

ORDINANCE NO. 1348

**AN ORDINANCE OF THE TOWN OF RUSTON,
WASHINGTON RELATING TO WORK BY UTILITIES
AND TELECOMMUNICATIONS PROVIDERS IN THE
PUBLIC RIGHTS OF WAY, SETTING STANDARDS FOR
SUCH PRACTICES AND REQUIRING A PERMIT,
ADOPTING A NEW CHAPTER OF THE RUSTON
MUNICIPAL CODE, CHAPTER 14.06 RMC ENTITLED
“RIGHT-OF-WAY USE – MASTER USE PERMITS AND
UTILITY RELOCATION”, AND ESTABLISHING AN
EFFECTIVE DATE.**

WHEREAS, in accordance with RCW 35.27.370, the Town has the right to control its streets and rights of way; and

WHEREAS, in accordance with RCW 35.21.860, the Town has the right to allow use of its rights of way by franchise agreement or other methods; and

WHEREAS, the State Legislature has adopted Chapter 35.99 RCW governing local governments regulation of the public rights-of-way as it relates to telecommunications and cable service; and

WHEREAS, Chapter 35.99 specifically provides that its provisions “shall not preempt specific provisions in existing franchises or contracts between cities... and service providers”; and

WHEREAS, the Town Council deems it to be in the public interest to adopt new provisions which comply with the provisions of Chapter 35.99 for application to

telecommunications and cable service by establishing a new chapter of the Ruston Municipal Code 14.06 entitled "Right of Way Use – Master Use Permits and Utility Relocation; and

WHEREAS, on December 19, 2011 the Town Council held the first reading on this Ordinance; and

WHEREAS, on 1-17-2012, the Town Council adopted this Ordinance during its regular meeting at second reading;

**THE TOWN COUNCIL OF THE TOWN OF RUSTON HEREBY ORDAINS AS
FOLLOWS:**

Section 1. The Ruston Municipal Code is hereby amended to add a new Chapter 14.06 to read as follows:

**RIGHT-OF-WAY USE – MASTER PERMITS AND UTILITY RELOCATION
CHAPTER 14.06**

Sections:

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14.06.010 Purpose. The purpose and intent of this chapter is to:

- A. Provide for the orderly use and regulation of public right-of-way by establishing clear guidelines, standards and timeframes for the exercise of local authority with respect to the regulation of right-of-way use by telecommunications and cable television providers and services. This chapter differs from “encroachment permits” under chapter 14.03 RMC and “street excavation” under chapter 14.08 RMC.
- B. Implement regulations that are consistent with the requirements of state law, to wit, Chapter 35.99 RCW as the same exists or is hereafter amended.
- C. Conserve the limited physical capacity of the public ways held in public trust by the Town.
- D. Assure that the Town’s current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs to be incurred by the Town, to the full extent permitted by state and federal law.
- E. Secure fair and reasonable compensation of the Town and the residents of the Town for permitting the private use of public rights-of-way while assuring that the Town can continue to fairly and reasonably protect the public health, safety and welfare.
- F. Enable the Town to discharge its public trust consistent with the rapidly evolving state and federal regulatory policies, industry competition and technological development.

14.06.020 Definitions.

For the purpose of this chapter and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they use it shall indicate otherwise; these definitions and all provisions of this chapter shall be interpreted in a manner consistent with the provisions of state and federal law, including but not limited to Chapter 35.99 RCW:

A. "Applicant" means any person or entity that applies for any permit pursuant to this chapter. The term "applicant" also applies to a person who has received a permit from the Town in accordance with this chapter.

B. "Cable television service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

C. "Construction standard" means a construction standard applicable to the right-of-way or utility easement and adopted by the owner of the easement. The term shall typically refer to construction standards adopted by the Town. Rights-of-way in the jurisdiction under the control of the state pursuant to RCW 47.24.020 shall be subject to state-adopted construction standards if such standards are more restrictive or intensive than those of the Town.

