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**Ordinance No. 695**

**TOWN OF YARROW POINT  
ORDINANCE NO. 695**

AN ORDINANCE OF THE TOWN OF YARROW POINT AMENDING YARROW  
POINT MUNICIPAL CODE CHAPTER 13.04 IN ITS ENTIRETY WITH REGARD  
TO UTILITY FRANCHISE REQUIREMENTS, TELECOMMUNICATIONS  
FRANCHISE REQUIREMENTS, AND SMALL WIRELESS DEPLOYMENT  
APPLICATION PROCESS, AND ESTABLISHING AN EFFECTIVE DATE

**WHEREAS**, Chapter 13.04 as amended provides franchise application and review procedures for utilities and telecommunications seeking access to the Town's rights-of-way along with application procedures for small wireless deployments within the Town; and

**WHEREAS**, contemporaneous with the consideration of this ordinance, Town Council enacted amendments to its Communications Facilities provisions located in Chapter 17.30 in order to provide for aesthetic and siting oversight of telecommunications deployments within the Town; and

**WHEREAS**, Town Council acknowledges that the growing use of smart phones and other personal wireless devices creates a substantial need for wireless data transmission, and that telecommunications companies are anticipating deployments within the Town's rights-of-way thereby requiring the Town to adopt code that will properly oversee and manage such deployments within the Town's rights-of-way; and

**WHEREAS**, adoption of the contemporaneous land use controls on telecommunications deployments requires integration with the Town's franchise code in order to properly manage the anticipated deployments; and

**WHEREAS**, the Planning Commission met to discuss this topic, along with those changes made to Chapter 17.30, at three different meetings and held a public hearing on the proposed changes to Chapter 17.30 as well as Chapter 13.04 on January 7, 2019 after such public hearing was properly noticed according to law; and

**WHEREAS**, all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

**WHEREAS**, environmental review was done on the proposed amendments and a Determination of Nonsignificance (DNS) was issued on December 11, 2018 for these amendments, and required notice to the State of Washington was sent on December 11, 2018; and

**WHEREAS**, the comment period and appeal period for the DNS expired on December 26, 2018; and

**WHEREAS**, after consideration from testimony taken at the public hearing, the Planning Commission recommends approval of the proposed changes to Chapter 13.04; and

**WHEREAS**, the Town administration concurs with the Planning Commission recommendation to

approve the proposed changes to Chapter 13.04.

NOW, THEREFORE, BE IT ORDAINED by the Town of Yarrow Point as follows:

**Section 1.** Recitals Incorporated. The Recitals set forth above are hereby adopted and incorporated as Findings of Fact and/or Conclusions of Law of the Town Council. The Town Council bases its findings and conclusions on the entire record of testimony and exhibits, including all written and oral testimony before the Planning Commission and the City Council.

**Section 2.** The Yarrow Point Municipal Code, Chapter 13.04, is hereby amended in its entirety as follows:

**Article I. Utility franchise requirements.**

**13.04.010 Definitions.**

For the purposes of this Article, a “public utility” is defined as any person, firm or corporation supplying electricity, water or gas or distributing the same or sewer service by the use of pipes, poles, lines, cables or other fixed equipment under, upon, along or above street rights-of-way in the town; and for the purpose of this chapter any public utility shall be deemed to include any employee, nominee or independent contractor thereof performing work upon such facilities in the streets or in public places of the town whether under contract, direction, request or authority of the public utility.

**13.04.020 Franchise required.**

From and after 15 days following the effective date of the ordinance codified in this chapter, it is unlawful for any public utility to use the street rights-of-way of the town without a valid and effective franchise granted by the town or the state and applicable to street rights-of-way of the town.

**13.04.030 Conditions of franchise.**

Franchises granted by the town for the use of streets shall be uniformly conditioned as follows:

- A. All Franchises to Include Hold Harmless Provisions. Any franchise granted a public utility for the use of town streets shall include a provision wherein the grantee holds the town harmless from any liability by reason of the construction, operation or maintenance of its facilities under, along, upon or over street rights-of-way or other public places.
- B. All Franchises to Include Assumption of Risk Provision. Any franchise granted a public utility under this chapter for the use of town streets shall include a provision wherein the grantee assumes the risk of injury to its facilities within street rights-of-way or other public places by the town.
- C. Rights Conferred by Franchises to Be Subject to Police Power. Any franchise granted a public utility under this chapter for the use of town streets shall include a provision wherein the grantee by its acceptance thereof acknowledges that all rights conferred thereby are subject to the police power of the town to adopt and enforce general ordinances necessary for the safety and welfare of the people of the town; and that the grantee agrees to comply with all such general ordinances insofar as applicable

to it.

D. All Franchises to Be Accepted within 30 Days. All franchises granted a public utility for the use of town streets shall include a provision that if, within 30 days after the granting of such franchise, the grantee shall have failed to file its written acceptance thereof with the clerk/treasurer of the town then such franchise shall be null and void.

E. All Franchises to Require Consent to Transfer. Any franchise granted a public utility, which is not also a municipal corporation, for the use of town streets shall include a provision requiring the consent of the town to any transfer thereof and shall provide that any transferee be equally bound by the terms thereof.

F. All Franchises Forfeitable Upon Breach. Any franchise granted a public utility for the use of town streets shall include a provision whereby such franchise may, by the town council, be declared forfeited when, after 60 days' notice to the local manager thereof, the grantee shall not have cured a deficiency in its discharge of the obligation created by the franchise and all other applicable laws of the town.

G. No Franchise to Limit Right of Condemnation. Any franchise granted a public utility, which is not also a municipal corporation, for the use of town streets will include a provision that such franchise in no way limits the town in its exercise of the right of eminent domain; and, that in any purchase or condemnation of any of the grantee's property during the term of the franchise, the addition to the sum of all other elements of value of such property by reason of the element which is the right to occupy the public ways evidenced by such franchise, shall be no greater than the actual cost of obtaining such franchise as related to such property.

#### **13.04.040 Map of facilities.**

Any public utility using street rights-of-way within the town shall, upon request therefor, supply the town engineer or other person to whom this responsibility may be delegated, with a map or maps to a uniform scale, showing as-built locations and the nature of its facilities within the street rights-of-way or public places and if such facilities are underground, the depth thereof, and any modifications thereof.

