

ORDINANCE NO. 242

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING TITLE 23, TELECOMMUNICATIONS, OF THE UNIVERSITY PLACE MUNICIPAL CODE, CONSISTENT WITH THE PRO-COMPETITIVE DEREGULATORY INTENT OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 BY AMENDING CHAPTER 23.05. TO CLARIFY THE INTENT AND SCOPE OF MUNICIPAL REGULATIONS OF TELECOMMUNICATIONS PROVIDERS AND FACILITIES, AMENDING THE DEFINITIONS OF AND TELECOMMUNICATIONS FACILITIES COVERED BY TITLE 23 TO PROMOTE DEREGULATION OF TELECOMMUNICATIONS PROVIDERS SERVING THE COMMUNITY, REPEALING CHAPTER 23.10 WHICH REQUIRED LOCAL REGISTRATION OF TELECOMMUNICATIONS PROVIDERS, AMENDING CHAPTERS 23.15, LICENSING, CHAPTER 23.20, FRANCHISING, CHAPTER 23.25, CABLE FRANCHISING, CHAPTER 23.30, CONDITIONS OF GRANT, AND CHAPTER 23.35 TO REDUCE BOTH THE NUMBER OF AND THE REQUIREMENTS OF LOCALLY IMPOSED CONDITIONS ON TELECOMMUNICATIONS LICENSING AND FRANCHISES AND CABLE TELEVISION FRANCHISES, AND AMENDING CHAPTER 23.40 TO REDUCE OR ELIMINATE CERTAIN FEES CHARGED BY THE CITY TO TELECOMMUNICATIONS PROVIDERS

WHEREAS, the City Council of the City of University Place wishes to promote the deployment of competitive telecommunications and cable television services throughout the City; and

WHEREAS, the City as a trustee for the public has an obligation to manage the use of public rights-of-ways to protect the health, safety and welfare of the community at large; and

WHEREAS, the Telecommunications Act of 1996 was intended by Congress to be a pro-competitive deregulatory framework which would foster the rapid deployment of high technology telecommunications services throughout the United States; and

WHEREAS, the telecommunications industry is rapidly evolving with new technologies, new entrants into local telecommunications markets and multiple mergers among telecommunications providers; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

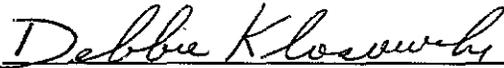
Section 1. Amending Title 23, Chapters 23.05, 23.15, 23.20, 23.25, 23.30, 23.35 and 23.40 of the University Place Municipal Code. Title 23, Chapters 23.05, 23.25, 23.20, 23.25, 23.30, 23.35 and 23.40 are hereby amended as set forth in Exhibit A hereto which is attached and incorporated by reference.

Section 2. Repealing Chapter 23.10, Registration, of the University Place Municipal Code. Chapter 23.10, Registration, of the University Place Municipal Code is hereby repealed.

Section 3. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances by a court of competent jurisdiction shall not be affected.

Section 4. Publication and Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This Ordinance shall be effective five (5) days after its publication.

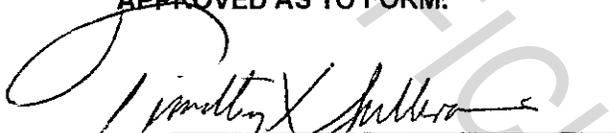
PASSED BY THE CITY COUNCIL ON JULY 19, 1999.


Debbie Klosowski, Mayor

ATTEST:


Susan Matthew, City Clerk

APPROVED AS TO FORM:


Timothy X. Sullivan, City Attorney

Published: July 23, 1999
Effective Date: July 28, 1999

Title 23

TELECOMMUNICATIONS

Chapters:

- 23.05** **Telecommunications**
- 23.10** **Registration**
- 23.15** **License**
- 23.20** **Franchise**
- 23.25** **Cable Franchise**
- 23.30** **Conditions of Grant**
- 23.35** **Construction**
- 23.40** **Fees**
- 23.45** **Personal Wireless Communications Facilities**

Chapter 23.05**TELECOMMUNICATIONS**

Sections:

- 23.05.010 Purpose.
- 23.05.020 Context.
- 23.05.030 Definitions.
- ~~23.05.040 Registration and fees.~~
- 23.05.050 License and fees.
- 23.05.060 Franchise and fees.
- 23.05.070 Cable franchise and fees.
- 23.05.080 Application to existing franchise ordinances and agreements.
- 23.05.090 Penalties.
- 23.05.100 Other remedies.
- 23.05.110 Further rules and regulations.
- 23.05.120 Severability.

23.05.010 Purpose.

The purpose of this title is to:

A. Establish a local policy concerning telecommunications providers and services which is consistent with federal and state laws and regulations pertaining to telecommunications providers;

B. Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of appropriate local authority with respect to the regulation of telecommunications providers and services;

~~C. Promote competition in telecommunications;~~

~~C. D.~~ Minimize unnecessary local regulation of telecommunications providers and services;

D. Minimize disruptions to users of public rights of way by regulating the timing of, locations of, and spacing among facilities installed in rights-of-ways;

E. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the city;

F. Permit and manage reasonable access to the public rights-of-way of the city for telecommunications purposes ~~on a competitively neutral basis;~~

G. Conserve the limited physical capacity of the public rights-of-way held in public trust by the city;

H. Assure that the city's current and ongoing costs of granting and regulating private access to

and use of the public rights-of-way are fully paid by the persons seeking such access and causing such costs;

I. To the extent permitted by state and federal law, secure fair and reasonable compensation to the city and the residents of the city, in a nondiscriminatory manner, for permitting private use of the rights-of-way;

J. Assure that all telecommunications carriers providing facilities or services within the city comply with the ordinances, rules and regulations of the city;

K. Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare;

L. Enable the city to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

(Ord. 151 § 1, 1997).

23.05.020 Context.

When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

(Ord. 151 § 1, 1997).

23.05.030 Definitions.

Terms used in this title shall have the following meanings:

~~1.~~ "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.

~~2.~~ "Cable acts" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of the Telecommunications Act of 1996, and as hereafter amended.

~~3.~~ "Cable operator" means a telecommunications carrier providing or offering to provide "cable service" within the city as that term is defined in the cable acts.

4. "Cable service" shall have the same meaning as defined in the cable acts.

5. "City" means the City of University Place.

6. "City property" means all real property owned by the city whether in fee ownership or other interest.

7. "Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the right-of-way that is or will be available for use for additional telecommunications facilities.

8. "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.

9. "Grantee" means both licensees and franchisees granted certain rights and obligations as more fully described herein.

"Occupy" means to construct, install, maintain, own, or operate telecommunications facilities located within city rights of way. The mere passage of electronic signals over, under, or through rights of way via telecommunications facilities owned by another telecommunications provider does not constitute occupying the rights of way.

10. "Overhead facilities" means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

11. "Person" means corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities and individuals.

~~12. "Public ways" includes the surface of and space above and below any real property in city in which city has a regulatory interest, or interest as a trustee for the public including, but not limited to, all public streets, highways, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the city, and any public or utility easements established, dedicated or devoted for public utility purposes.~~

43. "Rights-of-way" means land acquired or dedicated for public roads and streets but does not include (a) land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; (b) structures located within the right-of-way; or (c) 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.

14. "State" means the state of Washington.

15. "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

16. "Telecommunications carrier" includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the city, used or to be used for the purpose of offering telecommunications service.

17. "Telecommunications facilities" means the plant, equipment and property within the city used to transmit, receive, distribute, provide or offer telecommunications service.

18. "Telecommunications provider" includes every person who provides telecommunications service over telecommunications facilities.

19. "Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

20. "Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

21. "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.

22. "Utility facilities" means the plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within rights-of-way and used or to be used for the purpose of providing utility or telecommunications services.

23. "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.
(Ord. 151 § 1, 1997).

23.05.040 Registration and fees.

~~Except as otherwise provided herein, all telecommunications carriers or providers engaged in the business of transmitting, supplying or furnishing of telecommunications service originating, terminating or existing within the city shall register with the city pursuant to this title and pay all the fees as provided herein.~~
(Ord. 151 § 1, 1997).

23.05.050 License and fees.

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights-of-way for the purpose of providing telecommunications service to persons and areas outside the city shall first obtain a license granting the use of such rights-of-way from the city pursuant to this title and pay all the fees as provided herein.
(Ord. 151 § 1, 1997).

23.05.060 Franchise and fees.

Except as otherwise provided by applicable federal or state law or regulation, ~~herein~~, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights-of-way and to also provide telecommunications service to persons or areas in the city shall first obtain a franchise granting the use of such rights-of-way from the city pursuant to this title and pay all the fees as provided herein.
(Ord. 151 § 1, 1997).

23.05.070 Cable franchise and fees.

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or locate telecommunica-

tions facilities in rights-of-way for the purpose of providing cable services shall first obtain a cable franchise from the city pursuant to this title and pay all the fees as provided herein and in the cable franchise.
(Ord. 151 § 1, 1997).

23.05.080 Application to existing franchise ordinances and agreements.

Except as provided in Chapter 23.35 UPMC, which regulates construction of telecommunication facilities, this title shall have no effect on:

A. Any existing franchise agreement until:

1. ~~A.~~ The expiration of said franchise agreement; or
2. ~~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; and

B. Any telecommunications provider which has a franchise for wireline facilities pursuant to the Washington State Constitution or other Washington law.

(Ord. 151 § 1, 1997).

23.05.090 Penalties.

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this title shall be guilty of a misdemeanor. Upon conviction, any person violating any provision of this title shall be subject to a fine of up to \$1,000 or by imprisonment for a period of up to 90 days, or by both such fine and imprisonment. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.
(Ord. 151 § 1, 1997).

23.05.100 Other remedies.

Nothing in this title shall be construed as limiting any other remedies that the city may have, at law or in equity, for enforcement of this title.
(Ord. 151 § 1, 1997).

23.05.110 Further rules and regulations.

The city manager or designee is authorized to establish further rules, regulations and procedures for the implementation of this title.
(Ord. 151 § 1, 1997).

23.05.120 Severability.

If any section, subsection, sentence, clause, phrase, or other portion of this title, or its application to any person, is for any reason declared

invalid, in whole or in part, by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof. (Ord. 151 § 1, 1997).