D. "Council" means the Town council of the Town of Ruston, Washington, acting in its official capacity.

E. "Encroachment permit" means a permit issued pursuant to Chapter 14.03 of RMC.

F. "Facilities" means all of the plant, equipment, fixtures, pertinences, antennas and other facilities necessary to furnish and deliver telecommunication services and cable television services, including but not limited to poles with cross-arms, poles without cross-arms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services.

G. "Franchise" means the initial authorization or a renewal thereof issued by the Town, whether such authorization is designated as a franchise, permit, ordinance, resolution, contract, certificate, right-of-way use authorization, or otherwise, which authorizes construction and operation of facilities with the Town's rights-of-way for the purpose of offering cable service, utility or other service to subscribers or patrons.

H. "Franchisee" means the person to whom or which a franchise is granted by the Town Council and the lawful successor, transferee or assignee of said person subject to such conditions as may be defined in the franchise or by the ordinances of the Town, including but not limited to the provisions of this chapter.

I. "Master use permit" means the agreement in whatever form whereby the Town may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating facilities. This definition is not intended to limit, alter or change the extent of the existing authority of the Town to require franchise nor does it change the status of a service provider asserting an existing state-wide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution to occupy the right-of-way. For the purposes of this definition, a franchise, except for a cable television franchise, is a master use permit. "Master use permit" does not include cable television franchises.

J. "Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within the Town which are under the jurisdiction and control of a governmental entity or private party other than the Town.

K. "Overhead facilities" means utility poles, utility facilities and cable and television facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

L. "Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals, including their lessors, trustees and receivers.

M. "Personal wireless service" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

N. "Right-of-way" means land or an easement acquired or dedicated for public roads and streets, but does not include:

1. State highways and other ways;
2. Land dedicated for roads, 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; or
5. Federally granted railroad rights-of-way acquired under 43 U.S.C. Section 912 and related provisions of federal law that are not open for motor vehicle use.

O. "Service provider" or "provider" means every corporation, company, association, joint stock association, firm, partnership, person, Town, or town owning, operating, or managing any facilities used to provide and providing telecommunications or cable television service for hire, sale, or resale to the general public. "Service provider" or "provider" includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city or town.

P. "State" means the state of Washington.

Q. "Street excavation permit" means a permit issued pursuant to Chapter 14.08 RMC.

R. "Subscriber" means any person, entity or user of a cable system who lawfully receives cable services or other service therefrom with the franchisee's express permission.

S. "Telecommunication service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

T. "Town" means the Town of Ruston, Washington.

U. "Town property" means and includes all real property owned by the Town, other than rights-of-way as that term is defined herein, and all property held in proprietary capacity by the Town. Such Town property is not subject to the right-of-way master use permits as provided for by this chapter.

V. "Use permit" means the authorization in whatever form whereby a Town or town may grant permission to a service provider to enter and use the specified right-of-way for the purpose of installing, maintaining, repairing, or removing identified facilities.

14.06.030 Applicability of chapter. This chapter shall be applicable to all franchises, whether approved on or after the effective date of the ordinance codified in this chapter, and other persons seeking to utilize the right-of-way on or after the effective date of the ordinance codified in this chapter.

14.06.040 Master Use Permit authorization – Use of right-of-way for transmission only.

All providers of cable television service and telecommunications service who desire to construct, install, operate, maintain or otherwise locate facilities in, under, over or across any public way of the Town for the sole purpose of providing telecommunications or cable television service to persons and areas outside of the Town shall first obtain a master use permit pursuant to the provisions of this chapter.

14.06.050 Master use permit – Additional purposes.

Master use permits may be requested in the following situations:

A. By a franchisee who seeks authorization to construct continuing, extensive construction activities over a period estimated to be in excess of six months may apply for a master use permit as an alternative to individual right of way encroachment permits or street excavation permits for individual segments of the construction activities. Such applications shall include all information required by Chapters 14.03 and 14.08 RMC.

B. Holders of state-wide franchises, which may not be required to obtain a master use permit, are requested to do so in accordance with RCW 35.99.030(1).