#### **13.04.050 Permit required to change nature or location of facilities.**

A. Any work affecting the location of its poles, pipes or conduits in, upon or along town streets by or at the instance of a public utility, as defined in YPMC 13.04.010, shall be done only upon permit showing approval by the town engineer or other person to whom this authority may be delegated, and according to any applicable ordinances or resolutions of the town.

B. Such applications shall be accompanied by at least two maps to the same scale as the map required under YPMC 13.04.040, if such is requested by the town.

#### **13.04.060 Moving facilities to accommodate work on rights-of-way.**

Whenever it is deemed necessary to accommodate town work including, without limitation, the change of, or improvement to, grade of any street, its vacation or relocation, or in the absence of town work, if it is deemed necessary to satisfy the public need as determined by the town council, any public utility

shall move its equipment and facilities within the street rights-of-way or other public places to conform to such work or public need.

**13.04.070 Violation – Penalty.**

Violation of any of the provisions of this Article shall be a misdemeanor, and shall be punishable by a fine of not to exceed \$300.00 or by imprisonment not to exceed 90 days, or both.

**Article II. Telecommunications Franchises**

**13.04.080 Purpose.**

The purposes of this Chapter are to:

- A. Permit and manage reasonable access to the right-of-way of the Town for communication purposes on a nondiscriminatory basis;
- B. Establish clear and nondiscriminatory local guidelines, standards, and time frames which use federal guidelines for the exercise of local authority with respect to the regulation of right-of-way use;
- C. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions, and residents of the Town;
- D. Conserve the limited physical capacity of the public rights-of-way held in public trust by the Town;
- E. Ensure that the Town’s current and ongoing costs of granting and regulating private accesses to and use of the public rights-of-way are fully paid by the persons seeking such access and causing such costs;
- F. Ensure that all service providers maintaining facilities or providing services within the Town comply with the ordinances, rules, and regulations of the Town;
- G. Ensure that the Town can continue to fairly and responsibly protect the public health, safety, and welfare; and
- H. Enable the Town to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

**13.04.090 Definitions.**

For the purpose of this Chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended or in Chapter 17.30 of the Yarrow Point Municipal Code. Words not otherwise defined shall have their common and ordinary meaning:

- A. “Affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

- B. "Applicant" means any person or corporation submitting an application for a franchise.
- C. "Town" means the Town of Yarrow Point, a municipal corporation of the state of Washington in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.
- D. "Town property" means any real property owned by Town, whether in fee or other ownership estate of interest.
- E. "Town Representative" means the Town Planner, the Town Engineer, or the Town Building Official.
- F. "Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility with the right-of-way that is or will be available for use for additional telecommunications facilities.
- G. "FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.
- H. "Franchise" or "franchise agreement" is a contract by which a grantee is allowed to use Town right-of-way for the purpose of carrying on the business in which it is generally engaged, including furnishing service to members of the public.
- I. "Grantee" means the person, firm or corporation to whom or which a franchise, as defined in this section, is granted by the council under this Chapter and the lawful successor, transferee or assignee of such person, firm or corporation.
- J. "Grantor" means the Town of Yarrow Point acting through its Town council.
- K. "Light Pole" means a pole owned by the Town and used primarily for lighting streets, parking areas, parks or pedestrian paths.
- L. "Overhead facilities" means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.
- M. "Person" includes corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities, and individuals.
- N. "Public right-of-way" or "right-of-way" means land acquired or dedicated for public roads and streets but does not include:
1. State highways;
  2. Land dedicated for road, streets, and highways not opened and not improved for motor vehicle use by the public;
  3. Structures, including poles and conduits, located within the right-of-way;
  4. Federally granted trust lands or forest board trust lands;

5. Lands owned or managed by the state parks and recreation commission; or
6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec 912 and related provisions of federal law that are not open for motor vehicle use.
- O. "Service provider": Is defined consistently with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.
- P. "Small wireless" and "small wireless facility" shall have the same meaning as a "small wireless facility" as set forth in 47 CFR 1.6002.
- Q. "State" means the state of Washington.
- R. "Structure" means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of telecommunications service (whether on its own or comingled with other types of services).
- S. "Telecommunications facilities" means the plant, equipment and property including, but not limited to, cables, wires, conduits, ducts, pedestals, electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide or offer wireline or wireless telecommunications service.
- T. "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this Chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.
- U. "Traffic Signal Poles" means a pole that supports equipment used for controlling traffic, including but not limited to traffic lights, rapid flashing beacons, speed radar, and school zone flashers.
- V. "Utility Pole" means a wooden pole designated and used primarily for the support of electrical wires, telephone wires or television cable.
- W. "Washington Utilities and Transportation Commission" or "WUTC" means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services, and providers in the state of Washington to the extent prescribed by law.
- X. "Wireline" means services provided using a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

#### **13.04.100 Registration and fees.**

Except as otherwise provided herein, all service providers engaged in the business of the transmitting, supplying, or furnishing of telecommunications service originating, terminating, or existing with the Town shall register with the Town pursuant to the Yarrow Point Municipal Code and pay all applicable fees as provided therein or as may be set by resolution.

**13.04.110 Application to existing franchise ordinances and agreements.**

The enactment of this Chapter shall have no effect on any existing franchise agreement until:

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

**Article III. Telecommunications franchise agreement.**

**13.04.120 Franchise – Required.**

A franchise shall be required of any telecommunications provider who desires to make use of telecommunications facilities which occupy rights-of-way and to provide telecommunications services to any person or area in the Town. The franchise is a “master permit” within the meaning of RCW 35.99.010(3).

**13.04.130 Franchise application.**

Any person that desires a franchise hereunder shall file an application with the following information:

- A. The identity of the applicant;
- B. A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services;
- C. To the extent locations for installations are known, preliminary engineering plans, specifications and a map showing where the telecommunications facilities are to be located within the Town, all in sufficient detail to identify:
  - 1. The location and route requested for the applicant’s proposed telecommunications facilities;
  - 2. The location of applicant’s overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the rights-of-way along the proposed route;
  - 3. The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate;
- D. If the applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way and to the extent specific locations are known:
  - 1. The location proposed for the new ducts or conduits;



- 2. Evidence that there is sufficient capacity within the rights-of-way for the proposed telecommunications facilities;
- E. A preliminary construction schedule and completion date;
- F. Evidence that the applicant is registered to participate in the one-number locator service, as described in RCW Chapter 19.122, if applicable;
- G. If the applicant is proposing small wireless facilities, an accurate map showing the existing locations, if any, of any existing small wireless facilities in the rights-of-way, owned or operated by the applicant;
- H. An application fee which shall be set by the Town Council to recover Town costs in accordance with applicable federal and state law; and
- I. Such other information as the Town Representative, in his/her discretion, shall deem appropriate.