Chapter 23.10

REGISTRATION

Sections:

~~23.10.010 Required.~~

~~23.10.020 Purpose.~~

~~23.10.030 Exception.~~

~~**23.10.010 Required.**~~

~~All telecommunications carriers having telecommunications facilities within the corporate limits of the city, or all telecommunications carriers or providers that offer or provide telecommunications service within the city, shall register with the city hereunder on forms provided by the city manager or designee which shall include the following:~~

~~A. The identity and legal status of the registrant, including any affiliates.~~

~~B. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.~~

~~C. A description of registrant's existing or proposed telecommunications facilities within the city.~~

~~D. A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the city.~~

~~E. Information sufficient for the city to determine whether the registrant is subject to public way licensing or franchising under this title.~~

~~F. Information sufficient for the city to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal tax, or permit, license or franchise fee.~~

~~G. Copies of the applicant's registration filed with the Washington Utilities and Transportation Commission pursuant to Chapter 480-121 WAC, and any tariff or price list or other authorization or related filings as may be required by the WUTC to provide telecommunications services. Alternatively, applicant shall submit a statement detailing the reasons that registration and related filings with the WUTC are not required.~~

~~H. Information sufficient for the city to determine that the applicant has applied for and received any permit, operating license or other right or approvals required by the Federal Communications Commission to provide telecommunications services or facilities.~~

~~I. Such other information as the city may require.
(Ord. 151 § 1, 1997).~~

23.10.020 Purpose.

The purpose of registration is to:

~~A. Provide the city with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the city, or that own or operate telecommunication facilities within the city;~~

~~B. Assist the city in enforcement of this title;~~

~~C. Assist the city in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the city; and~~

~~D. Assist the city in monitoring compliance with local, state and federal laws.
(Ord. 151 § 1, 1997).~~

23.10.030 Exception.

~~A person which provides telecommunications services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control; provided, that such company or person does not use or occupy any rights of way of the city or other ways within the city is excepted from the registration requirement pursuant to this title.
(Ord. 151 § 1, 1997).~~

Chapter 23.15

LICENSE

Sections:

- 23.15.010 License.
- 23.15.020 Application.
- 23.15.030 Determination by the city.
- 23.15.040 Agreement.
- 23.15.050 Nonexclusive grant.
- 23.15.060 Rights granted.
- 23.15.070 Term of grant.
- 23.15.080 Route.
- 23.15.090 Construction permits.
- 23.15.100 Compensation to city.
- 23.15.110 Service to city users.
- 23.15.120 Amendment of grant.
- 23.15.130 Renewal applications.
- 23.15.140 Renewal determinations.
- 23.15.150 Obligation to cure as a condition of renewal.

23.15.010 License.

~~A. A license shall be required of any telecommunications carrier who desires to occupy any rights-of-way with any telecommunications facilities for the purpose of providing telecommunications services to persons or areas outside the city.~~

B. A license shall not be required for any telecommunications provider: (1) for which the city recognizes that the provider is exempt from wireline telecommunication service franchise requirements; or (2) which has a telecommunications franchise with the city.

~~(Ord. 151 § 1, 1997).~~

23.15.020 Application.

Any person that desires a license hereunder shall file an application provided by the city manager or designee.
(Ord. 151 § 1, 1997).

23.15.030 Determination by the city.

Within 120 days after receiving a complete application hereunder, the city manager or designee shall make a determination on behalf of the city granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. The following standards shall apply when determining to grant or deny the application:

A. The financial and technical ability of the applicant.

- B. The legal ability of the applicant.
- 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 within the rights-of-way.
- ~~G. The service that applicant will provide to the region.~~
- H. The effect, if any, on general public health, safety and welfare ~~in the city's sole opinion~~ if the application is granted.
- I. The availability of alternate routes or locations for the proposed facilities.
- J. Applicable federal, state and local laws, regulations, rules and policies.
- K. Such other factors as may demonstrate that the grant to use the rights-of-way will serve the community interest.
(Ord. 151 § 1, 1997).

23.15.040 Agreement.

No license granted hereunder shall be effective until the applicant and the city have executed a written agreement setting forth the particular items and provisions under which the license to occupy and use rights-of-way will be granted and said agreement is properly recorded pursuant to Washington law. ~~All licenses granted pursuant to this title shall contain substantially similar terms which, taken as a whole and considering relevant characteristics of applicants, do not provide more or less favorable terms and conditions than those required of other licensees.~~
(Ord. 151 § 1, 1997).

23.15.050 Nonexclusive grant.

No license granted hereunder shall confer any exclusive right, privilege or license to occupy or

use the rights-of-way for delivery of telecommunications services or any other purposes.
(Ord. 151 § 1, 1997).

23.15.060 Rights granted.

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

B. No license granted hereunder shall authorize or excuse a licensee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way.

C. No license granted hereunder shall be construed as any warranty of title.
(Ord. 151 § 1, 1997).

23.15.070 Term of grant.

Unless otherwise specified in a license agreement, a license granted hereunder shall be in effect for a term of not more than five ten years.
(Ord. 151 § 1, 1997).

23.15.080 Route.

A license granted hereunder shall be limited to a grant of specific rights-of-way and defined portions thereof, as may be indicated in the license agreement.
(Ord. 151 § 1, 1997).

23.15.090 Construction permits.

All licensees are required to obtain construction permits and pay all fees as required by the city; provided, however, that nothing in this title shall prohibit the city and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement; provided such alternative procedures provide substantially equivalent safeguards for reasonable construction practices.
(Ord. 151 § 1, 1997).

23.15.100 Compensation to city.

To the extent permitted by state or federal law, each license granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property pursuant to the license; provided nothing in this title shall prohibit the city and a

licensee from agreeing upon the compensation to be paid.

(Ord. 151 § 1, 1997).

23.15.110 Service to city users.

A licensee may be permitted to offer or provide telecommunications services to persons or areas within the city upon submitting an application for franchise approval pursuant to this title.

(Ord. 151 § 1, 1997).

23.15.120 Amendment of grant.

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

B. If ordered by the city to locate or relocate its telecommunications facilities in rights-of-way not included in a previously granted license, the city shall grant a license amendment without further application.

~~C. A new license application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a license previously granted.~~

(Ord. 151 § 1, 1997).

23.15.130 Renewal applications.

A licensee that desires to renew its license hereunder shall, not more than 180 days nor less than 90 days before expiration of the current license, file an application with the city for renewal of its license which shall include the following information:

A. The applicable information required pursuant to the license application.

B. Any other information reasonably required by the city consistent with its obligation to manage public rights-of-way.

(Ord. 151 § 1, 1997).

23.15.140 Renewal determinations.

Within 90 days after receiving a complete application hereunder, the city manager or designee shall make a determination on behalf of the city granting or denying the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reasons for nonrenewal. The standards enumerated in UPMC 23.15.030 shall apply when deter-

mining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this title and the license agreement.

(Ord. 151 § 1, 1997).

23.15.150 Obligation to cure as a condition of renewal.

No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement, of the requirements of this title, 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 licensee has been approved by the city manager or designee.

(Ord. 151 § 1, 1997).

Chapter 23.20

FRANCHISE

Sections:

- 23.20.010 Franchise.
- 23.20.020 Application.
- 23.20.030 Determination by the city.
- 23.20.040 Agreement.
- 23.20.050 Nonexclusive grant.
- 23.20.060 Rights granted.
- 23.20.070 Term of grant.
- 23.20.080 Territory.
- 23.20.090 Construction permits.
- 23.20.100 Compensation to city.
- ~~23.20.110 Nondiscrimination.~~
- ~~23.20.120 Service to the city.~~
- 23.20.130 Amendment of grant.
- 23.20.140 Renewal applications.
- 23.20.150 Renewal determinations.
- 23.20.160 Obligation to cure as a condition of renewal.

23.20.010 Franchise.

To the extent permitted by state and federal law, a franchise shall be required of any telecommunications carrier who desires to occupy rights-of-way. A franchise shall also be required for any person who provides cable television services by using city rights-of-way and to provide telecommunications services to any person or area in the city. (Ord. 151 § 1, 1997).

23.20.020 Application.

Any person that desires a franchise hereunder shall file an application provided by the city manager or designee. (Ord. 151 § 1, 1997).

23.20.030 Determination by the city.

Within 120 days after receiving a complete application hereunder, the city shall make a determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. The standards enumerated in UPMC 23.15.030 shall apply when determining to grant or deny the application. (Ord. 151 § 1, 1997).

23.20.040 Agreement.

No franchise shall be granted hereunder unless the applicant and the city 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 and said agreement has been recorded pursuant to Washington law. ~~All franchises granted pursuant to this title shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other franchisees.~~ (Ord. 151 § 1, 1997).

23.20.050 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. (Ord. 151 § 1, 1997).

23.20.060 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 franchisee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way.

C. No franchise granted hereunder shall be construed as any warranty of title. (Ord. 151 § 1, 1997).

23.20.070 Term of grant.

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of not more than ~~40~~ ten years. (Ord. 151 § 1, 1997).

23.20.080 Territory.

A telecommunications franchise granted hereunder shall be limited to the specific geographic area of the city to be served by the franchisee, and the specific rights-of-way and portions thereof, as may be identified in the franchise agreement. (Ord. 151 § 1, 1997).

23.20.090 Construction permits.

All franchisees are required to obtain permits and pay all fees for telecommunications facilities as required by the city; provided, however, that nothing in this title shall prohibit the city and a franchisee from agreeing to alternative plan review,

permit and construction procedures in a franchise agreement; provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.
(Ord. 151 § 1, 1997).

23.20.100 Compensation to city.

To the extent permitted by state and federal law, each franchise granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property pursuant to a franchise; provided nothing in this title shall prohibit the city and a franchisee from agreeing upon the compensation to be paid.
(Ord. 151 § 1, 1997).

23.20.110 Nondiscrimination.

~~A franchisee 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 franchisee's services; provided, however, that nothing in this title shall prohibit a franchisee from making any reasonable classifications among differently situated customers.~~
(Ord. 151 § 1, 1997).

23.20.120 Service to the city.

~~A franchisee shall make its telecommunications services available to the city at its most favorable rate for similarly situated users; provided, however, the city may negotiate more favorable rates or free service in lieu of other obligations of franchisee.~~
(Ord. 151 § 1, 1997).

23.20.130 Amendment of grant.

A. A new franchise application and grant shall be required of any telecommunications carrier 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. If ordered by the city to locate or relocate its telecommunications facilities in rights-of-way not included in a previously granted franchise, the city shall grant a franchise amendment without further application.

C. A franchise application and grant shall not be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a franchise previ-

ously granted unless the provider wishes to add cable television services.
(Ord. 151 § 1, 1997).

23.20.140 Renewal applications.

A franchisee that desires to renew its franchise hereunder shall, not more than 180 days nor less than 90 days before expiration of the current franchise, file an application with the city for renewal of its franchise which shall include the following information:

A. The applicable information required pursuant to the franchise application.

B. Any other information required by the city.
(Ord. 151 § 1, 1997).

23.20.150 Renewal determinations.

Within 120 days after receiving a complete application hereunder, the city manager or designee shall make a written determination on behalf of the city granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for nonrenewal. The standards enumerated in UPMC 23.15.030 shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this title and the franchise agreement.
(Ord. 151 § 1, 1997).

23.20.160 Obligation to cure as a condition of renewal.

No franchise shall be renewed until any ongoing violations or defaults in the franchisee's obligations under the franchise agreement, of the requirements of this title, 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 franchisee has been approved by the city.
(Ord. 151 § 1, 1997).

Chapter 23.25**CABLE FRANCHISE**

Sections:

- 23.25.010 Grant of franchise.
- 23.25.020 Franchise required.
- 23.25.030 Length of franchise.
- 23.25.040 Cable franchise characteristics.
- 23.25.050 Cable franchisee subject to other laws, police powers.
- 23.25.060 Interpretation of franchise terms.
- 23.25.070 Operation of a cable system without a franchise.
- 23.25.080 Eminent domain.
- ~~23.25.090 Exclusive contracts and anti-competitive acts prohibited.~~
- 23.25.100 Cable franchise fees.

