

ORDINANCE #2017-02-006

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REGARDING TELECOMMUNICATIONS FACILITIES LOCATED WITHIN CITY RIGHT-OF-WAY, AMENDING CHAPTER 13.15 OF THE BELLINGHAM MUNICIPAL CODE

WHEREAS, Bellingham City Charter Article XI authorizes the City to permit and regulate under such restrictions and conditions as it may set by ordinance and to grant nonexclusive franchises for the use of City rights-of-way for various commercial purposes; and

WHEREAS, City Council adopted Ordinance No. 1998-09-074, codified as Chapters 6.70 and 13.15 of the Bellingham Municipal Code ("BMC"), to implement the Charter by adopting rules and regulations for the placement within City rights-of-way of certain commercial facilities, including telecommunications, cable television, and electric and gas utilities; and

WHEREAS, BMC 6.70.040 provides that prior to siting such facilities in City right-of-way the applicant must obtain a general grant of authority from the City in the form of a franchise or permit as follows: (i) cable television providers must obtain a franchise under BMC 6.17; (ii) electric and gas utilities must obtain a franchise under BMC 6.70; and (iii) telecommunications providers must obtain a permit under BMC 13.15; and

WHEREAS, the authorization required of telecommunications providers under BMC 13.15 is denominated a "permit" but has the attributes of a franchise in so far as it grants general authority to the grantee to access and use City right-of-way for the installation and operation of telecommunications facilities, and is in addition to the more specific land-use permit and construction permit that also must be obtained for each specific site installation; and

WHEREAS, Article XI of the City Charter provides that no franchise shall be granted except by ordinance; and

WHEREAS, BMC 13.15 does not specify the form that the permit shall take or designate who within the City shall issue it; and

WHEREAS, BMC 13.15 does not specify the criteria to be used in determining whether to grant or deny the permit; and

WHEREAS, BMC 13.15 fails to specify the amount of any fees required under that Chapter; and

WHEREAS, upon recommendation of staff, and consistent with Bellingham City Charter Article XI, City Council desires to amend BMC 13.15 to address the foregoing deficiencies by:

- i. Clarifying that the permit required under BMC 13.15 shall be granted by City Council in an ordinance;

- ii. Specifying that City Council rather than the Hearing Examiner shall conduct any hearing on a permit application requested under BMC 13.15.030;
- iii. Identifying the criteria for granting or denying the permit under BMC 13.15;
- iv. Establishing an administrative fee for drafting permits and processing applications in an amount to be set by periodic resolution; and
- v. Modifying other provisions as necessary to maintain consistency with the foregoing changes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN THAT:

Section 1. A new section is added to BMC 13.15 as follows:

13.15.025 Administrative Application fee.

The applicant shall include with its application an application fee in an amount set by city council by periodic resolution. The application fee is intended to cover the City's administrative costs in drafting and processing the permit and all work related to its issuance.

Section 2. BMC 13.15.030 is amended as follows:

13.15.030 Notice of permit application.

Upon receipt of a complete application, the department of public works shall cause ~~N~~notice of application for a permit pursuant to this chapter ~~to~~shall be published at least once per week for two weeks prior to the granting of such permit. The notice shall briefly describe the nature of the application, and the cost of publication thereof shall be borne by the applicant. If at any time prior to granting of the permit the city receives a signed request in writing for a hearing on the permit, the City Council~~hearing examiner~~ shall set the matter for timely hearing and take whatever action thereon it deems appropriate. However, the department of public works may develop a procedure for dispensing with this notice procedure in situations where the impact of the work to be performed is not substantial.

Section 3. A new section is added to BMC 13.15 as follows:

13.15.035 Grant or denial of permit.

The public works director or his designee shall review the complete application and then forward it, along with his or her recommendation, to the city council for decision. The public works director's recommendation, and city council's decision, on the permit shall be based on the factors listed in BMC 13.15.020C-F. If approved, the permit shall be granted by City Council in the form of an ordinance. To the extent practicable, the permit shall contain substantially similar terms and shall not contain more or less favorable terms and conditions than exist in other such permits, taking into consideration relevant

characteristics of each applicant. No permit hereunder shall confer any exclusive right, privilege, or license to occupy any city right-of-way, nor convey any right, title, or interest in such right-of-way. Grantees shall comply with all applicable laws and regulations and obtain all necessary construction permits, land-use permits and other permits.

Section 4. BMC 13.15.240 is amended as follows:

BMC 13.15.240 Department action and hearing.

~~A. In the event that a person who holds a permit fails to provide evidence reasonably satisfactory to the city, the city department which issued the permit may terminate it or take other reasonably necessary action based on the criteria and goals set out in this chapter.~~

~~B. In the event that a person holding a franchise or permit under this chapter fails to cure any violation identified by the City in a written notice issued pursuant to this Chapter provide evidence reasonably satisfactory to the city, the city department responsible for administration of the franchise shall refer the apparent violation or noncompliance to the city council hearing examiner. The city council hearing examiner shall provide such person with notice and a reasonable opportunity to be heard concerning the matter.~~

Section 5. BMC 13.15.420 is amended as follows:

BMC 13.15.420 Construction standards - Construction permits.

A. [UNCHANGED]

B. Other than as exempted by applicable law, no person shall construct or install any facilities within the city without first obtaining a construction permit therefor. The applicant shall provide the following:

1. The location and route of all facilities to be installed in city right-of-way, including on existing utility poles.

2. - 6. [UNCHANGED]

PASSED by City Council this 27th day of February, 2017.

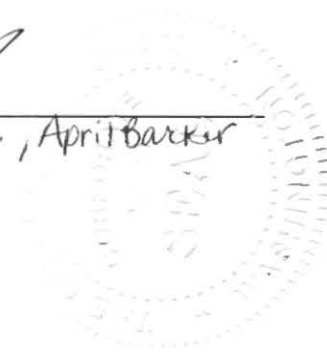


Council President


APPROVED by me this 8th day of March, 2017.



Mayor Pro Tempore, April Barker



ATTEST:



Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

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