**13.04.140 Determination by the Town.**

Within the time periods established by state and/or federal law, as applicable, after receiving a complete application hereunder, the Town Council shall grant or deny a franchise application. If the Town Council denies a franchise, such denial must be based on one of the following:

- A. The financial and technical ability of the applicant;
- B. The legal ability of the applicant to provide the telecommunications service;
- C. The capacity of the rights-of-way to accommodate the applicant's facilities;
- D. The capacity of the rights-of-way to accommodate additional utility and telecommunications facilities if the application is granted;
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;
- F. The public interest in minimizing the cost and disruption of construction with the rights-of-way;
- G. The service that the applicant will provide to the region;
- H. The effect, if any, on general public health, safety, and welfare in Town's sole opinion if the application is granted;
- I. Applicable federal, state and local laws, regulations, rules and policies;
- J. Such other factors as may demonstrate that the grant to use the rights-of-way will serve the community interest.

**13.04.150 Franchise agreement.**

No franchise shall be granted hereunder unless the applicant and the Town have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use rights-of-way will be granted. All franchises granted pursuant to this Chapter shall contain substantially similar terms and conditions.

**13.04.160 Nonexclusive grant.**

No franchise granted hereunder shall confer any exclusive right, privilege, or franchise to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes.

**13.04.170 Rights granted.**

A. No franchise granted hereunder shall convey any right, title, or interest in the rights-of-way, but shall be deemed a franchise only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.

B. No franchise granted hereunder shall authorize or excuse a grantee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use the rights-of-way. Grantee shall obtain the written approval of the facility or structure owner, including the Town, if the grantee does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way.

C. No franchise granted hereunder shall be construed as any warranty of title.

**13.04.180 Term of grant.**

Unless otherwise specified in a franchise, a franchise granted hereunder shall be valid for a term of not more than 5 years.

**13.04.190 Franchise territory.**

A franchise granted hereunder shall be issued for all of the rights-of-way within the Town.

**13.04.200 Location of facilities.**

Unless otherwise specified in a franchise, all facilities shall be constructed, installed, and located in accordance with the following terms and conditions:

A. Telecommunications facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility, unless such location is not feasible due to the technology employed in the facility.

B. A grantee with written authorization to install overhead facilities shall install its telecommunications facilities on pole attachments to existing or replacement utility poles only, and then only if surplus space is available.

C. Whenever any existing telephone facilities, electric utilities, cable facilities, or telecommunications facilities are located underground within rights-of-way, a grantee with written authorization to occupy the same rights-of-way, must also locate its telecommunications facilities underground to the extent technologically feasible.

D. Whenever any new or existing telephone facilities, electric utilities, cable facilities, or telecommunications facilities are located or relocated underground within rights-of-way, a grantee shall concurrently relocate its facilities underground if technologically feasible.

E. If requested, a grantee shall provide the Town with additional duct or conduit and related structures necessary to access the conduit; provided, that:

1. The Town enters into a contract with the grantee consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the grantee. If the Town makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated costs of the grantee. The grantee shall state both contract rates in the contract. The Town shall inform the grantee of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the Town.

2. Except as otherwise agreed by the grantee and the Town, the Town shall agree that the requested additional duct or conduit space and related access structures will not be used by the Town to provide telecommunications or cable television service for hire, sale, or resale to the general public.

3. The Town shall not require that the additional duct or conduit space be connected to the access structures and vaults of the grantee.

4. The value of the additional duct or conduit requested by the Town shall not be considered a public works construction contract.

#### **13.04.210 Utility right-of-way permits.**

Except as provided in Article IV, small wireless deployments, all grantees are required to obtain utility right-of-way permits and pay all fees for telecommunications facilities as required by Town of Yarrow Point ordinances and/or resolutions.

#### **13.04.220 Nondiscrimination.**

A grantee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for the grantee's services; provided, however, that nothing in this Chapter shall prohibit a grantee from making any reasonable classifications among differently situated customers. This provision shall not apply to neutral host infrastructure services who solely provide infrastructure to personal wireless services carriers.

**13.04.230 Amendment of franchise agreement.**

A. A new franchise application and grant shall be required of any grantee that desires to extend its franchise territory or to locate its telecommunications facilities in rights-of-way which are not included in a franchise previously granted hereunder.

B. A new franchise application and grant shall be required of any grantee that desires to add to or modify the telecommunications services provided pursuant to a franchise previously granted.

**13.04.240 Renewal applications.**

A grantee that desires to renew its franchise hereunder shall, not less than 180 days before expiration of the current franchise, file an application with the Town for renewal of its franchise which shall include the following information:

A. The applicable information required pursuant to the franchise;

B. Any other information required by the Town.

**13.04.250 Renewal determinations.**

The Town Council shall grant or deny a renewal application within the time periods established by state or federal law, as applicable. If the Town Council determines to deny a franchise application, it shall make such determination consistent with 13.04.140. As part of any franchise renewal determination the Town Council shall consider grantee's compliance with the requirements of this Chapter and the franchise agreement.

**13.04.260 Obligation to cure as a condition of renewal.**

No franchise shall be renewed until any ongoing violations or defaults in the grantee's obligations under the franchise, or the requirements of this Chapter, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the Town.

**Article III. Conditions for All Franchises**

**13.04.270 General duties.**

All grantees, before commencing any construction in the rights-of-way, shall comply with all requirements of this Article.

**13.04.280 Interference with the rights-of-way.**

No grantee may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the Town, by the general public or other persons, 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 Town.

**13.04.290      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 Town property, real or personal, or rights -of-way, or other property located in, on or adjacent thereto except in accordance with this Chapter.

**13.04.300      Notice of work.**

Unless otherwise provided in a franchise agreement, no grantee, or any person acting on the grantee's behalf, shall commence any nonemergency work in or about rights-of-way. Any private property owner whose property will be affected by a grantee's work shall be afforded 10 working days advance written notice of such work.