23.25.010 Grant of franchise.

The city may grant one or more cable television franchises containing such provisions as are reasonably necessary to protect the public interest, and each such franchise shall be awarded in accordance with and subject to the provisions of this title. This title may be amended from time to time, and in no event shall this title be considered a contract between the city and a franchisee such that the city would be prohibited from amending any provision hereof; provided no such amendment shall in any way impair any contract right or increase obligations of a franchisee under an outstanding and effective franchise except in the lawful exercise of the city's police power. (Ord. 151 § 1, 1997).

23.25.020 Franchise required.

No person may construct, operate or maintain a cable system or provide cable service over a cable system within the city without a franchise granted by the city authorizing such activity. No person may be granted a franchise without having entered into a franchise agreement with the city pursuant to this title. For the purpose of this provision, the operation of part or all of a cable system within the city means the use or occupancy of rights-of-way by facilities used to provide cable service. A system used to provide telephone service also used to provide cable service shall be subject to this title and shall also require a franchise. Services similar to cable service, such as open video system service, shall be subject to this title to the extent provided by law. A system shall not be deemed as operating within the city even though service is offered or rendered to one or more subscribers within the city,

if no right-of-way is used or occupied. All cable franchises granted pursuant to this title shall contain substantially similar terms and conditions, which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other cable franchisees. (Ord. 151 § 1, 1997).

23.25.030 Length of franchise.

Unless otherwise specified in a cable franchise, no cable franchise shall be granted for a period of more than 10 years. (Ord. 151 § 1, 1997).

23.25.040 Cable franchise characteristics.

A. A cable franchise authorizes use of rights-of-way for installing, operating and maintaining cables, wires, lines, optical fiber, underground conduit and other devices necessary and appurtenant to the operation of a cable system to provide cable services within the city, but does not expressly or implicitly authorize a franchisee to provide service to, or install a cable system on private property without owner consent, or to use publicly or privately owned poles, ducts or conduits without a separate agreement with the owners to the extent provided by law.

B. A cable franchise shall not mean or include any exclusive right for the privilege of transacting and carrying on a business within the city as generally required by the ordinances and laws of the city. A cable franchise shall not confer any authority to provide telecommunications services or any other communications services besides cable services. A franchise shall not confer any implicit rights other than those mandated by federal, state or local law.

C. A cable franchise is nonexclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the city, affect the city's right to authorize use of rights-of-way by other persons to operate cable systems or for other purposes as it determines appropriate, or affect the city's right to itself construct, operate or maintain a cable system, with or without a franchise.

D. Once a cable franchise has been accepted and executed by the city and a franchisee, such cable franchise shall constitute a valid and enforceable agreement between the franchisee and the city, and the terms, conditions and provisions of

such franchise, subject to this title and all other duly enacted and applicable laws and regulations, shall define the rights and obligations of the franchisee and the city relating to the franchise.

E. All privileges prescribed by a cable franchise shall be subordinate to any prior lawful occupancy of the rights-of-way and the city reserves the right to reasonably designate where a franchisee's facilities are to be placed within the rights-of-way through its generally applicable permit procedures.

F. A cable franchise shall be a privilege that is in the public trust and personal to the original franchisee. No franchise transfer shall occur without the prior written consent of the city upon application made by the franchisee pursuant to this title, and the franchise, and applicable law, which consent shall not be unreasonably withheld, and any purported franchise transfer made without application and prior written consent shall be void and shall be cause for the city to revoke the cable franchise.

(Ord. 151 § 1, 1997).

23.25.050 Cable franchisee subject to other laws, police powers.

A. A cable franchisee shall at all times be subject to and shall comply with all applicable federal, state and local laws and regulations, including this title. A cable franchisee shall at all times be subject to all lawful exercise of the police power of the city including, but not limited to, all rights the city may have under the cable acts, all powers regarding zoning, supervision of construction, control of rights-of-way and consumer protection.

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

(Ord. 151 § 1, 1997).

23.25.060 Interpretation of franchise terms.

A. In the event of a conflict between this title and a cable franchise, the provisions of this title control except where the conflict arises from the lawful exercise of the city's police power.

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

(Ord. 151 § 1, 1997).

23.25.070 Operation of a cable system without a franchise.

Any person who occupies rights-of-way for the purpose of operating or constructing a cable system or provides cable service over a cable system and who does not hold a valid franchise from the city shall be subject to all requirements of this title. In its discretion, the city at any time may by ordinance require such person to enter into a franchise within 30 days of receipt of a written notice to such person from the city that a franchise is required, require such person to remove its property and restore the affected area to a condition satisfactory to the city, direct municipal personnel to remove the property and restore the affected area to a condition satisfactory to the city and charge the person the costs therefor, including by placing a lien on the person's property, or take any other action it is entitled to take under applicable law. In no event shall a franchise be created unless it is issued by the city pursuant to this title and subject to a written franchise agreement.

(Ord. 151 § 1, 1997).

23.25.080 Eminent domain.

Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the city's power of eminent domain.

(Ord. 151 § 1, 1997).

~~23.25.090 Exclusive contracts and anti-competitive acts prohibited.~~

~~A. No cable franchisee or other multichannel video programming distributor shall enter into or enforce an exclusive contract for the provision of cable service or other multichannel video programming with any person, or demand the exclusive right to serve a person or location, as a condition of extending service to that or any other person or location.~~

~~B. No cable franchisee or other multichannel video programming distributor shall engage in acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service in the city.~~

~~(Ord. 151 § 1, 1997).~~

23.25.100 Cable franchise fees.

Cable franchisees shall be subject to the cable franchise fees, payments and costs provided in their cable franchise and herein.

(Ord. 151 § 1, 1997).

Chapter 23.30

CONDITIONS OF GRANT

Sections:

- 23.30.010 General duties.
- 23.30.020 Interference with the rights-of-way.
- 23.30.030 Damage to property.
- 23.30.040 Notice of work.
- 23.30.050 Repair and emergency work.
- 23.30.060 Maintenance of facilities.
- 23.30.070 Relocation or removal of facilities.
- 23.30.080 Removal of unauthorized facilities.
- 23.30.090 Failure to relocate.
- 23.30.100 Emergency removal or relocation of facilities.
- 23.30.110 Damage to grantee's facilities.
- 23.30.120 Restoration of rights-of-way.
- 23.30.130 Facilities maps.
- 23.30.140 Duty to provide information.
- 23.30.150 Leased capacity.
- 23.30.160 Grantee insurance.
- 23.30.170 General indemnification.
- 23.30.180 Performance and financial guarantees.
- ~~23.30.190 Security fund.~~
- 23.30.200 Construction and completion bond.
- 23.30.210 Acts at grantee's expense.
- 23.30.220 Coordination of construction activities.
- ~~23.30.230 Assignments or transfers of grant.~~
- ~~23.30.240 Transactions affecting control of grant.~~
- 23.30.250 Revocation or termination of grant.
- 23.30.260 Notice and duty to cure.
- 23.30.270 Hearing.
- 23.30.280 Standards for revocation or lesser sanctions.

23.30.010 General duties.

A. All grantees and any other telecommunications providers, before commencing any construction in the rights-of-way shall comply with all requirements of the University Place Municipal Code or other ordinances of the city.

B. At the request of the city engineer in the performance of his duties of managing public rights-of-way and planning for public works improvements, all grantees shall provide written confirmation sufficient for customary land survey and engineering-land title insurance purposes concerning the location of its facilities in rights-of-way and disclaiming any interest in rights-of-way where it has

no license or franchise to construct or operate its facilities.
(Ord. 151 § 1, 1997).

23.30.020 Interference with the rights-of-way.

No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the rights-of-way by the city, by the general public or other persons authorized to use or be present in or upon the rights-of-way. All such facilities shall be moved by and at the expense of the grantee, temporarily or permanently, as determined by the city.
(Ord. 151 § 1, 1997).

23.30.030 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, or other property located in, on or adjacent thereto except in accordance with UPMC 23.30.120.
(Ord. 151 § 1, 1997).

23.30.040 Notice of work.

Unless otherwise provided in a license, ~~or franchise agreement, or right-of-way permit~~, no grantee, or any person acting on the grantee's behalf, shall commence any nonemergency work involving undergrounding, excavation or obstructing in or about the rights-of-way without five working days' advance written notice to the city. Any private property owner whose property will be affected by a grantee's work shall be afforded the same notice.
(Ord. 151 § 1, 1997).

23.30.050 Repair and emergency work.

In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances; provided the grantee shall notify the city manager as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.
(Ord. 151 § 1, 1997).

23.30.060 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.
(Ord. 151 § 1, 1997).

23.30.070 Relocation or removal of facilities.

Within 30 days following written notice from the city, a grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the rights-of-way whenever the city manager or designee shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

A. The construction, repair, maintenance or installation of any city or other public improvement in or upon the rights-of-way.

B. The operations of the city or other governmental entity in or upon the rights-of-way.

C. The vacation of a public street or the release of a utility easement.
(Ord. 151 § 1, 1997).

23.30.080 Removal of unauthorized facilities.

Within 30 days following written notice from the city, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications 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 city may cause the removal and charge the grantee for the costs incurred. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

A. Upon expiration or termination of the grantee's license or 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 license, permit, or franchise unless the provider is exempt from licensing or franchising requirements.

D. If the system or facility was constructed or installed without the prior issuance of a required construction permit.

E. If the system or facility was constructed or installed at a location not permitted by the grantee's license or franchise.

F. Any such other reasonable circumstances affecting public health, safety and welfare deemed necessary by the city manager or designee.
(Ord. 151 § 1, 1997).

23.30.090 Failure to relocate.

If a grantee or other telecommunications provider is required to relocate, change or alter the telecommunications facilities hereunder and fails to do so, the city may cause such to occur and charge the grantee for the costs incurred.
(Ord. 151 § 1, 1997).

23.30.100 Emergency removal or relocation of facilities.

The city retains the right and privilege to cut or move any telecommunications facilities located within the rights-of-way as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency.
(Ord. 151 § 1, 1997).

23.30.110 Damage to grantee's facilities.

Unless directly and proximately caused by the willful, intentional or malicious acts of the city, the city shall not be liable for any damage to or loss of any telecommunications facility within the 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 city.
(Ord. 151 § 1, 1997).

23.30.120 Restoration of rights-of-way.

Restoration shall comply with the following:

A. When a grantee, or any person acting on its behalf, or any other telecommunications provider, does any work in or affecting any rights-of-way, 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. As used in this section, "promptly" shall mean as required by the city's public works director in the reasonable exercise of the director's discretion.

B. If weather or other conditions do not permit the complete restoration required hereunder, the grantee or any other telecommunications provider shall temporarily restore the affected ways or property. Such temporary restoration shall be at the grantee's provider's sole expense and the provider 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, and any other telecommunications provider, 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 such rights-of-way.
(Ord. 151 § 1, 1997).

23.30.130 Facilities maps.

Upon the written request of the city engineer in the exercise of the city's authority to manage rights-of-way and plan transportation and other public improvements to the right-of-way, each grantee telecommunications provider occupying city rights of way shall provide the city with an accurate as-built map or maps identifying certifying the location of the provider's all-telecommunications facilities located within a specific the rights-of-way in a format adequate for geographic information system usage. Each grantee shall provide updated as-built maps annually.
(Ord. 151 § 1, 1997).

