CITY OF EDGEWOOD
COUNCIL STUDY SESSION AGENDA
Tues., January 31, 2017 – 7:00 PM ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. **CALL TO ORDER**
   Pledge of Allegiance & Roll Call

2. **COUNCIL BUSINESS**
   - ***A. Interviews*** **-** Planning Commission Candidate Interviews
   - ***B. Review/Discussion*** **-** Planning Commission Work Program
   - ***C. Review/Discussion*** **-** PSE Streetlight Takeover
   - ***D. Review/Discussion*** **-** Telecommunications and Cable TV Permitting Process Ordinance

3. **OTHER COUNCIL ITEMS**

4. **ADJOURN**

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact City Hall at (253) 952.3299, 24 hours in advance.

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: Planning Commission Candidate Interviews

Date: January 31, 2017

Title: Planning Commission Candidate Interviews

Attachments: Planning Commission Application submitted by Andrew Low and Planning Commission Application submitted by Carol Hubbird

Submitted By: Community Development Director Kevin Stender

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: The Planning Commission recently advertised for an open position on the commission. The City received two candidates that meet the minimum requirements for Planning Commission eligibility. These interviews provide an opportunity for the Council to discuss the planning commission position with the candidates and make a future recommendation to the Mayor for appointment.

Recommendation: N/A

Fiscal Impact: N/A

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: Planning Commission 2017 Work Program

Date: January 31, 2017

Title: Planning Commission 2017 Work Program

Attachments: Planning Commission 2017 Work Program DRAFT

Submitted By: Community Development Director Kevin Stender

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Annually the Planning Commission develops with help from Community Development Staff a proposed work plan for the upcoming review year. Late in 2016, the Planning Commission developed a list of code updates and projects to undertake in 2017. That list consists this year of everything from simple housekeeping code changes to major code overhauls. Additionally the work program consists of the annual Comprehensive Plan Amendment applications of which the City received three this year. At this time we are looking to either confirm the work plan or propose changes to the plan accordingly.

Recommendation: Confirm Planning Commission Work Program or a modified version in-line with work load and available time at future Council Meeting giving additional code updates expected beyond the previously established work program.

Fiscal Impact: Some of the items require consultant expertise to complete and have been budgeted for accordingly. Other housekeeping items are primarily staff time related.

RANK ITEMS

Rather than try to rank 26 items, staff has grouped the 26 code updates into three groups based on level of effort. Mandatory code changes are obviously priority (only one item). Other high importance work topics are listed below and can be prioritized or de-prioritized as desired.

High Importance and Effort: The following work topics are either mandatory code changes, relatively urgent, or already started.

1. Critical Areas Ordinance Update – the floodway chapter must be updated by March 2017 per State Law.
2. 2016 Comp Plan Amendments
3. TC, C, MUR Code Development Requirements (Started)
4. Clarify density rounding code section (Started)
5. Impact Fees (Started)
6. Street Standards and Public Trailwalk Code Chapter
7. Open Space Requirements (Started)
8. Tree Preservation Code
9. Solar Energy Code
10. Electric Vehicle Charging Stations Code
11. Food Truck Code (Started)
12. Farmers' Market (Started)
13. Sign Code (on hold until we receive clarity from the City's Attorney)
14. Storm Water Comprehensive Plan

OTHER CODE UPDATES OR CHANGES

Moderate Effort: These changes are not mandatory, but either relatively urgent or a significant amount of work.

1. Revise and Clarify Final Subdivision and Short Plat Process in Code.
2. Revise TC, C, and MUR setbacks.
3. Change allowed storage uses in TC, C, and MUR zones.
4. Simplify PWSF Renewal Process.
5. Revise and update Parking Requirements Code Section.
6. Revise Land Use Types and Levels and Land Use Zone Sections.
7. Clarify dedications and improvements code sections.
8. Clarify design standards.

Easy Effort: These changes are neither urgent nor require much work (one or two meetings).