**13.04.310      Repair and emergency work.**

In the event of an emergency or an emergency repair necessary to protect the public, restore service or mitigate further damage to the system, a grantee may commence such repair and emergency response work as required under the circumstances; provided, the grantee shall notify the Town Representative as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

**13.04.320      Maintenance of facilities.**

Each grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

**13.04.330      Relocation or removal of facilities.**

A.      The Town may require grantee, to protect, support, temporarily disconnect, relocate, and remove, its facilities within the right-of-way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of and for public welfare, health, or safety. These projects may include but are not limited to, improving the rights-of-way for traffic conditions, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the Town or other governmental entity, regardless of the type of entity (public or private) performing the project.

B.      The Town shall notify the grantee as soon as practicable of the need to relocate pursuant to subsection A above and shall specify the date by which the relocation shall be completed. The Town shall consult with the grantee on the construction schedule. The grantee shall complete the relocation by the date specified by the Town, unless a later date is set for completion pursuant to RCW 35.99.060(2), or by mutual agreement of the Town and the grantee.

C. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to subsection A above shall be borne by grantee, provided however grantee shall not be limited in its ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

D. The Town may require the relocation of grantee's facilities at grantee's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

**13.04.340 Failure to relocate.**

If a grantee is required to relocate, change, or alter the facilities constructed, operated and/or maintained hereunder and fails to do so, the Town may cause such to occur.

**13.04.350 Emergency removal or relocation of facilities.**

The Town retains the right and privilege to cut or move any facilities located within the rights-of-way as the Town may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

**13.04.360 Damage to grantee's facilities.**

Unless directly and proximately caused by the gross negligence or malicious acts of the Town, the Town shall not be liable for any damage to or loss of any facility within rights-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the rights-of-way by or on behalf of the Town.

**13.04.370 Removal of unauthorized facilities.**

Within 30 days following written notice from the Town Representative, any grantee, service provider, or other person that owns, controls, or maintains any unauthorized system, facility, or related appurtenances within the rights-of-way shall, at its own expense, remove such facilities or appurtenances from the rights-of-way. If such grantee fails to remove such facilities or appurtenances, the Town may cause the removal and charge the grantee for the costs incurred. A facility or system is unauthorized and subject to removal in the following circumstances:

- A. Upon expiration or termination of the grantee's franchise;
- B. Upon abandonment of a facility within the rights-of-way;
- C. If the system or facility was constructed or installed without the prior grant of a franchise;
- D. If the system or facility was constructed or installed without the prior issuance of a required utility right-of-way permit;
- E. If the system or facility was constructed or installed at a location not permitted by the grantee's franchise;
- F. Any such other reasonable circumstances deemed necessary by the Town Representative.

**13.04.380 Restoration of rights-of-way or other property.**

Restoration shall comply with the following requirements:

- A. When a grantee, or any person acting on its behalf, does any work in or affecting any rights-of-way, or any other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the same condition which existed before the work was undertaken.
- B. If weather or other conditions do not permit the complete restoration required hereunder, the grantee shall temporarily restore the affected rights-of-way or other property. Such temporary restoration shall be at the grantee's sole expense and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. A grantee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting rights-of-way or any other property.
- D. All restoration shall comply with the Town's Construction and Design Standards.

**13.04.390 Facilities maps.**

Each grantee shall provide the Town with an accurate as-built map or maps certifying the location of all telecommunications facilities within the Town and particularly within rights-of-way. Each grantee shall provide updated as-built maps annually.

**13.04.400 Duty to provide information.**

Within 30 days of a written request from the Town Representative, each grantee shall furnish the Town Representative with information sufficient to demonstrate that:

- A. The grantee has complied with all requirements of this Chapter;
- B. All fees due the Town in connection with the services and facilities provided by the grantee have been properly collected and paid by the grantee;
- C. All books, records, maps and other documents maintained by the grantee with respect to its facilities within rights-of-way shall be made available for inspection by the Town Representative.

**13.04.410 Grantee insurance.**

As consideration for the issuance of a franchise, the franchise shall include an insurance provision substantially conforming to the following:

Each grantee shall secure and maintain the following liability insurance policies insuring both the grantee and the Town as an additional insured against claims for injuries to persons, death, or damages to property

which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the grantee:

A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

1. \$2,000,000.00 for bodily injury or death to each Person;
2. \$2,000,000.00 for property damage resulting from any one accident;
3. \$2,000,000.00 for all other types of liability; and
4. \$5,000,000 in the aggregate for bodily injury and property damage.

B. Automobile liability for owned, non-owned, and hired vehicles with a combined single limit of \$2,000,000.00 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00; and

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$5,000,000.00.

E. Excess umbrella liability policy with limits of no less than \$5,000,000 per occurrence and in the aggregate.

F. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the franchise, and such other period of time during which the grantee is operating without a franchise or is engaged in the removal of its telecommunications facilities. Failure to maintain such insurance shall be grounds for cancellation. The grantee shall provide an insurance certificate, together with an endorsement including the Town, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the Town prior to the commencement of any work or installation of any telecommunications facilities pursuant to said franchise. Payment of deductibles and self-insured retentions shall be the sole responsibility of the grantee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The grantee's insurance shall be primary and non-contributory insurance as respects the Town, its elected and appointed officers, officials, employees, agents, representatives, engineers, consultants, and volunteers. Any insurance maintained by the Town, its elected and appointed officers, officials, employees, consultants, agents, representatives, engineers, and volunteers shall be in excess of the grantee's insurance and shall not contribute with it. Receipt by the Town of any certificate showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements. Grantee may utilize primary and excess liability insurance policies to satisfy the insurance policy limits required in this section. Grantee's excess liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

G. In addition to the coverage requirements set forth in this section, the grantee must notify the Town of any cancellation or reduction in said coverage. Within thirty (30) days after receipt by the Town



of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, the grantee shall obtain and furnish to the Town a replacement insurance certificate meeting the requirements of this section.

H. Grantee's maintenance of insurance as required by this section shall not be construed to limit the liability of grantee to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or equity. Further, grantee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by grantee.

I. Upon approval by the Town Representative and based on conditions set by the Town in the franchise, the grantee may self-insure under the same terms as required by this section. Further, the Town Representative may modify these insurance requirements as he/she deems necessary to comply with the Town's risk management policies or as otherwise approved by the Town's Risk Manager, provided that any such changes provide adequate protection for the Town.