23.30.140 Duty to provide information.

Upon ~~Within 10 days of a~~ written request from the city manager or designee, each grantee or other telecommunications provider occupying city rights-of-way shall furnish the city manager or designee with information sufficient to demonstrate:

A. That grantee provider has complied with all applicable requirements of this title; and

B. That all applicable taxes and fees due the city in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee.

~~C. That all books, records, maps and other documents maintained by the grantee with respect to its facilities within the rights of way shall be made available for inspection by the city manager or designee at reasonable times and intervals.~~
(Ord. 151 § 1, 1997).

23.30.150 Leased capacity.

~~Subject to the provisions of UPMC 23.30.230, a~~ Grantee shall have the right to offer or provide capacity or bandwidth to another telecommunica-

tions provider, ~~with prior city approval;~~ provided that:

A. To assist the city in collecting applicable taxes, grantee shall furnish the city with a copy of any such ~~proposed lease or agreement~~ within 60 days of the execution of the lease or agreement; and.

B. The ~~proposed~~ lessee or person shall comply with all of the requirements of this title if the lessee installs, constructs, or maintains facilities in city rights-of-way.
(Ord. 151 § 1, 1997).

23.30.160 Grantee insurance.

Unless otherwise provided by franchise or license, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents, representatives and employees as additional insureds:

A. Comprehensive general liability insurance with limits not less than:

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

B. Automobile liability for owned, nonowned and hired vehicles with a limit of \$3,000,000 for each person and \$3,000,000 for each accident.

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

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.

E. The liability insurance policies required by this section shall be maintained at all times by the grantee. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the city, by registered mail, of a written notice addressed to the city manager of such intent to

cancel or not to renew.

F. Within 60 days after receipt by the city of said notice, and in no event later than 30 days prior to said cancellation, the grantee shall obtain and furnish to the city replacement insurance policies meeting the requirements of this title.

(Ord. 151 § 1, 1997).

23.30.170 General indemnification.

In addition to and distinct from the insurance requirements of this title, each grantee hereby agrees to defend, indemnify and hold the city and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the acts, omissions, failure to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this title or by a grant agreement made or entered into pursuant to this title.

(Ord. 151 § 1, 1997).

23.30.180 Performance and financial guarantees.

Before a license or franchise granted pursuant to this title 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 city as may be required by this title, or by an applicable license or franchise agreement or other applicable code, ordinance or rules and regulations of the city.

(Ord. 151 § 1, 1997).

23.30.190 Security fund.

Each grantee shall establish a permanent security fund with the city by depositing the amount of up to \$50,000 with the city in cash, an unconditional letter of credit, or other instrument acceptable to the city, which fund shall be maintained at the sole expense of grantee so long as any of grantee's telecommunications facilities are located within the rights of way. This security fund shall be separate and distinct from any other bond or deposit required.

~~A. The fund shall serve as security for the full and complete performance of grantee's obligations under this title, including any costs, expenses, damages or less the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city.~~

~~B. Before any sums are withdrawn from the security fund, the city manager or designee shall give written notice to the grantee:~~

~~1. Describing the act, default or failure to be remedied, or the damages, cost or expenses which the city has incurred by reason of the grantee's act or default;~~

~~2. Providing a reasonable opportunity for the grantee to first remedy the existing or ongoing default or failure, if applicable;~~

~~3. Providing a reasonable opportunity for the grantee to pay any monies due the city before the city withdraws the amount thereof from the security fund, if applicable;~~

~~4. That the grantee will be given an opportunity to review the act, default or failure described in the notice with the city manager or designee.~~

~~C. Grantee shall replenish the security fund within 14 days after written notice from the city manager or designee that there is a deficiency in the amount of the fund.~~

~~(Ord. 151 § 1, 1997).~~

23.30.200 Construction and completion bond.

Unless otherwise provided in a license or franchise agreement, a bond written by a surety acceptable to the city equal to at least 100 percent of the estimated cost of repairing city rights-of-way to their preapproval condition shall be required as a condition of approval for the issuance of any permit to any telecommunications provider wishing to install of constructing the grantee's telecommunications facilities within the rights-of-way. shall be deposited before a construction permit is issued.

A. The construction bond shall remain in force until 60 days after substantial completion of the work, as determined by the city manager or designee, including restoration of rights-of-way and other property affected by the construction.

B. The construction bond shall guarantee, to the satisfaction of the city:

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 city;

4. Restoration of the rights-of-way and other property affected by the construction;

5. Accurate information to the city engineer about the location, depth, and size of the telecommunications facilities. ~~The submission of "as-built" drawings after completion of the work as required by this title;~~

6. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

(Ord. 151 § 1, 1997).

23.30.210 Acts at grantee's expense.

Any act that a grantee is or may be required to perform under this title, a license, franchise, or cable franchise or applicable law shall be performed at the grantee's expense.

(Ord. 151 § 1, 1997).

23.30.220 Coordination of construction activities.

All grantees are required to cooperate with the city and with each other as follows:

~~A. By February 1st of each year, grantee shall provide the city manager or designee with a schedule of their proposed construction activities which may affect the rights of way for that year.~~

B. A. Upon reasonable notice, each grantee shall meet with the city, other grantees and users of the rights-of-way annually or as determined by the city to schedule and coordinate construction.

~~CB. All construction locations, activities and schedules shall be coordinated, as ordered by the city engineer in the exercise of his responsibility to manage public rights-of-way and plan public improvements.~~
manager or designee, to minimize public inconvenience, disruption or damages.

(Ord. 151 § 1, 1997).

23.30.230 Assignments or transfers of grant.

~~Ownership or control of a telecommunications system, license or franchise or any part of transmission capacity may not directly or indirectly be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, nor may there be a transfer of working control (which includes not only actual control, but also the ability to affect or influence decisions) without the prior written consent of the city, which consent shall not be unrea-~~

~~sonably withheld or delayed, as expressed by ordinance and then on such conditions as may be prescribed therein and:~~

~~A. No grant shall be assigned or transferred in any manner within 12 months after the initial grant of the license or franchise unless otherwise provided by law.~~

~~B. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.~~

~~C. The grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the city manager or designee:~~

~~1. Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;~~

~~2. All information required of a license or franchise applicant pursuant to this title with respect to the proposed transferee or assignee;~~

~~3. All information required by federal, state and local law or regulation (i.e., FCC 394's);~~

~~4. Any other information reasonably required by the city manager or designee.~~

~~D. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other qualifications in city's sole discretion to own, hold and operate the telecommunications system pursuant to this title.~~

~~E. The grantee shall reimburse the city for all direct and indirect fees, costs and expenses incurred by the city in considering a request to transfer ownership in or assign a license or franchise.~~

~~F. Any transfer of ownership in or assignment of a grant, system or integral part of a system without prior approval of the city under this title shall be void and is cause for revocation of the grant.~~

~~G. Upon receipt of all information required herein, and any other information required by the city, the city shall have 120 days to review and approve or deny the requested assignment or transfer, unless such period is extended by agreement of the city and grantee.~~

~~(Ord. 151 § 1, 1997).~~

~~23.30.240 Transactions affecting control of grant.~~

~~Any transaction which results in any change of the ownership or in any manner the working control of the grantee, of the ownership or working control of a license or franchise, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth or any part of the transmission capacity of the grantee's telecommunications system, facilities or any parts thereof, all defined as five percent or more ownership or control, shall be considered an assignment or transfer requiring city approval hereunder. Transactions between affiliated entities are not exempt from city approval. (Ord. 151 § 1, 1997).~~

23.30.250 Revocation or termination of grant.

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

A.1. Construction or operation at an unauthorized location.

~~B. Unauthorized transfer of control of the grantee.~~

~~C. Unauthorized assignment of a license or franchise.~~

~~D. Unauthorized sale, assignment or transfer of the grantee's franchise or license assets or an interest therein.~~

~~2.E.~~ Misrepresentation or lack of candor by or on behalf of a grantee in any application to the city.

3.F. Abandonment of telecommunications facilities in the rights-of-way.

4.G. Failure to relocate or remove facilities as required in this title.

5.H. Failure to pay taxes, compensation, fees or costs when and as due the city.

6.I. Demonstrated inability to carry out the terms of the franchise or license. ~~Insolvency or bankruptcy of the grantee.~~

7.J. Violation of a material provision of this title.

8.K. Violation of a material term of a license or franchise.

B. Any revocation of a license or franchise may be appealed to the city's hearing examiner who shall use the criteria found in subsection (A) above, 23.30.280 and 23.15.130 in determining whether to

revoke a franchise or license. A stay of an order of revocation shall automatically issue during the pendency of any appeal to a court of competent jurisdiction.

(Ord. 151 § 1, 1997).

23.30.260 Notice and duty to cure.

In the event that the city manager or designee believes that grounds exist for revocation of a license or 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:

A. That corrective action has been, or is being, actively and expeditiously pursued to remedy the violation or noncompliance.

B. That rebuts the alleged violation or noncompliance.

C. That it would be in the public interest to impose some monetary damages, penalty or sanction less than revocation.

(Ord. 151 § 1, 1997).

23.30.270 Hearing.

In the event that a grantee fails to provide evidence reasonably satisfactory to the city manager or designee as provided hereunder, the city manager or designee shall refer the apparent violation or noncompliance to the city's hearings examiner. The city shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

(Ord. 151 § 1, 1997).

23.30.280 Standards for revocation or lesser sanctions.

If persuaded that the grantee has violated or failed to comply with a material provision of this title or of a franchise or license or applicable codes, ordinances, statutes, or rules and regulations, the hearings examiner shall determine whether to revoke the license or 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.
(Ord. 151 § 1, 1997).

Chapter 23.35

CONSTRUCTION

Sections:

- 23.35.010 Construction standards.
- 23.35.020 Construction codes.
- 23.35.030 Construction permits.
- 23.35.040 Applications.
- 23.35.050 Engineer's certification.
- 23.35.060 Traffic control plan.
- 23.35.070 Issuance of permit.
- 23.35.080 Construction schedule.
- 23.35.090 Compliance with permit.
- 23.35.100 Display of permit.
- 23.35.110 Survey of underground facilities.
- 23.35.120 Noncomplying work.
- 23.35.130 Completion of construction.
- 23.35.140 As-built drawings.
- 23.35.150 Restoration of improvements.
- 23.35.160 Landscape restoration.
- 23.35.170 Location of facilities.
- ~~23.35.180 Conduit occupancy.~~
- ~~23.35.190 Franchisee occupancy of city owned conduit.~~
- 23.35.200 Construction surety.

23.35.010 Construction standards.

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the city except as provided in this title.
(Ord. 151 § 1, 1997).

23.35.020 Construction codes.

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including, but not limited to, the National Electrical Safety Code. Telecommunication facilities shall comply with the city's public works standards. ~~In the event of a conflict between the public works standards and this title, the title applies.~~
(Ord. 151 § 1, 1997).

23.35.030 Construction permits.

No person shall construct or install any telecommunications facilities within the city without first obtaining a construction permit therefor; provided, however:

A. No permit shall be issued for the construction or installation of telecommunications facilities within the city unless the telecommunications car-

rier has filed a registration statement with the city pursuant to this title.