1. Add specific landscaping requirements for plats.
2. Clarify ROW landscaping requirements in Design Standards Code.

3. Codify parallel road requirement into Title 12.
4. Consider revising Density Standards to remove streets from calculations of net buildable density.
5. Define landlocked lot in development code.
6. Reduce number of application documents required in code.
7. Revise and Clarify Final Subdivision and Short Plat Process in Code

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: PSE Streetlight Takeover

Date: January 31, 2017

Title: PSE Streetlight Ownership Takeover-Meridian

Attachments: PSE Intolight Program Outline, Estimated COE ROI

Submitted By: Aaron Nix, Asst. City Administrator

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: The City has investigated turning over the ownership of the Meridian Corridor Street Lights to Puget Sound Energy. This would remove the City from all maintenance & replacement costs going forward. If the City spends about $23,000 to upgrade 53 of the 117 fixtures to LED before transferring them to PSE, the monthly electrical expense drops to a point the City will recapture the cost in approximately 37 months. Going forward the City will enjoy an annual savings of about $7,000 per year at current electrical rates. The asset value for the 117 fixtures calculated by PSE is 854,732. The original cost of the fixtures was paid by the State when they widened Meridian and installed the sidewalks and planter strips.

Recommendation: Ask the City Clerk to Schedule a Public Hearing for the surplus of the Street Light Fixtures in anticipation of transferring ownership to PSE.

Fiscal Impact: The City of Edgewood does not list assets on a balance sheet, so disposing of an asset does not generate a financial gain or loss. The annual net savings on the electric bill after the three year recapture of the $23,000 cost to retrofit 53 fixtures with LED, is estimated by PSE as about $7,000 per year, continuing every year going forward at the current electric rate. The City will also no longer be responsible for replacing or maintaining the street lights, which so far has required replacement of a fixture each year (traffic incidents). In both the last two years, the individual vehicle operator responsible for the destruction of the fixture has been billed directly and recovered without City expense.

INTOLIGHT

Street Light Takeover Proposal

November 23, 2016

Aaron Nix
City of Edgewood
2224 104th Ave E
Edgewood, WA 98372

Re: Street Lighting Takeover, Meridian Ave S, Edgewood

Aaron:

The purpose of this letter is to communicate the monthly cost of the street lights along Meridian Ave S, if ownership were to be relinquished to Puget Sound Energy (PSE) from the City of Edgewood.

The existing customer owned, metered street lighting system consists of (53), 40' Mounting Height, Black Powder Coated, Galvanized Steel Poles, with decorative bases, banner arms, festoon outlets, with Black 400watt High Pressure Sodium Cobrahead Flat-Lens Luminaires on Black 12' custom arms and (64) 16' Mounting Height, Black Decorative, Pedestrian scale poles with Black 60watt LED, Post top luminaires. The Value of the System, as determined by our review of the as-built's and products in the field is estimated to be $854,732.29. This is the value that we base our monthly rates off of to account for maintenance expense, including but not limited to bad ballasts or photocells, vandalism and car/pole accidents as well as periodic preventive maintenance on the system.

There is no cost for PSE to assume ownership of the lighting system as is. The monthly, flat rate costs would be $2,121.66 at present rates for the entire 117 light system.

If the City of Edgewood is interested in converting the (53) 400watt HPS Cobrahead Flat-Lens luminaires to the equivalent 285watt LED luminaire, the **cost to do so would be $29,260.22**. The present ongoing monthly cost would then decrease from $2,121.66 to $1,538.52. *Additional rebates of approximately $7,657.44 would be available to you directly, through PSE's Energy Efficiency department.

This service is being offered in accordance with the terms and conditions contained in PSE's Schedule 51 (LED) and Schedule 52 (HPS), and any future modifications of such Schedule as may be approved by the Washington Utilities and Transportation Commission

Please let me know if you would like to proceed and I will follow up with the necessary paperwork. Upon receipt of signed paperwork, we will have the meters pulled and replaced with slugs, and we will tag the poles for identification purposes. If you have questions, please give me a call at 425-456-2701.

Thanks for the opportunity to serve you.

Sincerely,

Lars Larson
Account Manager, Intolight

PSE Ownership of Meridian Street Lights
r11232016.1

53 40' Light Poles et al

System Value =	$854,732.29	
New 53 LED's Capital Cost	$29,260.22	
Less Rebate from PSE	$7,657.44	
Net Capital Cost to COE =	$21,602.78	
117 Light Cost =	$2,121.66	per Month
New 117 LED Light Cost =	$1,538.52	per Month
Net Monthly Savings =	$583.14	per Month
Month Return on Investment	37.05	Months
Annual Savings Once Recovered	$6,997.68	

Aaron Nix

Subject: FW: City of Edgewood street light takeover
Attachments: Meridian street light takeover letter.pdf; 2016 PSE Savings LED.xlsx

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From: Larson, Lars [mailto:Lars.Larson@pse.com]
Sent: Wednesday, November 23, 2016 11:17 AM
To: Aaron Nix; Dave Gray
Cc: Rick Pederson; Daryl Eidinger
Subject: RE: City of Edgewood street light takeover

Hi Aaron
Sorry for the long delay on this, as we had to do some digging and research on the various lights. Attached is an explanatory letter for the city-to-PSE Meridian street light takeover proposal. If you want to give this a look and decide what you which direction you want to go, just let me know and I'll send over the official takeover paperwork.