#### **13.04.420 General indemnification.**

As consideration for the issuance of a franchise, the franchise shall include an indemnity clause substantially conforming to the following:

A. Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend, and hold harmless the Town, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives from any and all claims, costs, judgments, awards, or liability to any Person arising from injury, sickness, or death of any Person or damage to property:

1. For which the negligent acts or omissions of grantee, its agents, servants, officers or employees in performing the activities authorized are the proximate cause;
2. By virtue of grantee's exercise of the rights granted herein;
3. By virtue of the Town's permitting grantee's use of the rights-of-way or other Town property;
4. Based upon the Town's inspection or lack of inspection of work performed by grantee, its agents and servants, officers or employees in connection with work authorized on a telecommunications facility, rights-of-way or other Town property over which the Town has control pursuant to any franchise issued;
5. Arising as a result of the negligent acts or omissions of grantee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work upon a telecommunications facility, in any rights-of-way in performance of work or services;
6. Based upon radio frequency emissions or radiation emitted from grantee's equipment located upon a telecommunications facility, regardless of whether grantee's equipment complies with applicable federal statutes and/or FCC regulations related thereto.

B. Grantee's indemnification obligations pursuant to subsection A of this section shall include assuming potential liability for actions brought against the Town by grantee's own employees and the

employees of grantee's agents, representatives, contractors, and subcontractors even though grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this assumption of potential liability for actions brought against the Town by the aforementioned employees is with respect to claims against the Town arising by virtue of grantee's exercise of its rights. In addition to the indemnification obligations throughout this Section, the obligations of grantee under this subsection B shall be mutually negotiated between the parties. Grantee shall acknowledge that the Town would not enter into an agreement without grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, grantee will waive its immunity under Title 51 RCW as provided in RCW 4.24.115.

C. Inspection or acceptance by the Town of any work performed by grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that grantee has been given prompt written notice by the Town of any such claim, said indemnification obligations shall also extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The Town has the right to defend or participate in the defense of any such claim and has the right to approve any settlement or other compromise of any such claim.

D. In the event that grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties agree to decide the matter), to have been a wrongful refusal on the part of grantee, then grantee shall pay all of the Town's costs for defense of the action, including all reasonable expert witness fees, reasonable attorneys' fees, the reasonable costs of the Town, and reasonable attorneys' fees of recovering under this Subsection.

E. The obligations of grantee under the indemnification provisions of this section shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the Town, its officers, agents, employees or contractors. The provisions of this section, however, are not to be construed to require the grantee to hold harmless, defend, or indemnify the Town as to any claim, demand, suit, or action which arises out of the sole negligence of the Town. In the event that a court of competent jurisdiction determines that a franchise is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to provide that the grantee's obligation to indemnify the Town hereunder shall extend only to the extent of grantee's negligence.

F. Notwithstanding any other provisions of this section, grantee assumes the risk of damage to its telecommunications facilities located in the rights-of-way and upon Town property from activities conducted by the Town, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or willful or malicious action on the part of the Town, its officers, agents, employees or contractors. Grantee releases and waives any and all such claims against the Town, its officers, agents, employees and contractors. In no event shall the Town be responsible for indirect, special, consequential, or punitive damages or losses, including but not limited to lost income or business interruption, whether or not a party has been advised of the possibility of such damage and notwithstanding the theory of liability in which an action may be brought. Grantee further agrees to indemnify, hold harmless and defend the Town against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of grantee's telecommunications facilities as the result of any interruption of service due to

damage or destruction of grantee's telecommunications facilities caused by or arising out of activities conducted by the Town, its officers, agents, employees or contractors.

G. These indemnification requirements shall survive the expiration, revocation, or termination of a franchise issued thereunder.

**13.04.430 Performance and construction surety.**

Before a franchise granted pursuant to this Chapter is effective, and as necessary thereafter, the grantee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the Town as may be required by the Town of Yarrow Point, or by an applicable franchise or other applicable code, ordinance, resolution, or rules and regulations of the Town.

**13.04.440 Security fund.**

A. Prior to issuance of a franchise pursuant to this Chapter, each grantee shall establish a permanent security fund with the Town by depositing the amount of \$50,000, or such other amount as deemed necessary by the Town Representative, with the Town in cash, bond, or an unconditional letter of credit, based upon both operating history in rights-of-way, Other ways, and Town property and the cost of removal of the grantee's facilities, which fund shall be maintained at the sole expense of the grantee so long as any of the grantee's telecommunications facilities are located within the rights-of-way.

B. The fund shall serve as security for the full and complete performance of this Chapter and the franchise including any costs, expenses, damages, or loss the Town pays or incurs, including civil penalties, because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations, or permits of the Town applicable to the construction, maintenance, repair, or removal of telecommunications facilities in the rights-of-way or upon Town property.

C. The Town and the grantee shall agree upon and specify in the franchise certain amounts which represent both parties' best estimate of the damages for failure to comply with the franchise issued thereunder. The liquidated damages provided in the franchise shall be the exclusive monetary remedy for the named breaches. Neither the right to liquidated damages nor the payment of liquidated damages shall bar or otherwise limit the right of the Town in a proper case to:

1. Obtain judicial enforcement of a grantee's obligations by means of specific performance, injunctive relief, mandamus, or other remedies at law or in equity;
2. Consider any substantial violation or breach as grounds for forfeiture and termination of a franchise issued thereunder; and
3. Consider any violation or breach as grounds for nonrenewal or nonextension of a franchise or issuance of a new franchise.

D. Before any sums are withdrawn from the security fund, the Town shall give written notice to the grantee:

1. Describing the act, default or failure to be remedied, or the damages, costs, or expenses which the Town has incurred by reason of grantee's act or default regarding the installation, maintenance, repair, or removal of telecommunications facilities in the rights-of-way, Other ways, or upon Town property or in connection with restoration of the foregoing;
  2. Providing a reasonable opportunity for grantee to first remedy the existing or ongoing default or failure regarding the installation, maintenance, repair, or removal of telecommunications facilities in the rights-of-way or in connection with the restoration of the foregoing, if applicable;
  3. Providing a reasonable opportunity for grantee to pay any monies due the Town before the Town withdraws the amount thereof from the security fund, if applicable; and
  4. That the grantee will be given an opportunity to review the act, default or failure described in the notice with the Town or his or her designee.
- E. Grantees shall replenish the security fund within 14 days after written notice from the Town that there is a deficiency in the amount of the fund.
- F. Upon termination or expiration of a franchise all funds remaining in the Security Fund shall be returned to the grantee within 30 days after removal of grantee's telecommunications facilities within the rights-of-way.