14.06.060 Master Use Permit -- Application.

Any person that desires a master use permit pursuant to this chapter shall file an application with the Town which shall include the following information:

A. The identity of the applicant, including all affiliates of the applicant. Additionally, if any contractor(s) will be doing work for the applicant, then the applicant shall provide the Town with the applicable information and authorization for such contractor(s) to perform the work on behalf of applicant.

B. A description of the services that are or will be offered or provided by the applicant over its facilities.

C. A description of the transmission medium that will be used by the applicant to offer or provide such services.

D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the Town, depicted on a 22-by-34-inch sheet format in sufficient detail to identify:

1. The horizontal and vertical location and proposed route requested for applicant's proposed facilities;
2. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;
3. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate;
4. Depiction of existing utilities and other public and/or private facilities including but not limited to cross streets, permanent landmarks or other points of reference;
5. Existing right-of-way boundaries;
6. Cross-section(s) of existing roadway(s) with proposed facilities, including offsets and depth;
7. Proposed construction note stating compaction and testing requirements;
8. Restoration details conforming to adopted Town standard;
9. All maps, including a required area map, shall have centerline stations and a north arrow orienting the map;
10. Temporary erosion and sedimentary control plan utilizing best management practices (T.E.S.C.).

E. If applicant is proposing to install overhead facilities, evidence that it has obtained the permission of the owner of existing poles or, in the alternative, that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing public ducts or conduits within the right-of-way, information in sufficient detail to identify:

1. The excess capacity currently available in such public ducts or conduits before installation of applicant's facilities;
2. The excess capacity, if any, that will exist in such public ducts or conduits after installation of applicant's facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the right-of-way:

1. The location proposed for the new ducts or conduits;
2. The excess capacity that will exist in such public ducts or conduits after installation of applicant's telecommunications facilities;
3. Provision to be made for the installation of public conduit pursuant to RMC 14.06.260.

H. A preliminary construction schedule and completion date.

I. A preliminary traffic control plan in accordance with the Town's adopted street standards and current Town and state standards.

J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the facilities and services described in the application and an ability to properly complete the project in accordance with Town's standards.

L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the telecommunications services.

M. An application fee which shall be set by the Town council by resolution and any deposits or charges established by ordinance, resolution or franchise.

N. Requirements in subsections (J) through (L) of this section may be satisfied pursuant to the relevant requirements of a valid franchise issued to the applicant by the Town.

14.06.070 Permit Processing.

The Town shall act upon a complete application within 120 days from the date the applicant files the complete application, except:

- A. With the agreement of the applicant; or
- B. Where the Town Council cannot reasonably make a final decision within the 120 days.

14.06.080 Criteria for Approval.

The Town council shall hold a public hearing and receive testimony and other evidence regarding the issuance of the master use permit. The Town Council's decision shall be confirmed in writing shall be based upon the record of the proceeding and shall consider and apply the factors set forth below:

- A. The financial and technical ability of the applicant.
- B. The legal ability of the applicant.
- C. The capacity of the right-of-way to accommodate the applicant's proposed facilities.
- D. The capacity of the right-of-way to accommodate additional utility, cable, and telecommunications facilities if the master use permit is granted.
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the master use permit is granted.
- F. The public interest in minimizing the cost of the disruption of construction within the right-of-way.
- G. The effect, if any, on public health, safety and welfare if the master use permit is granted.
- H. The availability of alternate routes and/or locations for the proposed facilities.
- I. Applicable federal and state laws, regulations and policies.
- J. Such other factors as may demonstrate that the grant to use the right-of-way will serve the community interest.

14.06.090 Conditions of Approval; Term.

- A. No master use permit shall be deemed to have been granted hereunder until the Town has issued a written permit setting forth the particular terms and provisions under which the provider has been granted the right to occupy and use right-of-way of the Town and all preconditions thereto, such as bonding, have been satisfied.
- B. The applicant shall provide to the Town a performance bond sufficient to restore the right of way surface to its original condition and sufficient to guarantee and maintain the site of the applicant's work for the duration of the master use permit. Such bond shall be provided in

a form acceptable to the Town Attorney. The amount of the bond shall be established by the Town Engineer.