B. To the extent permitted by law, no permit shall be issued for the construction or installation of telecommunications facilities in the rights-of-way unless the telecommunications carrier has applied for and received a franchise or license pursuant to this title.

C. Unless otherwise provided by law, franchise or license, no permit shall be issued for the construction or installation of telecommunications facilities without payment of all fees pursuant to this title.

D. To the extent permitted by law, no permit shall be issued to cut any public way, the surface of which is less than three years old.
(Ord. 151 § 1, 1997).

23.35.040 Applications.

Applications for permits to construct telecommunications facilities shall be submitted upon forms provided by the city. The applicant shall pay all associated fees and shall include any additional information as may reasonably be requested by the city manager or designee in the exercise of the city's responsibility to manage rights-of-way. The application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

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

B. The location and route of all facilities to be installed on existing utility poles.

C. The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the rights-of-way.

D. The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the rights-of-way along the underground route proposed by the applicant.

~~E. The location of all other facilities to be constructed within the city, but not within the rights-of-way.~~

F. The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way.

G. The location, dimension and types of all trees within or adjacent to the rights-of-way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.
(Ord. 151 § 1, 1997).

23.35.050 Engineer's certification.

Unless otherwise provided in a license or franchise, all permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. The engineer shall provide a certificate of the construction cost estimate.
(Ord. 151 § 1, 1997).

23.35.060 Traffic control plan.

All permit applications which involve work on, in, under, across or along any rights-of-way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed.
(Ord. 151 § 1, 1997).

23.35.070 Issuance of permit.

Within 45 days after submission of all plans and documents required of the applicant and payment of necessary permit fees, the city manager or designee, if satisfied that the application, plans and documents comply with all requirements of this title, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the city manager or designee may deem necessary or appropriate.
(Ord. 151 § 1, 1997).

23.35.080 Construction schedule.

The permittee shall submit a written construction schedule to the city manager or designee 10 working days before commencing any work in or about the rights-of-way. The permittee shall further provide written notification to the city manager or designee not less than five working days in advance of any excavation or work in the rights-of-way.
(Ord. 151 § 1, 1997).

23.35.090 Compliance with permit.

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city manager or designee and his or her representative shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.
(Ord. 151 § 1, 1997).

23.35.100 Display of permit.

The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the city manager or designee at all times when construction work is occurring.
(Ord. 151 § 1, 1997).

23.35.110 Survey of underground facilities.

If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standards, the permittee shall cause the location of such facilities to be verified by a registered Washington land surveyor. The permittee, at its expense, shall relocate any facilities which are not located in compliance with permit requirements.
(Ord. 151 § 1, 1997).

23.35.120 Noncomplying work.

Upon order of the city manager or designee, all work which does not comply with the permit, the approved plans or specifications for the work, or the requirements of this title shall be removed.
(Ord. 151 § 1, 1997).

23.35.130 Completion of construction.

The permittee shall promptly complete all construction activities so as to minimize disruption of the rights-of-way and other public and private property. All construction work authorized by a permit within rights-of-way, including restoration, must be completed within 90 days of the date of issuance or at such other interval as the city may specify in writing upon issuance of the permit.
(Ord. 151 § 1, 1997).

23.35.140 As-built drawings.

Within 30 days after completion of construction, the permittee shall furnish the city manager or designee with two complete sets of plans, drawn to scale and certified to the city as accurately depicting the location of all underground telecommunica-

tions facilities constructed pursuant to the permit within city rights-of-way.
(Ord. 151 § 1, 1997).

23.35.150 Restoration of improvements.

Upon completion of any construction work, the permittee shall promptly repair, but in no event longer than such time as may be established by the city during permit review, any and all public and private property, improvements, fixtures, structures and facilities which are damaged during the course of construction, restoring the same to their condition before construction commenced.
(Ord. 151 § 1, 1997).

23.35.160 Landscape restoration.

A. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of telecommunications facilities, which is done pursuant to a franchise, license or permit, shall be replaced or restored to the condition existing prior to performance of the work. Significant trees removed shall be replaced according to the significant tree provisions of the city's zoning code. "Significant tree" means an existing healthy tree which, when measured four feet above grade, has a minimum diameter of:

1. Six inches for evergreens, except as provided under subsection (2) or (4) below; or
2. Eight inches for Douglas Fir and Hemlock trees; or
3. Twelve inches for deciduous trees; or
4. A tree that because of its unique species, environment, or location is determined by the director to be a significant tree.

B. All restoration work within the rights-of-way shall be done in accordance with landscape plans approved by the city.
(Ord. 151 § 1, 1997).

23.35.170 Location of facilities.

Unless otherwise required in current or future city ordinances regarding underground construction requirements, 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.

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

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

D. Whenever all new or existing telephone, electric utilities, cable facilities or telecommunications facilities are located or relocated underground within rights-of-way, a franchisee that currently occupies the same rights-of-way shall concurrently relocate its facilities underground at its expense.

(Ord. 151 § 1, 1997).

23.35.180 Conduit occupancy.

In furtherance of the public purpose of reduction of right of way excavation, it is the goal of the city to encourage both the shared occupancy of underground conduit as well as the construction, whenever possible, of excess conduit capacity for occupancy of future right of way occupants. Therefore, if a franchisee is constructing underground conduit for its own telecommunications facility, and the city reasonably determines such construction is in an area in which another telecommunications provider(s) may also construct telecommunications facilities in the future, city may require the franchisee to construct excess conduit capacity in the right of way; provided the expense of such excess capacity shall be borne by the city (calculated as the difference between what franchisee would have paid for the construction of its conduit and the additional cost only of the excess conduit). Franchisee may either lease the excess conduit to city at a rate of \$1.00 for the term of the franchise (in which case the city will be permitted to sublease the excess conduit at its sole discretion); or franchisee may manage the excess conduit itself and be permitted to charge a reasonable market lease rate for occupancy of the additional conduit space; provided such lease revenues shall be first applied to reimburse city for its actual contribution to the construction of the excess conduit (plus interest compounded at the rate the city invested its funds during the time in question).

(Ord. 151 § 1, 1997).

~~23.35.180 Franchisee occupancy of city-owned conduit.~~

~~In furtherance of the same objectives of UPMC 23.35.180, if city owns or leases conduit in the path of franchisee's proposed telecommunications facilities, and provided it is technologically feasible for franchisee to occupy the conduit owned or leased by city, franchisee shall be required to occupy the conduit owned or leased by city in order to reduce the necessity to excavate the right of way. Franchisee shall pay to city a fee for such occupancy which shall be the cost franchisee would have expended to construct its own conduit from the outset, as certified by the franchisee's engineer and approved by the city engineer. City and franchisee may agree to amortize the fee through annual payments to city over the term of the franchise, including the time value of money.~~

~~(Ord. 151 § 1, 1997).~~

23.35.200 Construction surety.

Prior to issuance of a construction permit, the permittee shall provide a construction bond, as provided in the University Place Municipal Code, is title.

(Ord. 151 § 1, 1997).

Chapter 23.40

FEES

Sections:

- ~~23.40.010 Registration fee.~~
- 23.40.020 Preapplication conference and application fee.
- 23.40.030 Refund.
- 23.40.040 Other city costs.
- 23.40.050 Reserved compensation for rights-of-way.
- 23.40.060 Compensation for city property.
- 23.40.070 Construction permit fee.
- ~~23.40.080 Annual fees.~~
- 23.40.090 Regulatory fees and compensation not a tax.
- 23.40.100 Fee review process and hearings examiner.

~~23.40.010 Registration fee.~~

~~Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee in such amount as the city council determines by resolution is required to cover actual costs.~~

~~(Ord. 151 § 1, 1997).~~

23.40.020 Preapplication conference and application fee.

Prior to the acceptance of an application by the city, applicants shall participate in a preapplication conference pursuant to UPMC Title 22, Administration of Development Regulations, for the purpose of establishing the application fee. The purpose of the application fee is to ensure the recovery of city costs and expenses associated with the review of the application, including but not limited to actual costs of city staff time and resources as well as any outside consultation expenses which the city reasonably determines are necessary to adequately review and analyze the application. The application fee shall be established by resolution in the sole discretion of the city council, and shall be a minimum of \$2,500, with the maximum fee established depending upon estimated reasonable city costs and expenditures in review of the application. Disputes in the amount required by city shall be resolved by the hearings examiner established pursuant to UPMC 23.40.100. All franchisee and licensee applicants shall deposit the application fee with the city. This application fee shall be applied towards actual expenses and costs of the city. Any unencumbered application fees shall be refunded to the applicant upon written request of

the applicant, but in no event earlier than 60 days after granting or denial of the permit.
(Ord. 151 § 1, 1997).

23.40.030 Refund.

An applicant whose license or franchise application has been withdrawn, abandoned or denied shall, within 60 days of its application and review fee payment, be refunded the balance of its deposit under this section, less:

A. The application and review fee; and

B. All ascertainable costs and expenses incurred by the city in connection with the application.

(Ord. 151 § 1, 1997).

23.40.040 Other city costs.

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

(Ord. 151 § 1, 1997).

23.40.050 Reserved compensation for rights-of-way.

To the extent permitted by law, the city reserves its right to fix a fair and reasonable compensation to be paid for the authorization granted to a grantee. Nothing in this title shall prohibit the city and a grantee from agreeing upon the compensation.

(Ord. 151 § 1, 1997).

23.40.060 Compensation for city property.

If the right is granted, by lease, license, franchise or other manner, to use and occupy city property, other than rights-of-way, for the installation or use of telecommunications facilities, the compensation to be paid shall be fixed by the city.

(Ord. 151 § 1, 1997).

23.40.070 Construction permit fee.

Prior to issuance of a construction permit, the permittee shall pay a permit fee equal to \$1,000 or .75 percent of the estimated cost of constructing underground the telecommunications facilities, as certified by the applicant's engineer and approved by the city engineer, whichever is greater. The purpose of the construction permit fee shall be to recover city's actual attributable costs, expenses, damage or right-of-way value diminution as a result

of permittee's occupancy of the right-of-way. City hereby finds that it must at this time attribute costs, expenses, damage, and diminution of value to permittee until such time as actual costs can be ascertained. This results from the inability of city to ascertain the number and type of all right-of-way permittees hereunder as well as the extent and nature of all future such occupancy. Therefore, city shall within six months of the effective date of the ordinance codified in this chapter commence a study to analyze the value of city rights-of-way, after which city shall review the fees of this section, and adjust them to the extent city determines in its sole discretion is necessary, if any, to more accurately represent ascertainable actual costs associated with future permittee's occupancy. In no event shall construction permit fees received prior to such study and analysis be refunded or increased. A permittee may request review of the fees required herein by initiation of the fee review process of UPMC 23.40.100. (Ord. 151 § 1, 1997).

fee shall be as established in UPMC Title 22, Administration of Development Regulations. (Ord. 151 § 1, 1997).

23.40.080 Annual fees.

~~Each grantee shall pay an annual fee to the city equal to the city's costs in connection with reviewing, inspecting and supervising the use and occupancy of the rights of way. (Ord. 151 § 1, 1997).~~

23.40.090 Regulatory fees and compensation not a tax.

The regulatory fees and costs provided for in this title, and any compensation charged and paid for the rights-of-way provided for herein, are separate from, and additional to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services. (Ord. 151 § 1, 1997).