**13.04.450 Performance bond.**

- A. A grantee performing work in the rights-of-way must provide a performance bond written by a corporate surety acceptable to the Town equal to at least 125% of the estimated cost of completing or removing the facilities and restoring the rights-of-way or Town property to its pre-construction condition. The Town Planner may, at his/her discretion, waive the bonding requirement for specific projects. This bond may be placed for the entirety of the grantee's projects provided that Grantee is able to quantify the full estimated cost of its deployment of telecommunications facilities. If a grantee provides a bond on a per project basis, such grantee is permitted to increase the bond for future projects, or if a project is complete, grantee may apply the bond to other projects in the rights-of-way. The purpose of this bond is to guarantee completion or removal of partially completed or nonconforming telecommunications facilities, and to fully restore the rights-of-way and Town property to their pre-construction condition.
- B. If required by the Town, a grantee shall furnish a two (2) year warranty bond, or other surety acceptable to the Town, upon the completion of grantee's construction work, including any restoration work, within the rights-of-way. The warranty bond amount will be equal to 125% of the documented final cost of the construction and restoration work.
- C. The performance bond shall guarantee, to the satisfaction of the Town:
1. Timely completion of construction;
  2. Construction in compliance with applicable plans, permits, technical codes and standards;

3. Proper location of the facilities as specified by the Town;
4. Restoration of the rights-of-way and any other property affected by the construction;
5. The submission of as-built drawings after completion of the work;
6. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

**13.04.460 Coordination of construction activities.**

All grantees are required to cooperate with the Town and with each other.

- A. Each grantee shall meet with the Town, other grantees and users of the rights-of-way annually or as determined by the Town to schedule and coordinate construction in rights-of-way.
- B. All construction locations, activities, and schedules shall be coordinated, as ordered by the Town Representative to minimize public inconvenience, disruption, or damages.

**13.04.470 Assignments or transfers of grant of franchise.**

- A. A franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of grantee, by operation of law or otherwise, unless prompt written notice is provided to the Town within sixty (60) days of the assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this section, no assignment or transfer of a franchise shall be deemed to occur based on the public trading of grantee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of a franchise.
- B. Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control (for example, management of grantee or its facilities) of the grantee or of the ownership or working control of the grantee's facilities within the Town, or of the ownership or working control having ownership or working control of the grantee or of the grantee's facilities within the Town, or of control of the capacity or bandwidth of the grantee's facilities within the Town, shall be considered an assignment or transfer requiring notice to the Town pursuant to a franchise. Such transactions between affiliated entities are not exempt from notice requirements. A grantee shall notify the Town of any proposed change in, or transfer of, or acquisition by any other party of control of a grantee within sixty (60) days following the closing of the transaction.
- C. The Parties acknowledge that Equipment deployed by Grantee pursuant to a Franchise may be owned and/or remotely operated by third-party wireless carrier customer ("Carriers") and installed and maintained by Grantee pursuant to existing agreements between Grantee and a Carrier. Such Equipment shall be treated as Grantee's Equipment for all purposes under such Franchise. A Carrier's ownership and/or operation of such Equipment shall not constitute an Assignment under the Franchise, provided that Grantee shall not actually or purport to sell, assign, encumber, pledge, or otherwise transfer any part of its interest in the Franchise Area to a Carrier, or otherwise permit any portion of the Franchise Area to be occupied by anyone other than itself. Grantee shall remain solely responsible and

liable for the performance of all obligations under the Franchise with respect to any Equipment owned and/or remotely operated by a Carrier

**13.04.480 Revocation or termination of grant of franchise.**

A franchise granted by the Town to use or occupy rights-of-way may be revoked for any one or more of the following reasons:

- A. Construction or operation at an unauthorized location;
- B. Unauthorized transfer of control of the grantee;
- C. Unauthorized assignment of a franchise;
- D. Unauthorized sale, assignment, or transfer of the grantee's franchise assets or an interest therein;
- E. Misrepresentation or lack of candor by or on behalf of a grantee in any application to the Town;
- F. Abandonment of facilities in the rights-of-way;
- G. Failure to relocate or remove facilities as required in this Chapter;
- H. Failure to pay taxes, compensation, fees or costs when and as due the Town;
- I. Insolvency or bankruptcy of the grantee;
- J. Violation of a material provision of this Chapter;
- K. Violation of a material term of a franchise.

**13.04.490 Notice and duty to cure.**

In the event that the Town Representative believes that grounds exist for revocation of a franchise, the grantee shall be given written notice of the apparent violation or noncompliance, be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding 30 days to furnish evidence that:

- A. Corrective action has been, or is being, actively and expeditiously pursued to remedy the violation or noncompliance.
- B. Rebutts the alleged violation or noncompliance.
- C. It would be in the public interest to impose some monetary damages, penalty, or sanction less than revocation.

**13.04.500 Revocation hearing.**

In the event that a grantee fails to provide evidence reasonably satisfactory, as provided hereunder, to the Town Representative, he/she shall refer the apparent violation or noncompliance to the Town Council. The Town Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

**13.04.510 Standards for revocation or lesser sanctions.**

If persuaded that the grantee has violated or failed to comply with a material provision of this Chapter or of a franchise or applicable codes, ordinances, resolutions, or statutes, the Town Council shall determine whether to revoke the franchise, and issue a written decision relating thereto, or to establish some monetary damages, penalty, lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- A. Whether the misconduct was egregious;
- B. Whether substantial harm resulted;
- C. Whether the violation was intentional;
- D. Whether there is a history of prior violations of the same or other requirements;
- E. Whether there is a history of overall compliance;
- F. Whether the violation was voluntarily disclosed, admitted or cured.

**Article IV. Small Wireless Deployment.**

**13.04.520 Application Process.**

A. Overview. In order to manage its rights-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the Town, the Town of Yarrow Point has adopted this administrative process for the deployment of small wireless facilities. The Town and applicant for a franchise and other permits associated with the deployment of small wireless facilities face challenges in coordinating applicable legislative and administrative processes under the Federal Communications Commission (FCC) regulations. A franchise for the use of the Town's right-of-way is a contract which requires approval by the Town Council. The small wireless permits are issued by the Town Representative and by the Planning commission for new poles. Applicants are encouraged and expected to provide all related applications in one submittal, unless they have already obtained a franchise.

B. Application Process. The Town Representative is authorized to establish franchise and other application forms to gather the information required by these ordinances from applicants and to determine the completeness of the application process as provided herein. The application shall include Parts A, B, and C as described below.