C. The applicant shall be required to indemnify and hold the Town harmless from any and all claims for bodily injury or property damage that may arise out of or in connection with the applicant's permitted use. The applicant shall be required to sign an indemnification agreement prepared by the Town Attorney as a condition of receiving the permit.

D. Prior to beginning any work, the applicant shall provide the Town with proof of insurance that will remain in effect for the duration of the master use permit. Such insurance will provide for public liability and property damage and shall be in a form and type that is acceptable to the Town. The limits of said insurance shall be established by the Town Engineer. A certificate evidencing the existence of said insurance or, upon written request of the Town Engineer, a duplicate copy of the policy shall be provided to the Town as evidence of the existence of the insurance protection prior to the applicant beginning any work. Said insurance shall not be cancelable or reduced without prior written notice to the Town, not less than 30 days in advance of the cancellation or alteration. Said insurance shall name the Town as a named or additional insured and shall be primary as to any other insurance available to the Town.

E. No master use permit granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the right-of-way of the Town for delivery of telecommunications, cable television services, or any other services or purposes.

F. No master use permit granted under this chapter shall convey any right, title or interest in the right-of-way, but shall be deemed a permit only to use and occupy the right-of-way for the limited purposes and term stated in the permit. Further, no master use permit shall be construed as any warranty of title.

G. A master use permit granted under this chapter shall be limited to a grant of specific rights-of-way and defined portions thereof for the period specified therein.

14.06.100 Appeal.

Any decision by the Town Council to condition or deny the master use permit is appealable in accordance with the procedures set forth in Chapter 35.99 RCW, or as hereafter amended.

14.06.110 Requirements for the provisions of services within the Town.

Except as expressly provided herein, all providers of cable television service and telecommunications service to citizens of the Town through facilities located in the right-of-way shall, prior to commencing operations:

A. Obtain and maintain a franchise from the Town unless expressly exempted by the provisions of state or federal law;

- B. Obtain and maintain a business license as provided by Chapter 5.05 RMC; and
- C. Either:
 - 1. Obtain and maintain an encroachment permit or street excavation permit for specific construction activities. Encroachment permits or street excavation permits for telecommunications or cable television service shall be processed within 30 days unless the applicant consents to a longer processing period; or
 - 2. Obtain a master use permit for all desired activities.

14.06.120 Facilities lease required.

No provider of cable television or telecommunications services or any other entity who desires to locate equipment on Town property shall locate such facilities or equipment on Town property until a facilities lease is approved by the Council. The Council reserves unto itself the sole discretion in its legislative capacity to lease Town property for telecommunications, cable television or other facilities, and no vested or other right shall be created by this section or any other provision of this chapter with respect to such facilities leases.

14.06.130 Exempt activities.

Persons who have a franchise and/or have obtained a master use permit are authorized to conduct the normal day-to-day activities of providing the services for which they have obtained a business license, if required, including but not limited to customer service activities, hookups or corrections and utilization of the public right-of-way for parking that does not block the public right-of-way or violate any traffic or parking ordinance of the Town. No activity which interferes with the free flow of pedestrian or vehicular traffic, involves the cutting or penetration of any street or sidewalk surface, the impairment, relocation, or interruption of the provision of any utility service, public or private, shall be undertaken without first obtaining an encroachment permit, street excavation permit or master use permit and any other required permits or approvals.

14.06.140 Use of right-of-way prohibited when.

Except as provided below, no person shall break, cut or otherwise compromise the surface and/or integrity of any street or sidewalk within the first two years after its construction and installation. For the period commencing with the third year through the seventh year, any person proposing to cut, penetrate or compromise the integrity of the surface of any street or sidewalk shall conduct its operations only in accordance with a master use permit, encroachment permit or street excavation permit and shall provide a Town performance bond sufficient to replace the street or sidewalk surface to its original condition. Such bond shall be provided in accordance with the Town provisions of any franchise, master use permit, encroachment permit

or street excavation permit when in the discretion of the Town Engineer a particular project poses a significant risk of the impairment of the normal useful life of the street surface. Insurance and indemnity shall be provided in accord with the requirements of RMC 14.03.070(A) and (B). The Town, at its sole discretion, may permit installation of facilities underneath a street or sidewalk during the initial two years after construction and acceptance by the Town by a provider:

- A. When the facilities are installed, boring or other construction method which does not penetrate the street surface when a full Town maintenance and restoration bond is provided to ensure that no surface subsidence occurs; or
- B. When the provider fully replaces the Town street or sidewalk in accordance with Town standards and provides a Town performance and maintenance bond for the work.