Thanks and let me know with any questions!

Lars

Lars Larson | Account Manager
INTOLIGHT | Puget Sound Energy
LEC-OFC PO Box 97034
Bellevue, WA 98009-9734
Office 425.456.2701 | Cell 206.450.6083
Fax 425.462.3149 | Lars.Larson@pse.com
www.Intolight.com

From: Aaron Nix [mailto:aaron@cityofedgewood.org]
Sent: Friday, September 09, 2016 10:40 AM
To: Larson, Lars; Dave Gray
Cc: Rick Pederson; Daryl Eidinger
Subject: RE: City of Edgewood

Lars,

Here are pdf's of the as-builts for the project along Meridian. Let me know if this is what you need.

Thanks,

Aaron C. Nix, M.P.A.
City of Edgewood, WA
Assistant City Administrator – Municipal Services
(253) 952-3299

From: Larson, Lars [mailto:Lars.Larson@pse.com]
Sent: Thursday, September 08, 2016 2:41 PM
To: Aaron Nix <aaron@cityofedgewood.org>; Dave Gray <dave@cityofedgewood.org>
Cc: Stephanie Goff <stephanie@cityofedgewood.org>; Rick Pederson <rick@cityofedgewood.org>; Daryl Eidinger <daryl.eidinger@cityofedgewood.org>
Subject: RE: City of Edgewood

On a related note, do you have the spec sheet on the 2 types of poles that were installed on Meridian? We will need that for our records should we ever need to repair/replace one of the poles.

Thanks!

Lars Larson | Account Manager
INTOLIGHT | Puget Sound Energy
LEC-OFC PO Box 97034
Bellevue, WA 98009-9734
Office 425.456.2701 | Cell 206.450.6083
Fax 425.462.3149 | Lars.Larson@pse.com
www.Intolight.com

From: Larson, Lars
Sent: Thursday, September 08, 2016 2:37 PM
To: 'Aaron Nix'; Dave Gray
Cc: Stephanie Goff; Rick Pederson; Daryl Eidinger
Subject: RE: City of Edgewood

Hi Aaron
That sounds good. I will get you this information.

For the Meridian street lights you want us to take over and assume maintenance for, we have two options then:
We take over the system as is with the respective rates (small poles are LED, cobrahead poles are HPS); or we take over the system with all of the lights as LED. Our crews would do the work to convert them (these are the taller roadway poles) to LED, but you'd need to fund it (~$500 per pole x 53 poles).

The conversion can be done whenever; I.E. We take it over as is now, and you can budget for the costs and do the LED conversion next year etc.

Thanks Aaron and we'll be in touch.

Lars

Lars Larson | Account Manager
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Office 425.456.2701 | Cell 206.450.6083
Fax 425.462.3149 | Lars.Larson@pse.com
www.Intolight.com

From: Aaron Nix [mailto:aaron@cityofedgewood.org]
Sent: Thursday, September 08, 2016 9:38 AM
To: Larson, Lars; Dave Gray
Cc: Stephanie Goff; Troupe, Danielle R; Rick Pederson; Daryl Eidinger
Subject: RE: City of Edgewood
Importance: High

Thanks Lars, extremely helpful. If you could supply us with a GIS Shapefile that would be ideal, as we have capabilities to manage this type of data now.

We very much want to move forward with the notion of converting our streets to LED's. I managed the utility for the City of Milton and we had done that conversion recently, with fantastic results and cost savings to our utility. Please let me know what we can do to move forward with this, as well as the Meridian issue.