23.40.100 Fee review process and hearings examiner.

Any applicant or permittee may initiate a review of the fees established by city in UPMC 23.40.020 or 23.40.090. A permit will issue pending a final determination of any appeal of the fee. Within 10 days of notice of the fee, applicant or permittee may appeal to the city's hearings examiner if the fees applied to applicant by staff are in error or do not comply with the circumstances or facts of the application or permit. The procedures and appeal

Chapter 23.45

PERSONAL WIRELESS COMMUNICATIONS FACILITIES

Sections:

- 23.45.010 Purpose.
- 23.45.020 Definitions.
- 23.45.030 Exemptions.
- 23.45.040 Policy statement.
- 23.45.050 Recognition of industry site selection criteria.
- 23.45.060 Site selection criteria.
- 23.45.070 Priority of locations.
- 23.45.080 Siting priority on public property.
- 23.45.090 Required submittals.
- 23.45.100 Co-location.
- 23.45.110 Design criteria.
- 23.45.120 Permits required.
- 23.45.130 Inspection requirements.
- 23.45.140 Landscaping/screening.
- 23.45.150 Non-use/abandonment.
- 23.45.160 Third party review.
- 23.45.170 Violation – Penalty.

23.45.010 Purpose.

A. These standards were developed to protect the public health, safety, and welfare, to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the city. These standards were designed to comply with the Telecommunications Act of 1996. The provisions of this title are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This title shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

B. To the extent that any provision of this title is inconsistent or conflicts with any other city ordinance this title shall control. Otherwise, this title shall be construed consistently with the other provisions and regulations of the city.

C. In reviewing any application to provide personal wireless service or to install personal wireless service facilities, the city shall act within a reasonable period of time, taking into account the nature and scope of the application. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record. The city shall approve, approve with condition, or deny the application in accordance with the

time frames set forth in UPMC Title 22, Administration of Development Regulations, and in accordance with other applicable ordinances. (Ord. 152 § 1, 1997).

23.45.020 Definitions.

For the purpose of this title, the following terms shall have the meaning ascribed to them below:

1. "Abandonment" means: (A) to cease operation for a period of 60 or more consecutive days; (B) to reduce the effective radiated power of an antenna by 75 percent for 60 or more consecutive days; (C) to relocate an antenna at a point less than 80 percent of the height of an antenna support structure; or (D) to reduce the number of transmissions from an antenna by 75 percent for 60 or more consecutive days.

2. "Antenna" means any exterior apparatus designed for telephonic, radio, data, internet, or television communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower or building for the purpose of providing personal wireless services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular", "enhanced specialized mobile radio" and "personal communications services", telecommunications services, and its attendant base station.

3. "Antenna height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

4. "Antenna support structure" means any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

5. "Applicant" means any provider or any person, partnership, or company who files an application for any permit necessary to install, maintain, or remove a personal wireless service facility within the city.

6. "Camouflaged" means a personal wireless service facility that is disguised, hidden, or integrated with an existing structure that is not a monopole or tower, or a personal wireless service facility that is placed within an existing or proposed structure, or new structure, tower, or mount within trees so as to be significantly screened from view.

7. "Cell site" or "site" means a tract or parcel of land that contains personal wireless service facilities including any antenna, support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

8. "City center area" means a circular area extending 700 feet in radius from the center of the intersection of 40th Street West and Bridgeport Way West, together with a rectangular area extending 450 feet east and west from the centerline of Bridgeport Way between 35th Street West and 44th Street West.

9. "Co-location" means the use of a personal wireless service facility or cell site by more than one personal wireless service provider.

10. "Conditional use permit" or "CUP" means a process and approval as described in UPMC Title 22, Administration of Development Regulations, and in the UPMC Title 19, Zoning.

11. "COW" means "cell on wheels."

12. "Design" means the appearance of personal wireless service facilities, including such features as their materials, colors, and shape.

13. "EIA" means the Electronics Industry Association.

14. "Equipment enclosure" means a structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals. Associated equipment may include air conditioning, backup power supplies and emergency generators.

15. "FAA" means the Federal Aviation Administration.

16. "FCC" means the Federal Communications Commission.

17. "Governing authority" means the city council of the City of University Place.

18. "Hearings examiner" means the duly appointed hearings examiner of the city.

19. "Modification" means the changing of any portion of a personal wireless service facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design.

20. "Mount" means the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts:

A. Building Mounted. A personal wireless service facility mount fixed to the roof or side of a building.

B. Ground Mounted. A personal wireless service facility mount fixed to the ground, such as a tower.

C. Structure Mounted. A personal wireless service facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.

21. "Personal wireless service," "personal wireless service facilities," and "facilities" used in this title shall be defined in the same manner as in Title 47, United States Code, Section 332 (c)(7)(C), as they may be amended now or in the future, and includes facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal communications services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.

22. "Provider" means every corporation, company, association, joint stock company, firm, partnership, limited liability company, other entity and individual which provides personal wireless service over personal wireless service facilities.

23. "Screening" means a personal wireless telecommunication facility such as a tower or mount placed amongst and adjacent to (within 20 feet) three or more trees at least 75 percent of the height of the facility.

24. "Secondary use" means a use subordinate to the principle use of the property, such as commercial, residential, utilities, etc.

25. "Security barrier" means a wall, fence, or berm that has the purpose of sealing a personal wireless service facility from unauthorized entry or trespass.

26. "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities including radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.

27. "Unlicensed wireless services" means commercial mobile services that operate on public frequencies and do not need an FCC license. (Ord. 152 § 1, 1997).

23.45.030 Exemptions.

The following are exempt from the provisions of this chapter and shall be permitted in all zones:

A. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.

B. Antennas and related equipment no more than three feet in height that are being stored, shipped, or displayed for sale.

C. Radar systems for military and civilian communication and navigation.

D. Wireless radio utilized for temporary emergency communications in the event of a disaster.

E. Licensed amateur (ham) radio stations.

F. Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when used as a secondary use of the property.

G. Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structural work or changes in height or dimensions of antennas, towers, or buildings); provided, that compliance with the standards of this chapter are maintained.

H. Subject to compliance with all other applicable standards of this chapter, a building permit

application need not be filed for emergency repair or maintenance of a personal wireless service facility until 30 days after the completion of such emergency activity.

I. A COW or other temporary personal wireless telecommunications facility shall be permitted for a maximum of 90 days or during an emergency declared by the city. (Ord. 152 § 1, 1997).

23.45.040 Policy statement.

A. The city, with increasing frequency, has been confronted with requests to locate towers and antennas. The purpose of this chapter is to establish general guidelines for the siting of towers and antennas. The goals of this chapter are to: (i) enhance the ability of personal wireless service providers to provide such services throughout the city quickly, effectively, and efficiently; (ii) encourage personal wireless service providers to locate towers and antenna in nonresidential areas; (iii) encourage personal wireless service providers to co-locate on new and existing tower sites; (iv) encourage personal wireless service providers to locate towers and antennas, to the extent possible, in areas where the adverse impact on city residents is minimal; and (v) encourage personal wireless service providers to configure towers and antennas in a way that minimizes any significant adverse visual impact. Accordingly, the city council finds that the promulgation of this chapter is warranted and necessary:

1. To manage the location of towers and antennas in the city;

2. To protect residential areas and land uses from potential adverse impacts of towers;

3. To minimize adverse visual impacts of towers through careful design, siting, landscape screening, and innovative camouflaging techniques;

4. To accommodate an increased need for towers to serve the wireless communications needs of city residents;

5. To promote and encourage co-location on existing and new towers as an option rather than construction of additional single-use towers, and to reduce the number of such structures needed in the future;

6. To consider the public health and safety of towers to the extent permitted by the Telecommunications Act of 1996; and

7. To avoid potential damage to adjacent properties through sound engineering practices and the proper siting of antenna support structures.

B. New Uses. All new antenna shall comply with this chapter after the date of passage.

C. Existing Uses. All towers and antenna existing on the date of passage of this chapter shall be allowed to continue as they presently exist, but will be considered nonconforming uses. Routine maintenance shall be permitted on existing towers and antennas. However, new construction other than routine maintenance on existing towers, antennas, buildings or other facilities shall comply with the requirements of this chapter.

(Ord. 152 § 1, 1997).

23.45.050 Recognition of industry site selection criteria.

In establishing a new site, the industry requires a location that is technically compatible with the established network. A general area is to be identified based upon engineering constraints and the desired area of service. Specific locations within that general area will be evaluated using the following criteria which are not listed in order of priority:

A. Topography as it relates to line of sight transmissions for optimum efficiency in telephone service.

B. Availability of road access.

C. Availability of electric power.

D. Availability of land based telephone lines or microwave link capability.

E. Leasable lands, and landlords who want facilities to be located on their properties consistent with zoning regulations.

F. Screening potential of existing vegetation, structures and topographic features.

G. Zoning that will allow low power mobile radio service facilities.

H. Compatibility with adjacent land uses.

I. The least number of sites to cover the desired area.

J. The greatest amount of coverage, consistent with physical requirements.

K. Opportunities to mitigate possible visual impact.

L. Availability of suitable existing structures for antenna mounting.

(Ord. 152 § 1, 1997).

23.45.060 Site selection criteria.

A. Any applicant proposing to construct an antenna support structure, or mount an antenna on an existing structure, shall demonstrate by engineering evidence that the antenna must be located at the site to satisfy its function in the applicant's local grid system. Further, the applicant must demonstrate by engineering evidence that the height requested is the minimum height necessary to fulfill the site's function within the grid system.

B. Applications for necessary permits will only be processed when the applicant demonstrates either that it is an FCC-licensed telecommunications provider or that it has agreements with an FCC-licensed telecommunications provider for use or lease of the support structure.

C. Low power mobile radio service facilities shall be located and designed to minimize any significant adverse impact on residential property values. Facilities shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

D. In all zones, location and design of facilities shall consider the impact of the facility on the surrounding neighborhood and the visual impact within the zone district. In all zones, towers shall be significantly screened by placing them in trees to the extent that it does not result in significant signal degradation.

(Ord. 152 § 1, 1997).

23.45.070 Priority of locations.

The order of priorities for locating new personal wireless service facilities shall be as follows:

A. Place antennas and towers on public property if practical.

B. Place antennas on appropriate rights-of-way and existing structures, such as buildings, towers, water towers and smokestacks.

C. Place antennas and towers in districts zoned moderate intensity employment center.

D. Place antennas and towers in districts zoned mixed use districts and community centers outside

the city center area which do not adjoin or adversely impact residential neighborhoods.

E. Place antennas and towers on other non-residential property.

F. Place antenna and towers in the city center area.

G. Place antennas on multifamily residential structures exceeding 30 feet in height.

H. Place antennas and towers in moderate density single-family and high density residential zones only if (1) locations are not available on existing structures or in nonresidential districts; and (2) only on or in existing churches, parks, schools, utility facilities, or other appropriate public facilities.

1. An applicant that wishes to locate a new antenna support structure in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a nonresidential zone, and that due to valid considerations including physical constraints, and economic or technological feasibility, no appropriate location is available.