14.06.150 Service to Town users – Franchise required.

A person shall be allowed to offer or provide cable television or telecommunications services to persons or areas within the Town upon approval of a franchise. An applicant for a franchise agreement with the Town may apply for a master use permit concurrent with the franchise. When an applicant applies for both a franchise and a master use permit, the Town may seek agreement from the applicant to process the franchise and the master use permit concurrently. Where state or federal law prohibits the Town from requiring a franchise, only a business license and master use permit are required.

14.06.160 Compensation to the Town.

Each master use permit granted pursuant to this chapter is subject to the Town's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the right to occupy and use the public ways of the Town granted under such permits; provided, nothing in this chapter shall prohibit the Town and a provider from agreeing to the compensation to be paid. State and federal prohibitions or preemptions may apply, and this provision shall be interpreted to conform to such state or federal restrictions.

14.06.170 Amendment of Master Use Permit.

A new master use permit application shall be required of any service provider that desires to extend or locate its facilities in rights-of-way of the Town which are not included in a use permit previously granted under this chapter or in its franchise. If ordered by the Town to locate or relocate its telecommunications facilities in public ways not included in a previously granted use permit, the Town shall grant a master use, right of way encroachment permit or street excavation permit amendment without further application.

14.06.180 Renewal of Master Use Permit.

A provider that desires to renew its master use permit under this chapter shall, not more than 180 days nor less than 90 days before expiration of the current permit, file an application with the Town for renewal of its master use permit which shall include the following:

- A. The information required pursuant to RMC 14.06.060.
- B. Any information required pursuant to the prior master use agreement between the Town and the provider. (This requirement may be satisfied through information previously required of a franchisee.)
- C. All deposits or charges required pursuant to this chapter.
- D. An application fee which shall be set by the Town council by resolution and any deposits or charges established by ordinance, resolution or franchise.

14.06.190 Standards for renewal of Master Use Permits.

The Town shall process an application for renewal consistent with the process set forth in RMC 14.06.070. Upon final decision by the Town Council, the Town shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying the renewal of a permit under this chapter, the Town Council shall make a decision based upon the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

- A. The financial and technical ability of the applicant.
- B. The continuing capacity of the rights-of-way to accommodate the applicant's existing facilities.
- C. The applicant's compliance with the requirements of this chapter and the expired master use permit.
- D. Applicable federal, state and local telecommunications laws, rules and policies.
- E. Such other factors as may demonstrate that the continued grant to use the right-of-way will serve the community interest.
- F. The appeal provisions in RMC 14.06.100 also apply to decisions made under this section.

14.06.200 Obligation to cure as a condition of renewal.

No master use permit shall be renewed until any ongoing violations or defaults in the provider's performance of the master use permit, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the provider has been approved by the Town.

14.06.210 Notice and liability.

A. A service provider may file with the Town clerk a notice of its intent to place facilities within the Town. When the Town has plans for opening the right of way, the Town should provide as much advance notice as reasonable to any service provider that has filed a notice within the past 12 months. The Town is not liable for damages for failure to provide notice of prior plans for excavation of a right of way. No service provider may claim a lack of notice where a project has been included on the Town's annually amended transportation improvement plan and notice of the transportation improvement plan element of the comprehensive plan has been published in accordance with the provisions of state statute or when the Town has communicated notice of the plans for right of way excavation by another means.

B. This chapter shall not be construed as imposing upon the Town or any official or employee any liability or responsibility for damages to any person injured by the performance of any work for which a master use permit is issued hereunder, nor shall the Town or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any work.