Appreciated,

Aaron C. Nix, M.P.A.
City of Edgewood, WA
Assistant City Administrator – Municipal Services
(253) 952-3299

From: Larson, Lars [mailto:Lars.Larson@pse.com]
Sent: Thursday, September 08, 2016 9:33 AM
To: Dave Gray <dave@cityofedgewood.org>
Cc: Kevin Stender <kevin@cityofedgewood.org>; Aaron Nix <aaron@cityofedgewood.org>; Stephanie Goff <stephanie@cityofedgewood.org>; Troupe, Danielle R <danielle.troupe@pse.com>
Subject: RE: City of Edgewood

Hi Dave
My name is Lars and I am a coworker of Danielle's here at PSE street lighting. Danielle and I switched territories about a year ago so you're stuck with me now!

To answer your question about street light maintenance:
A)
Any light that is installed by PSE is inherently owned and maintained by PSE. Largely, this is going to involve any new plats (Northwoods, Westridge, Simons Mill, View Pointe) where PSE is involved with the design and installation of the lights. This will also involve any lights that are on PSE wood distribution poles.
Lights that are installed by others and are metered are not maintained by PSE and are property of the respective owner or city. That said, customers can relinquish ownership of the lighting system to PSE, which will then bypass the meter, tag and inventory the lights, and begin monthly flat rate billing for the lights which covers the energy and maintenance (preventative and corrective) of the lights (this covers bulbs, fixtures, poles, underground wire etc). On PSE owned flat rate billed lights, there are no additional costs for repairs or service calls. The customer is required to report the lights out to PSE, in which they will be repaired within 3 business days (unless for extenuating circumstances).
From my discussion with Danielle about this, it looks like there were communications with the city about taking the lights over on Meridian Ave (117 poles +/-), but the process was not completed (paperwork not signed). If the city is still

interested in this, just let me know and I can unearth that info! There is also the option to convert the lights to LED as well if you wish.
B)
Yes we have a list of the lights which are PSE owned and maintained which we can provide. This will have the lat/longs, addresses, and tag numbers. We can also provide a GIS file which shows the lights if you want that.

Thanks Dave, and let me know with any questions or more info you need!

Lars

Lars Larson | Account Manager
INTOLIGHT | Puget Sound Energy
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www.Intolight.com

From: Dave Gray <dave@cityofedgewood.org>
Date: September 7, 2016 at 3:10:07 PM PDT
To: "danielle.troupe@pse.com" <danielle.troupe@pse.com>
Cc: Aaron Nix <aaron@cityofedgewood.org>, Kevin Stender <kevin@cityofedgewood.org>, Stephanie Goff <stephanie@cityofedgewood.org>
Subject: City of Edgewood

Hello Danielle,
Not sure if we've made contact before, but I'm one of the Assistant City Administrators at the City of Edgewood. Also the Finance Director. In that role I was reviewing where we are on maintaining the City street lights. I can see that the bill has addresses listed on the consolidated billing. Much appreciate the consolidated billing by the way. I have two question. A) Have we passed the light maintenance over to PSE? B) Do you have a detail listing of the lamps location. I see some email traffic regarding the City transferring full maintenance to PSE, but between the folks here paying the bill and Eric Phillips leaving, I am unsure of the maintenance responsibility. My counterpart, ACA Nix-Municipal Services is trying to determine who will replace some bulbs and is also concerned with the greater question of ongoing maintenance. He is also asking for the detailed locator list so he can cause an overlay of the lamps to be generated on city maps.
Thank you in advance for any assistance you can give us with these questions. If there is someone else at PSE we should contact I would appreciate some direction.
Regards,
Dave Gray

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CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: Telecommunications & Cable TV Permitting Process Ordinance

Date: January 31, 2017

Title: Telecommunications and Cable TV Permitting Process Ordinance

Attachments: Draft Ordinance 17-XXXX, Telecommunications-Cable Television Permitting and comments from City Attorney via email

Submitted By: Aaron C. Nix, Assistant City Administrator – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: As discussed with the Mayor and Council previously, the City's current code as it relates to permit processing for telecommunications and cable TV does not meet recent changes in federal law as it pertains to permit processing and timing requirements. Staff's intent is to create this section within Edgewood's code in order to meet these federal mandates in order to ensure that the City is compliant with these requirements and can avoid future, potential legal liability as it pertains to these issues.

Recommendation: N/A

Fiscal Impact: Like all permitting processes, this proposed structure will attempt to utilize current staffing levels in order to meet the requirements outlined in the proposed code and provide cost recovery for any new proposed processes.