2. Applicants are required to demonstrate: (i) that they have contacted the owners of structures in excess of 30 feet within a one-quarter mile radius of the site proposed and which from a location standpoint could provide part of a network for transmission of signals; (ii) have asked for permission to install the antenna on those structures; and (iii) were denied for reasons other than economic feasibility.

3. The information submitted by the applicant shall include (i) a map of the area to be served by the tower or antenna, (ii) its relationship to other cell sites in the applicant's network, and (iii) an evaluation of existing buildings taller than 30 feet, within one-quarter mile of the proposed tower or antenna which from a location standpoint could provide part of a network to provide transmission of signals.

4. A conditional use permit is required for all personal wireless facilities located in a residential zone.

(Ord. 152 § 1, 1997).

23.45.080 Siting priority on public property.

A. Where public property is sought to be utilized by an applicant, priority for the use of city-owned

land for wireless antennas and towers will be given to the following entities in descending order:

1. City of University Place;
2. Public safety agencies, including law enforcement, fire and ambulance services, which are not part of the City of University Place and private entities with a public safety agreement with the City of University Place;
3. Other governmental agencies, for uses which are not related to public safety; and
4. Entities providing licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, internet, paging, and similar services that are marketed to the general public.

B. Minimum Requirements. The placement of personal wireless service facilities on city-owned property must comply with the following requirements:

1. The facilities will not interfere with the purpose for which the city-owned property is intended;
2. The facilities will have no significant adverse impact on surrounding private property;
3. The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The city shall establish fees after considering comparable rates in other cities, potential expenses, risks to the city, and other appropriate factors;
4. The applicant will submit a letter of credit, performance bond, or other security acceptable to the city to cover the costs of removing the facilities;
5. The antennas or tower will not interfere with other users who have a higher priority as discussed in UPMC 23.45.080;
6. The lease shall provide that the applicant must agree that in the case of a declared emergency or documented threat to public health, safety or welfare and following reasonable notice the city may require the applicant to remove the facilities at the applicant's expense;
7. The applicant must reimburse the city for any related costs which the city incurs because of the presence of the applicant's facilities;
8. The applicant must obtain all necessary land use approvals; and
9. The applicant must cooperate with the city's objective to encourage co-locations and thus limit the number of cell sites requested, or camouflage the site.

C. Special Requirements for Parks. The use of city-owned parks for personal wireless service facilities brings with it special concerns due to the unique nature of these sites. The placement of personal wireless service facilities in a park will be allowed only when the following additional requirements are met:

1. The parks and recreation commission has reviewed and made a recommendation regarding proposed personal wireless service facilities to be located in the park and this recommendation must be forwarded to the city council for consideration;

2. In no case shall personal wireless service facilities be allowed in designated critical areas (except aquifer recharge areas) unless they are co-located on existing facilities;

3. Before personal wireless service facilities may be located in public parks, consideration shall be given to visual impacts and disruption of normal public use;

4. Personal wireless service facilities may be located in public parks that are adjacent to an existing commercial or industrial zone;

5. Personal wireless service facilities may be located in park maintenance facilities.
(Ord. 152 § 1, 1997).

23.45.090 Required submittals.

Application for conditional use permit, administrative use permit, building permit, and other related requests may include any combination of site plans, surveys, maps, technical reports, or written narratives necessary to convey the following information in addition to the requirements of UPMC Title 22, Administration of Development Regulations, and other applicable ordinances:

A. Photosimulations of the proposed facility from affected residential properties and public rights-of-way at varying distances;

B. A site elevation and landscaping plan indicating the specific placement of the facility on the site, the location of existing structures, trees, and other significant site features, the type and location of plant materials used to screen the facility, and the proposed color(s) of the facility;

C. A signed statement indicating that (1) the applicant and landowner agree they will diligently negotiate in good faith to facilitate co-location of additional personal wireless service facilities by other providers on the applicant's structure or within the same site location and (2) the applicant

and/or landlord agree to remove the facility within 60 days after abandonment;

D. Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by FCC Para. 1.1307, or, in the event that an FCC environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment;

E. A site plan clearly indicating the location, type and height of the proposed tower and antenna, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, and any other proposed structures;

F. A current map and aerial showing the location of the proposed tower, a map showing the locations and service areas of other personal wireless service facilities operated by the applicant and those proposed by the applicant that are close enough to impact service within the city;

G. Legal description of the parcel, if applicable;

H. The approximate distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;

I. A landscape plan showing specific landscape materials;

J. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination;

K. A letter signed by the applicant stating the tower will comply with all FAA regulations and EIA Standards and all other applicable federal, state and local laws and regulations;

L. A statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users;

M. Certification that the antenna usage will not interfere with other adjacent or neighboring transmission or reception functions;

N. The telecommunications company must demonstrate that it is licensed by the FCC if required to be licensed under FCC regulations;

O. The applicant, if not the telecommunications service provider, shall submit proof of lease agreements with an FCC licensed telecommunications provider if such telecommunications provider is required to be licensed by the FCC;

P. A full site plan shall be required for all sites, showing the tower, antenna, antenna support structure, building, fencing, buffering, access, and all other items required in this chapter. The site plan shall not be required if the antenna is to be mounted on an existing structure; and

Q. At the time of site selection, the applicant should demonstrate how the proposed site fits into its overall network within the city. (Ord. 152 § 1, 1997).

23.45.100 Co-location.

To minimize adverse visual impacts associated with the proliferation of towers, co-location of personal wireless service facilities on existing or new towers is encouraged as follows:

A. Proposed facilities may, and are encouraged to, co-locate onto existing towers. Such co-location is permitted by right and new or additional conditional use permit approval is not required, except that any other permit, license, lease, or franchise requirements must be satisfied, and the co-location must be accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this chapter.

B. The conditional use permit requirement for a facility may be waived in nonresidential zones if the applicant locates the antenna on an existing structure or an existing tower. The applicant must submit detailed plans to the planning department for an administrative use permit to determine if the conditional use permit process and public hearing can be waived. No building permit will be issued until approval is granted by an administrative use permit or conditional use permit.

C. The city may deny an application to construct new facilities if the applicant has not shown by substantial evidence that it has made a diligent effort to mount the facilities on an existing structure or tower.

D. To reduce the number of antenna support structures needed in the city in the future, new proposed support structures shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.

E. Unless co-location is not feasible: (i) an applicant's site plan shall reserve an area for other providers' equipment near the base of the applicant's tower. A first right-of-refusal (which is either executed or maintained while the providers personal wireless facilities and services are in use) to lease the area at the base of the tower or mount for other providers will meet the reservation requirement; and (ii) the site plan for towers in excess of 100 feet above ground level must propose space for two comparable providers, while the site plan for towers 100 feet or less must propose space for one comparable provider. To provide further incentive for co-location, an existing tower may be modified as a matter of right to accommodate co-location without new or additional CUPs; provided the additional antenna shall be of the same type as that on the existing tower unless additional height requires a conditional use permit and the following conditions are met:

1. Height. An existing tower may be modified or rebuilt to a taller height, not to exceed 20 feet over the tower's existing height and subject to the other provisions of this chapter, including by way of example and not limitation any applicable requirements or conditional use and building permits. The height change may occur only once per tower.

2. Except as set forth herein, no signs, banners or similar devices or materials may be attached to the tower, antenna support structures or antennas.

F. While co-location and the requirements herein are encouraged, co-location shall not take precedence over the construction of shorter towers with appropriate screening. (Ord. 152 § 1, 1997).

23.45.110 Design criteria.

A. As provided above, new facilities shall be designed to accommodate co-location, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons.

B. Facilities shall be architecturally compatible with the surrounding buildings and land uses in the zoning district and screened or otherwise inte-

grated, through location and design, to blend in with the existing characteristics of the site.

1. **Setback.** A tower's setback shall be measured from the base of the tower to the property line of the parcel on which it is located. In residential districts and residential land use areas, where permitted, towers shall be set back from all property lines a distance equal to 100 percent of tower height as measured from ground level, except for unusual geographic limitations or other public policy considerations, as determined in the city's sole discretion. All other towers shall comply with the minimum setback requirements of the area in which they are located in all other zoning districts, unless there are unusual geographical limitations or other public policy considerations as determined in the sole and absolute discretion of the city.

Such considerations shall include by way of illustration and not limitation, but are not limited to:

- a. Impact on adjacent properties;
- b. Alternative sites for personal wireless facilities; and
- c. The extent to which screening and camouflaging will mitigate the effects of the personal wireless facilities.

2. **Right-of-Way Setback Exception.** The setback requirement may be waived if the antenna and antenna support structure are located in the city right-of-way.

3. **View Corridors.** Due consideration shall be given so that placement of towers, antenna, and personal wireless service facilities do not obstruct or significantly diminish views of Mt. Rainier, Puget Sound or the Olympic Mountains.

4. **Color.** Towers shall have a color generally matching the surroundings or background that minimizes their visibility, unless a different color is required by the FCC or FAA.

5. **Lights, Signals and Signs.** No signals, lights, or signs shall be permitted on towers unless required by the FCC or the FAA. Should lighting be required, in cases where there are residents located within a distance which is 300 percent of the height of the tower, then dual mode lighting shall be requested from the FAA.

6. **Equipment Structures.** Ground level equipment, buildings, and the tower base shall be screened from public view. The standards for the equipment buildings are as follows:

- a. The maximum floor area is 300 square feet and the maximum height is 12 feet. Except in unusual circumstances or for other public policy considerations the equipment building may be located no more than 250 feet from the tower or antenna. Depending upon the aesthetics and other

issues, the city, in its sole discretion, may approve multiple equipment structures or one or more larger structures.

b. Ground level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means, as specified herein or in other city ordinances.

c. Equipment buildings mounted on a roof shall have a finish similar to the exterior building walls. Equipment for roof-mounted antenna may also be located within the building on which the antenna is mounted.

d. In instances where equipment buildings are located in residential zones, equipment buildings shall comply with setback requirements and shall be designed so as to conform in appearance with nearby residential structures.

Equipment buildings, antenna, and related equipment shall occupy no more than 25 percent of the total roof area of the building the facility is mounted on, which may vary in the city's sole discretion if co-location and an adequate screening structure is used.

The use must be approved on a site plan or final development plan, as applicable.

7. **Federal Requirements.** All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If those standards and regulations are changed, then personal wireless service providers governed by this chapter shall bring their towers and antennas into compliance with the revised standards and regulations within three months of their effective date or the timelines provided by the revised standards and regulations, whichever time period is longer. The revised standards and regulations are not retroactively applicable to existing providers, unless otherwise provided or permitted by federal law. Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute grounds for the city to remove a provider's facilities at the provider's expense.

8. **Building Codes – Safety Standards.** To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable city building codes and the applicable standards for towers that are published by the Electronic Industries Association ("EIA"), as amended from time to time. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner

of the tower, the owner shall have 30 days to bring the tower into compliance with such standards. If the owner fails to bring its tower into compliance within 30 days, the city may remove the tower at the owner's expense.

9. Structural Design. Towers shall be constructed to the EIA Standards, which may be amended from time to time, and to all applicable construction/building codes. Further, any improvements or additions to existing towers shall require submission of site plans stamped by a professional engineer which demonstrate compliance with the EIA Standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.