1. Franchise. The process typically begins with and depends upon approval of a franchise for the use of the public right-of-way to deploy small wireless facilities if any portion of the applicant's facilities are to be located in the right-of-way. A complete application for a franchise

is designated as Part A. An applicant with a franchise for the deployment of small wireless facilities in the Town may proceed to directly apply for a small wireless facilities permit and related approvals (Parts B and C). An applicant at its option may utilize phased development. Because franchises are required by federal law to be competitively neutral, the Town has established a franchise format for use by all right-of-way users.

2. Small Wireless Facility Permits. Part B of the application requires specification of the small wireless facility components and locations as further required in the small wireless permit application described in 13.04.530.

3. Associated Permit(s). Part C of the application shall attach all associated permit requirements such as applications or checklists required under the Critical Areas, Shoreline or SEPA ordinances. Applicants for deployment of small wireless facilities on new poles shall comply with the requirements in Chapter 17.30 YPMC.

4. Leases. An applicant who desires to attach a small wireless facility to any utility pole or light owned by the Town shall include an application for a lease as a component of its application. The Town Representative is authorized to approve leases in the form approved for general use by the Town Council for any utility pole or light pole in the right-of-way. Leases for the use of other public property, structures or facilities shall be submitted to the Town Council for approval.

#### **13.04.530 Small Wireless Permit Application.**

The following information shall be provided by all applicants for a small wireless permit:

A. The application shall provide specific locational information including GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement or new poles, towers, existing buildings and/or other structures. Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards, shall be provided by the applicant. The application shall have sufficient detail to identify:

1. The location of overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the rights-of-way along the proposed route;
2. The specific trees, structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction.
3. Compliance with the aesthetic requirements of Chapter 17.30.150 YPMC.

B. The applicant must show written approval from the owner of any pole or structure for the installation of its small wireless facilities on such pole or structure. To extent that the pole or structure



is not owned by the property owner, the applicant shall demonstrate in writing that they have authority from the property owner to install the small wireless facility on the pole or structure. Such written approval shall include approval of the specific pole, engineering and design standards from the pole owner, unless the pole owner is the Town. Submission of the lease agreement between the owner and the applicant is not required. For Town-owned poles or structures, the applicant must obtain a lease from the Town prior to or concurrent with the small wireless permit application and must submit as part of the application the information required in the lease for the Town to evaluate the usage of a specific pole.

C. If the application is for a new or replacement light pole, then the applicant must provide a photometric analysis.

D. The applicant can batch multiple small wireless facility sites in one application. The applicant is encouraged to batch the small wireless facility sites within an application in a contiguous service area.

E. Any application for a small wireless facility located in the right-of-way adjacent to a parcel zoned for residential use shall demonstrate that it has considered the following:

1. Whether the proposed small wireless facility could be located on a street corner rather than in the middle of a block.

2. Whether a small wireless facility is currently installed on an existing pole in front of the same residential parcel. If a small wireless facility exists, then the applicant must demonstrate that no technically feasible alternative location exists which is not in front of the same residential parcel.

3. Whether the proposed small wireless facility can be screened from residential view by choosing a pole location that is not directly in front of a window or views.

F. Any application for a small wireless permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Chapter 19.04 YPMC. Further, any application proposing small wireless facilities in Shoreline Management Zones must indicate that the application is exempt or comply with the review processes in such codes.

G. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless facilities will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the Small Wireless facility will operate. If facilities which generate RF radiation necessary to the Small Wireless facility are to be provided by a third party, then the small wireless permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation. The applicant may provide one emissions report for the entire small wireless deployment if the applicant is using the same small wireless facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch.

H. The applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

I. A professional engineer licensed by the State of Washington shall certify in writing, over his or her seal, that both construction plans and final construction of the small wireless facilities and structure or pole and foundation are designed to reasonably withstand wind and seismic loads as established by the International Building Code. Further, the construction drawings shall depict all existing and proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 250 feet from the proposed site. The construction drawings shall also include the applicant's plan for electric and fiber utilities, all conduits, cables, wires, handholes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small wireless facility.

J. A traffic control plan developed through consultation with the Town Engineer.

K. The small wireless facilities permit shall include those elements that are typically contained in the right-of-way use permit (YPMC 12.30) to allow the applicant to proceed with the build-out of the small wireless facility deployment.

M. If the application requires an equipment enclosure greater than 17 cubic feet, the applicant must notice and hold a public meeting for the Town residents within 30 days of filing the complete application.

L. Recognizing that small wireless facility technology is rapidly evolving, the Town is authorized to adopt and publish standards for the technological and structural safety of Town-owned structures and to formulate and publish application questions for use when an applicant seeks to attach to Town-owned structures.

#### **13.04.540 Review Process.**

A. Review. The following provisions relate to review of applications for a small wireless facility permit.

1. Only complete applications for small wireless facilities containing all required submission elements described in 13.04.530 shall be considered by the City. Applications that are not made complete within 60 days of initial submission of application materials shall be deemed withdrawn.

2. In any zone, upon application for a small wireless permit, the Town will permit small wireless deployment on existing or replacement utility poles conforming to the Town's generally applicable development and design standards adopted pursuant to Chapter 17.30 YPMC, except as provided in subsection B below.

3. Vertical clearance shall be reviewed by the Town Representative to ensure that the small wireless facilities will not pose a hazard to other users of the rights-of-ways.

4. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), Town construction and sidewalk clearance standards, traffic warrants, Town ordinances, and state and federal statutes and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement pole or new pole must: be physically possible, cannot obstruct vehicular or pedestrian traffic or the clear zone,

not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

5. No equipment shall be operated so as to produce noise in violation of Chapter 8.04 YPMC.

6. Small wireless facilities may not encroach onto or over private property or property outside of the right of way without the property owner's express written consent.

B. Deployments on new poles or deviations for pole design standards. Small wireless deployment on new non-Town owned poles, or replacement poles deviating from the pole design standards adopted pursuant to Chapter 17.30.150, are subject to review pursuant to Chapter 17.30.160.

C. Eligible Facilities Requests. The design approved in a small wireless facility permit shall be considered concealment elements and such facilities may only be expanded upon an Eligible Facilities Request described in 17.30.170 when the modification does not defeat the concealment elements of the small wireless facility.

D. Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC 253 and 47 USC 332 and other applicable statutes, regulations and case law. Applicants for franchises and the small wireless facility permits shall be treated in a competitively neutral and non-discriminatory manner with other service providers, utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small wireless facility permit review under this Chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

E. Collaborative Review. The Town Representative may require the applicant to produce a representative to collaboratively review application materials with Town staff up to one time per week during the course of the Town's review. The required applicant representative may include an engineer and/or a siting specialist with sufficient understanding of the project to knowledgeably address questions or concerns the Town may have on the application. The Town must provide seven (7) days' notice to applicant of the date, time, location, anticipated scope of review, and requested participants for the meeting.

F. Final Decision. The Town Representative shall review and make a determination on all applications to site small wireless facilities, with the exception of new poles in the rights-of-way which is governed by 17.30.160, consistent with this Chapter as well as other applicable code provisions including, but not limited to, 17.30 YPMC. The Town Planner's decision shall be final and is appeal pursuant to 17.30.190.

G. Shot Clocks. The Town shall make every reasonable effort consistent with any applicable provisions of state or federal law, and the preservation of the City's health, safety and aesthetic environment, to comply with the Federal presumptively reasonable time periods for review of facilities for the deployment of small wireless facilities to the fullest extent possible.

H. Public Comment. The Town shall provide notice of a complete application for a small wireless facility permit on the Town's website with a link to the application. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant is

encouraged to host informational meetings for the public regarding the deployment. The Town shall post meeting notices, if any for informational meetings on its website. These meetings are entirely within the control of the applicant and are for the public's information and are neither Town hearings nor part of any land use appeal process.

I. **Withdrawal.** Any applicant may withdraw an application submitted pursuant to 13.04.530 at any time, provided the withdrawal is in writing and signed by all persons who signed the original application or their successors in interest. When a withdrawal is received, the application shall be deemed null and void. If such withdrawal occurs prior to the Town Representative's decision, then reimbursement of fees submitted in association with said application shall be prorated to withhold the amount of Town costs incurred in processing the application prior to time of withdrawal. If such withdrawal is not accomplished prior to the Town Planner's decision, there shall be no refund of all or any portion of such fee.

#### **13.04.550 Permit Requirements**

A. The grantee of any permit shall comply with all of the requirements within the small wireless permit.

B. Small wireless facilities installed pursuant to a small wireless facility permit may proceed to install the approved small wireless facilities without the need for an additional right-of-way use permit if construction is commenced within thirty (30) days of approval by providing email or written notice to the Town Planner. Facilities approved in a small wireless permit in which installation has not commenced within thirty (30) days of the approval of a small wireless facility permit shall apply for and be issued a right-of-way use permit to install such small wireless facilities in accordance with the standard requirements of the Town for use of the right-of-way.

C. **Post-Construction As-Builts.** Within thirty (30) days after construction of the small wireless facility, the grantee shall provide the Town with as-builts of the small wireless facilities demonstrating compliance with the permit and site photographs.

D. **Permit Time Limit.** Construction of the small wireless facility must be completed within six (6) months after the approval date by the Town. The grantee may request one (1) extension to be limited to three (3) months, if the applicant cannot construct the small wireless facility within the original six (6) month period.

E. **Site Safety and Maintenance.** The grantee must maintain the small wireless facilities in safe and working condition. The grantee shall be responsible for the removal of any graffiti or other vandalism and shall keep the site neat and orderly, including but not limited to following any maintenance or modifications on the site.

#### **13.04.560 Modifications to small wireless facilities**

A. If a grantee desires to make a modification to an existing small wireless facility, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure, placing additional pole-mounted or ground-mounted equipment, or modifying the concealment elements, then the applicant shall apply for a small wireless facility permit.

B. A small wireless facility permit shall not be required for routine maintenance and repair of a small wireless facility within the rights-of-way, or the replacement of an antenna or equipment of similar size, weight, and height, provided that such replacement does not defeat the concealment elements used in the original deployment of the small wireless facility, does not impact the structural integrity of the pole, and does not require pole replacement. Further, a small wireless facility permit shall not be required for replacing equipment within the equipment enclosure or reconfiguration of fiber or power to the small wireless facility. Right-of-way use permits may be required for such routine maintenance, repair or replacement consistent with 12.30 YPMC.

**13.04.570 Consolidated Permit**

A. The issuance of a small wireless permit grants authority to construct small wireless facilities in the rights-of-way in a consolidated manner to allow the applicant, in most situations, to avoid the need to seek duplicative approval by both the public works and the development services department. If the applicant requires a new franchise to utilize the right-of-way, the franchise approval may be consolidated with the small wireless facility permit review if requested by the applicant. As an exercise of police powers pursuant to RCW 35.99.040(2), the small wireless facility permit is not a right-of-way use permit, but instead a consolidated public works and land use permit and the issuance of a small wireless facility permit shall be governed by the time limits established by federal law for small wireless facilities.

B. The general standards applicable to the use of the rights-of-way described in 12.30 YPMC shall apply to all small wireless facility permits.

**Article V Fees for telecommunications franchises**

**13.04.580 Application and review fee.**

Any applicant for a franchise pursuant to this Chapter shall pay an application and review fee or fee deposit in an amount as determined by the Town Council and adopted by resolution. This application and review fee covers the actual costs associated with the Town's initial review of the application; provided, however, that the applicant shall be required to pay all necessary permit fees. This application and review fee shall be deposited with the Town as part of the application filed pursuant to this Chapter.

**13.04.590 Other Town costs.**

All grantees shall, within 30 days after written demand therefor, reimburse the Town for all direct and actual costs and expenses incurred by the Town in connection with any grant, modification, amendment, renewal, or transfer of any franchise.

**13.04.600 Permit fee.**

Prior to issuance of a right-of-way permit or small wireless facility permit, the applicant shall pay a permit fee in an amount as determined by the Town Council and adopted by resolution, or the actual costs incurred by the Town in reviewing such permit application.

**Section 3.** Ordinance to be transmitted to Department. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington Department of Commerce as required by law.

**Section 4.** Corrections. The Town Clerk and codifiers of the ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 5.** Severability. If any section, sentence, clause phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

**Section 6.** Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the Town and shall take effect and be in full force five (5) days after publication.

DRAFT

**PASSED AND APPROVED** Passed by the Town Council of the Town of Yarrow Point, the 8th day of January 2019. Approved by the Mayor of the Town of Yarrow Point, the day of January 2019.

\_\_\_\_\_  
Richard Cahill, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Bonnie Ritter, Clerk-Treasurer

\_\_\_\_\_  
Scott Missall, Town Attorney

FILED WITH THE TOWN CLERK:  
PASSED BY THE TOWN COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO.: 695