ORDINANCE NO. 17-XXXX

AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO THE REGULATION OF RIGHT-OF-WAY USE BY TELECOMMUNICATIONS AND CABLE TELEVISION PROVIDERS, DESCRIBING THE SITUATIONS IN WHICH LEASES, FRANCHISES AND MASTER USE PERMITS ARE REQUIRED FOR THE USE OF CITY RIGHT-OF-WAY, LISTING THE ELEMENTS OF A COMPLETE APPLICATION FOR A MASTER USE PERMIT, THE PROCEDURE FOR APPROVAL, RIGHTS GRANTED, THE PROCESS FOR RENEWAL AND AMENDMENT OF A MASTER USE PERMIT, EXPLAINING THE PROCEDURE FOR NOTIFICATION OF SERVICE PROVIDERS OF THE CITY'S PLANS FOR STREET IMPROVEMENT PROJECTS, INCLUDING THOSE REQUIRING RELOCATION OF FACILITIES, DESCRIBING THE PROCEDURES FOR RELOCATION AND COST RECOVERY, EMERGENCY RELOCATION AND WHEN THE CITY MAY REQUIRE A SERVICE PROVIDER TO INSTALL ADDITIONAL DUCTS OR CONDUITS; ADDING A NEW CHAPTER 12.08 TO THE EDGEWOOD MUNICIPAL CODE.

WHEREAS, the State of Washington adopted chapter 35.99, which addresses the manner in which cities may allow use of rights-of-way for installation of telecommunications facilities in light of recent federal law; and

WHEREAS, the SEPA Responsible Official has determined that this Ordinance is exempt from SEPA under WAC 197-11-800(19); and

WHEREAS, the City Council considered this Ordinance during a regular City Council meeting on January 31, 2017; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Chapter 12.08 of the Edgewood Municipal Code is hereby repealed.

Section 2. A new chapter 12.08 is hereby added to the Edgewood Municipal Code, which shall read as follows:

DRAFT

CHAPTER 12.08
RIGHT-OF-WAY USE – MASTER USE PERMIT AND
UTITLITY RELOCATION (TELECOMMUNICATIONS AND CABLE TELEVISION)

Sections:

12.08.010 **Purpose.**
12.08.020 **Definitions.**
12.08.030 **Applicability of Chapter.**
12.08.040 **Requirements for the provision of services within the City.**
12.08.050 **Facilities lease required.**
12.08.060 **Use of right-of-way prohibited.**
12.08.070 **Master use permit authorization, when required, fees.**
12.08.080 **Master use permit application.**
12.08.090 **Issuance/denial of master use permit application.**
12.08.100 **Effective date of master use permit.**
12.08.110 **Rights granted under master use permit.**
12.08.120 **Amendment of master use permit.**
12.08.130 **Renewal of master use permit.**
12.08.140 **Obligation to cure as a condition of renewal.**
12.08.150 **Notification – TIP element of comprehensive plan.**
12.08.160 **Notice and Liability.**
12.08.170 **Location within open right-of-way.**
12.08.180 **Relocation of facilities.**
12.08.200 **Emergency relocation.**
12.08.210 **Additional ducts or conduits – City may require.**

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

A. Provide for the orderly use of public rights-of-way by establishing clear guidelines, standards and timeframes for the exercise of local authority with respect to the regulation of right-of-way use by telecommunications and cable television providers and services.

B. Implement regulations that are consistent with the requirements of state law (chapter 35.99 RCW), as the same exists or is hereafter amended.

C. Conserve the limited physical capacity of the public ways held in public trust by the City.

D. Assure that the City's current and ongoing costs of granting an regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs to be incurred by the City, to the full extent permitted by state and federal law.

E. Secure fair and reasonable compensation to the City and the residents of the City for permitting the private use of public rights-of-way while assuring that the City can continue to fairly and reasonably protect the public health, safety and welfare.

DRAFT

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

12.08.020 Definitions. For the purpose of this chapter and the interpretation/enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which it is used shall indicate otherwise. These definitions and all provisions of this chapter shall be interpreted in a manner consistent with the provisions of state and federal law, including but not limited to chapter 35.99 RCW:

A. "Applicant" means any person or entity that applies for any permit under this chapter.

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

C. "City" means the City of Edgewood, Washington.

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

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

F. "Council" means the City Council of the City of Edgewood, Washington.

G. "Right-of-Way Use Permit" means a permit issued pursuant to chapter 12.06 EMC.

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

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

DRAFT

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

K. "Master use permit" means the permit whereby the City may grant general permission to a service provider to enter, use and occupy the right-of-way for the purpose of locating facilities. This definition is not intended to limit, alter or change the extent of the existing authority of the City to require a franchise nor does it change the status of a service provider asserting an existing state-wide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution to occupy the right-of-way.