10. Fencing. A well-constructed wall or wooden fence not less than six feet in height from the finished grade shall be provided around each personal wireless service facility. Access to the tower shall be through a locked gate. The use of chain link, plastic, vinyl, or wire fencing is prohibited unless it is fully screened from public view by a minimum eight-foot-wide landscaping strip. All landscaping shall meet the standards of UPMC Title 19, Zoning.

11. Tower and Antenna Height. The applicant shall demonstrate that the tower and antenna is the minimum height required to function satisfactorily. No tower or antenna that is taller than this minimum height shall be approved. No tower or mount shall exceed 60 feet in moderate density single-family or high density residential zones or 110 feet in the moderate intensity employment center, community centers, or mixed use districts. Towers or mounts shall not exceed 60 feet in the city center area.

A variance from the height limit may be granted if the applicant can show by clear and convincing evidence that the additional height is necessary to provide adequate service to the residents of the city and no other alternative is available. When granting a variance the examiner shall require that a significant portion of the of the tower and related facilities be screened by existing trees or existing structures. In the city center area, a variance may only be granted in extraordinary circumstances.

Variances shall meet the requirements of UPMC Title 22, Administration of Development Regulations and UPMC Title 19, Zoning, except 19.75.040(D)(3) and (5).

12. Antenna Support Structure Safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice, or other

debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

13. Required Parking. If the cell site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, arrangements for adequate off-street parking shall be made and documentation thereof provided to the city. Security fencing should be colored or should be of a design which blends into the character of the existing environment.

14. Tower Separation. In no case shall towers be located closer than 500 feet from another tower whether it is owned or utilized by applicant or another provider, unless the city designates areas where multiple towers can be located in closer proximity.

15. Antenna Criteria. Antenna on or above a structure shall be subject to the following:

a. The antenna shall be architecturally compatible with the building and wall on which it is mounted, and shall be designed and located so as to minimize any adverse aesthetic impact.

b. The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted unless it must be for technical reasons. In no event shall an antenna project more than 16 feet above the roof line including parapets.

c. The antenna shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.

d. The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

e. If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.

f. The structure must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation, and uses. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

g. Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the city, in the city's sole discretion.

h. For installations or buildings greater than 30 feet in height, see other applicable provisions of this chapter. In addition to the other requirements of this chapter, on buildings 30 feet or less in height, the antenna may be mounted on the roof if the following additional criteria are satisfied:

i. The city finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall.

ii. No portion of the antenna or base station causes the height of the building to exceed the limitations set forth herein.

iii. The antenna or antennas and related base stations cover no more than an aggregate total of 25 percent of the roof area of a building, which may vary in the city's sole discretion, if co-locating and an adequate screening structure are used.

iv. Roof mounted antenna and related base stations are completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.

v. No portion of the antenna may exceed 16 feet above the height of the existing building.

i. If a proposed antenna is located on a building or a lot subject to a site review, approval is required prior to the issuance of a building permit.

j. No antenna shall be permitted on property designated as an individual landmark or as a part of a historic district, unless such antenna has been approved in accordance with city ordinances.

k. No personal wireless service provider or lessee or agent thereof shall fail to cooperate in good faith to accommodate co-location with competitors. If a dispute arises about the feasibility of co-locating, the city manager may require a third party technical study, at the expense of either or both parties, to resolve the dispute.

l. No personal wireless service provider or lessee shall fail to assure that its antenna complies at all times with the current applicable FCC standards. After installation, but prior to putting the antenna in service, each provider shall submit a certification by an independent professional engineer to that effect. In the event that an antenna is co-located with another antenna, the certification must provide assurances that FCC approved levels of electromagnetic radiation will not be exceeded by the co-location.

m. No antenna shall cause localized interference with the reception of any other communications signals including, but not limited to, public safety, television, and radio broadcast signals.

n. No person shall locate an antenna or

tower for wireless communications services upon any lot or parcel except as provided in this chapter. (Ord. 152 § 1, 1997).

23.45.120 Permits required.

Where a tower or antenna support structure will be 60 feet or less in height, in addition to the other provisions of this chapter, an applicant will be required to obtain an administrative use permit. In the event that a proposed tower or antenna support structure will be located in a residential zone, or an unscreened tower in the city center area, or will be more than 60 feet in height, in addition to the other provisions of this chapter, an applicant will be required to obtain a conditional use permit. With respect to the placement of antenna on a tower or antenna support structure, the requirements for a conditional use permit or administrative use permit will be applicable based on the height of the tower and antenna or mount and antenna unless this chapter provides other requirements to the contrary.

Project permit review procedures are specified in UPMC Title 22, Administration of Development Regulations. The following table specifies the permits required for the various types of personal wireless service facilities that meet the standards of this chapter:

Type of Facility	Type of Permit				
	Building	CUP	Site Development	Rights-of-Way Use	Administrative Use
Towers > 60 feet or towers or antenna in moderate density single-family or high density residential zones	X (if applicable)	X	X	X (if applicable)	
Structure mounted wireless facilities	X (if applicable)			X (if applicable)	X
Building mounted wireless facilities	X (if applicable)			X (if applicable)	X (unless waived)
Modification of existing facilities to accommodate co-location	X (if applicable)				

To meet the standards of this chapter, a personal wireless service facility must also comply with the other requirements under this chapter and with the following:

For antenna attached to the roof or sides of a building at least 30 feet in height, an existing tower, a water tank, or a similar structure:

A. The antenna must be either:

1. An omnidirectional or whip antenna no more than seven inches in diameter and extending no more than 16 feet above the structure to which they are attached; or
2. A panel antenna no more than two feet wide and six feet long, extending above the structure to which they are attached by no more than 10 feet.

B. Antennas mounted on existing structures in the moderate intensity employment center, community center, city center area, or mixed use district, not exceeding 16 feet in height, do not require an administrative use permit but may be permitted following an administrative review and submittal of an affidavit of compliance, with this chapter and other city regulations.

C. Antenna, antenna arrays, and support structures not on publicly-owned property shall not extend more than 16 feet above the highest point of the structure on which they are mounted. The

antenna, antenna array, and their support structure shall be mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of 100 miles per hour without the use of supporting guy wires. The antenna, antenna array, and their support structure shall be a color that blends with the structure on which they are mounted.

D. Setback from Street. Unless there are unusual geographic limitations or other public policy considerations, as determined in the city's sole discretion, no such antenna, antenna array, or its support structure shall be erected or maintained closer to any street than the minimum setback for the zone in which it is located unless otherwise waived or exempt.

E. Guy Wires Restricted. No guy or other support wires shall be used in connection with such antenna, antenna array, or its support structure except when used to anchor the antenna, antenna array, or support structure to an existing building to which such antenna, antenna array, or support structure is attached.

F. To the extent that antenna are attached to electric, phone or light poles and such antenna are no more than two feet in height, administrative use and building permit review will be required, but

such antenna shall not be subject to setbacks and screening requirements.
(Ord. 152 § 1, 1997).

23.45.130 Inspection requirements.

Each year after a facility becomes operational, the facility operator shall conduct a safety inspection in accordance with the EIA and FCC standards and within 60 days of the inspection file a report with the city manager. Submission of a copy of FCC required, and duly filed, safety inspection report, or the facility operator's maintenance reports for the prior 12 months in the event no FCC report is required for such year, shall satisfy the requirements of this section.
(Ord. 152 § 1, 1997).

23.45.140 Landscaping/screening.

A. Landscaping. Landscaping, as described herein, shall be required to screen personal wireless service facilities as much as possible, to soften the appearance of the cell site. The city may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If the antenna is mounted flush on an existing building, and other equipment is housed inside an existing structure, landscaping shall not be required.

B. Screening. The visual impacts of a personal wireless service facility shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering shall be required around the perimeter of the tower and accessory structures, except that the city may waive the standards for those sides of the facility that are not in public view. Landscaping shall be installed on the outside of fences. Further, existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or as a supplement to landscaping requirements.

1. A row of evergreen trees a minimum of six feet tall at planting a maximum of six feet apart shall be planted around the perimeter of the fence.

2. A continuous hedge at least 36 inches high at planting capable of growing to at least 48 inches in height within 18 months shall be planted in front of the tree line referenced above.

3. In the event that landscaping is not maintained at the required level, the city after giving 30 days' advance written notice may maintain or establish the landscaping and bill both the owner

and lessee for such costs until such costs are paid in full.
(Ord. 152 § 1, 1997).

23.45.150 Non-use/abandonment.

A. Abandonment. No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the City of University Place by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. In the event that a licensed carrier fails to give notice, the facility shall be considered abandoned upon the city's discovery of discontinuation of operation. Upon such abandonment, the provider shall have 60 days or additional period of time determined in the reasonable discretion of the city within which to:

1. Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or

2. In the event that abandonment as defined in this chapter occurs due to relocation of an antenna at a lower point on the antenna support structure, reduction in the effective radiated power of the antenna or reduction in the number of transmissions from the antennas, the operator of the tower shall have six months from the date of effective abandonment to co-locate another service on the tower. If another service provider is not added to the tower, then the operator shall promptly dismantle and remove that portion of the tower which exceeds the minimum height required to function satisfactorily. Notwithstanding the forgoing, changes which are made to personal wireless facilities which do not diminish their essential role in providing a total system shall not constitute abandonment. However, in the event that there is a physical reduction in height of substantially all of the providers towers in the city or surrounding area then all of the towers within the city shall similarly be reduced in height.

3. Dismantle and remove facility. If the tower, antenna, foundation, and facility are not removed within the 60-day time period or additional period of time allowed by the city, the city may remove such tower, antenna, foundation, and related facility at the provider's expense. If there are two or more providers co-locating on a facility, except as provided for in the paragraph above, this provision shall not become effective until all providers cease using the facility.

At the earlier of 60 days from the date of abandonment without reactivating or upon completion of

dismantling and removal, city approval for the facility shall automatically expire.
(Ord. 152 § 1, 1997).

for relief under Chapter 1.20 UPMC and all other remedies provided at law or in equity.
(Ord. 152 § 1, 1997).

23.45.160 Third party review.

Personal wireless service providers use various methodologies and analyses, including geographically-based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, a third party expert may need to review the technical data submitted by a provider. The city may require a technical review as part of a permitting process. The costs of the technical review shall be borne by the provider.

The selection of the third party expert may be by mutual agreement between the provider and the city, or, at the discretion of the city, with a provision for the provider and interested parties to comment on the proposed expert and review its qualifications. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the providers' methodology and equipment used and not a subjective review of the site which was selected by a provider. Based on the results of the expert review, the city may require changes to the provider's application. The expert review shall address the following:

- A. The accuracy and completeness of submissions;
 - B. The applicability of analysis techniques and methodologies;
 - C. The validity of conclusions reached; and
 - D. Any specific technical issues designated by the city.
- (Ord. 152 § 1, 1997).

23.45.170 Violation – Penalty.

A. Any person violating any of the provisions of this chapter upon conviction shall be punishable by a fine not to exceed \$1,000 or by imprisonment for a period of up to 90 days, or by both such fine and imprisonment, for each day during which an offense occurs.

B. In addition to receiving any monetary remuneration, the city shall have the right to seek injunctive relief for any and all violations of this chapter,