, at all times, employ professional care and install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. In furtherance thereof, the franchisee must comply with the City's traffic control requirements, including, for example, but without limitation, the use of signal devices, warning signs and flaggers when appropriate. All of the franchisee's structures, cables, lines, equipment and connections in, over, under and upon the rights-of-way and public ways or other places in the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe condition.

12.50.200 Construction standards.

(1) All facilities constructed or operated under this chapter shall be installed and maintained at such places in or upon such rights-of-way and public places as shall not interfere with the free passage of traffic and the free use of adjoining property, and shall conform to federal standards, Washington requirements, and City regulations.

(2) The franchisee shall be subject to any and all requirements established by the City with regard to the placement and screening of the franchisee's facilities and equipment located in the rights-of-way and on other public property. Such requirements may include, but are not limited to, the use of landscaping to screen pedestals and cabinets and a requirement that construction be flush with the natural grade of the surrounding area.

(3) The franchisee shall comply with any applicable ordinances, resolutions, rules, regulations and policies of the City regarding geographic information systems mapping for users of the rights-of-way; provided, that all similarly situated users of the rights-of-way must also accordingly comply.

12.50.210 Street cut or repair.

The franchisee shall guarantee the durability and structural integrity of any street cut or repair made by it or its agents which are necessary for the construction, installation, operation, repair or maintenance of the franchisee's facilities for the life of the street; provided, that no action by a third party materially affects the integrity of the franchisee's street cut or repair. The franchisee shall repair or replace, at no expense to the City, any failed street cut or repair which was completed by the franchisee or the franchisee's agent(s), as determined by the City Engineer.

12.50.220 Privacy.

The franchisee will be bound by all of the provisions of applicable federal, state and local privacy laws.

12.50.230 Discriminatory practices prohibited.

The franchisee shall not deny wireless communication facility or otherwise discriminate against subscribers or others on the basis of race, color, religion, national origin, sex, age, disability or other protected classes.

12.50.240 Equal employment opportunity.

The franchisee shall strictly adhere to and comply with the equal employment opportunity requirements of federal, state and local laws.

12.50.250 Reimbursement.

To the extent allowed by applicable law, the City may require a franchisee to reimburse the City for the City's reasonable processing and review expenses in connection with a sale or transfer of a franchise or a change in control of a franchise or franchisee, including, without limitation, costs of administrative review, financial, legal and technical evaluation of the proposed transferee or controlling party, costs of consultants, notice and publication costs, and document preparation expenses. In connection with the foregoing, the City will send the franchisee an itemized description of all such charges, and the franchisee shall pay such amount within 30 days after the receipt of such description.

12.50.260 Franchise renewal.

Franchise renewals shall be conducted in accordance with applicable law. The City and franchisee, by mutual consent, may enter into renewal negotiations at any time during the term of a franchise.

12.50.270 Franchise revocation.

Any franchise granted by the City may be revoked during the period of such franchise, as provided in the franchise, subject to the procedural requirements provided for therein. A failure by the franchisee to comply with any of the material provisions of this chapter shall be deemed a material violation of a franchise.

12.50.280 Acceptance.

No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the ordinance granting the same has become effective. Within 45 days after the adoption by the City Council of the ordinance awarding a franchise, or within such extended period of time as the City Council in its discretion may authorize, the

franchisee shall file with the City Clerk its written and unconditional acceptance of the franchise.

12.50.290 Conflicts.

Where a federal law or rule and this chapter conflict, both shall be liberally interpreted to achieve a common meaning or requirement. In the event that this is not possible within reasonable limits, the federal law or rule shall prevail.

12.50.300 Miscellaneous.

- (1) This chapter shall be construed in a manner consistent with all applicable federal, state and local laws, and shall apply to any franchise hereafter accepted by a franchisee.
- (2) The captions throughout this chapter are intended to facilitate the reading hereof. Such captions shall not affect the meaning or interpretation of any part of this chapter.
- (3) A franchisee shall not be relieved of its obligations to comply with any or all of the provisions of this chapter by reason of any failure of the City to demand prompt compliance.
- (4) The provisions of this chapter shall apply to all wireless operators and WCFs to the greatest extent permissible under applicable law.