C. Nothing herein shall be deemed to create, expand or extend any liability of the Town to a third-party user of the facilities or a third-party beneficiary. The Town engineer shall require provision of an indemnity agreement and certifications of insurance as conditions of a service provider's right for a facility to occupy the Town's right-of-way; provided, however, that these requirements shall be met by holders of franchises, encroachment permits, street excavation permits or master use permits if they provide the indemnity and insurance required by such use permits or franchises.

14.06.220 Locating within an open right-of-way.

In order to locate facilities within a right-of-way opened by a public or private construction project, a service provider shall:

A. Obtain any applicable permits from the Town. If the work to be performed is not covered in the master use permit, then additional permits may be required, including, but not limited to, an encroachment permit under Chapter 14.03 RMC, a street excavation permit under Chapter 14.08 RMC;

B. Comply with applicable ordinances, construction codes, regulations and standards applicable to the installation of facilities and the restoration of the right-of-way, subject to verification by the Town of compliance with such standards, regulations and ordinances;

C. Cooperate with the Town by complying with all traffic control measures and other requirements designed to ensure that facilities are installed, maintained, repaired, and removed within the right-of-way in such a manner and at such points as not to inconvenience the public use of the right-of-way or to adversely affect the public health, safety and welfare;

D. Provide information and plans as reasonably necessary following notification of projects through publication of the Town's transportation improvement plan. The provision of advance planning information shall conform to requirements established by the Town engineer;

E. Obtain the written approval of the facility or structure owner, if the service provider does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way;

F. Construct, install, operate and maintain its facilities solely at its own expense; and

G. Comply with applicable federal and state safety laws and standards.

14.06.230 Undergrounding required – Relocation of existing aerial facilities.

A. All new facilities which are located and installed in accordance with this chapter must be located underground.

B. The Town may require service providers to relocate authorized facilities within the rights of way when reasonably necessary for construction, alteration, repair, or improvement of the right of way for purposes of public welfare, health or safety.

C. Relocation of Facilities. Service providers may only seek reimbursement for relocation expenses from the Town following the Town's request to relocate existing facilities, in the following circumstances:

1. Where the service provider paid for the relocation costs of the same facilities at the request of the Town within the past five years. In this case, the service provider's share of the cost of relocation shall be paid by the Town.
2. Where the aerial to underground relocation of authorized facilities is required by the Town, service providers with an ownership share of the aerial supporting structures, the additional incremental cost of

underground compared to aerial relocation, or as provided for in an approved tariff if less, will be paid by the Town.

3. Where the Town requests relocation solely for aesthetic purposes, unless otherwise agreed to by the parties.

14.06.240 Relocation for private benefit.

Where the Town has requested a service provider to relocate a project primarily for private benefit, the private party or parties shall reimburse the cost of relocation to the service provider or providers. Service providers shall not be precluded from recovering their costs associated with relocation; provided, that the recovery is consistent with this chapter and other applicable laws and ordinances.

14.06.250 Emergency relocation.

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

14.06.260 Additional ducts or conduits – the Town may require.

The Town may require that a service provider that is constructing, relocating or placing ducts or conduits in public rights-of-way provide the Town with additional duct or conduit and related structures necessary to access the conduit; provided, that:

A. The Town enters into a contract with the service provider consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental cost to the service provider. 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 cost of the service provider. The service provider shall state both contract rates in the contract. The Town shall inform the service provider of the use, and any change in use of the requested duct or conduit and related access structures in order to determine the applicable rate to be paid by the Town.

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

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

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

E. This section shall not affect the provision of an institutional network by a cable television service provider under federal law.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be 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 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the Town Council of the Town of Ruston, signed by the Mayor and attested by the Town Clerk in authentication of such passage on this 17th day of January, 2012.



Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:



Cindy Adams
Town Clerk

APPROVED AS TO FORM:

Carol Morris, Town Attorney

FILED WITH THE TOWN CLERK: 1-18-2012
PASSED BY THE TOWN COUNCIL: 1-17-2012
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