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

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

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

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

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

1. State highways and other ways;
2. Land dedicated for roads, streets and highways not opened and not improved for motor vehicle use by the public;
3. Structures, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the State Parks and Recreation Commission;
6. 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.

Q. "Right-of-Way Use Permit" means the authorization in whatever form whereby a city may grant permission to a service provider to enter and use the specified right-of-way for the purpose of installing, maintaining, repairing or removing identified facilities. As used herein, the term shall be synonymous for the term "right-of-way permit" as used in chapter 12.06 EMC.

DRAFT

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

S. "State" means the State of Washington.

T. "Subscriber" means any person, entity or users of a cable system who lawfully receives cable services or other service therefrom with the franchisee's express permission.

U. "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic or other similar means for hire, sale or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds or any other symbols. For the purpose of this chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

V. "Transportation improvement plan" or "TIP" means the six-year element of the City's comprehensive plan as amended annually by adoption by the City Council.

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

12.08.040 Requirements for the provision of services within the City. Except as expressly provided herein, all providers of cable television service and telecommunications service to citizens of the City through facilities located in the right-of-way shall, prior to commencing operations:

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

B. Obtain and maintain a business license as provided in chapter 5.05 of the EMC;

C. Either:

1. Obtain a master use permit to obtain general provision to enter, use and occupy the right-of-way for the purpose of locating telecommunications facilities; and

2. Once a master use permit has issued, obtain and maintain a right-of-way permit for specific construction activities.

12.08.050 Facilities Lease required. No provider of cable television or telecommunications services or any other entity who desires to locate equipment on City property shall locate such facilities or equipment on City property unless and until a facilities lease is approved by the City Council. The Council reserves unto itself the sole discretion in its

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legislative capacity to lease City property for telecommunications, cable television or other facilities, and no vested right or other right shall be created by this section or any other provision of this chapter with respect to such facilities leases.

12.08.060 Use of Right-of-Way Prohibited.

A. Except as provided below, no person shall break, cut or otherwise compromise the surface and/or integrity of any street or sidewalk within the first two years after its construction and installation. For the period commencing with the third year through the seventh year, any person proposing to break, cut or otherwise compromise the integrity of the surface of any street or sidewalk shall conduct operations only in accordance with a master use permit and right-of-way use permit.

B. If the service provider submits a complete application for a right-of-way use permit under chapter 12.06 EMC, the final decision must be made within thirty (30) days thereafter, unless the applicant agrees to a different time period or the service provider has not obtained a Master Use Permit. As provided in Section 12.06.217 the service provider shall provide a City performance bond sufficient to replace the street or sidewalk surface to its original condition. Such bond shall be provided in accordance with the provisions of any franchise, master use permit or right-of-way permit, when in the discretion of the Public Works Director a particular project poses a significant risk of the impairment of the normal useful life of the street surface. Insurance and indemnity shall be provided in accordance with the requirements of Section 12.06.215 and 12.06.216 or the applicable franchise. The City, at its sole discretion, may permit installation of facilities underneath a street or sidewalk during the initial two years after construction and acceptance by the City, when a performance, maintenance and restoration bond is provided.

12.08.070 Master use permit authorization, when required, fees.

A. *When required.* All providers of cable television service and telecommunications service who desire to construct, install, operate, maintain or otherwise locate or remove facilities in, under over or across any right-of-way of the City for the sole purpose of providing telecommunications or cable television service to persons and areas outside of the City shall first obtain a Master Use Permit pursuant to the provisions of this Chapter.

B. *When MUP is optional:* Master use permits may be requested by the City in the following situations:

1. By a franchisee who seeks authorization to construct continuing, extensive construction activities over a period estimated to be in excess of six months. A master use permit may be obtained in this situation as an alternative to a right-of-way permit for individual segments of the construction activities.

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

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

12.08.080 Master Use Permit Application. A complete master use permit application shall be submitted to the City under the circumstances described in Section 12.08.070, which shall include the following information:

A. The identity of the applicant, including all affiliates of the applicant;

B. Identification of the franchise that the applicant has with the City;

C. A description of the services that are or will be offered or provided by the applicant through its facilities;

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

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

1. The horizontal and vertical location and proposed route requested for applicant's proposed facilities;

2. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;

3. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate;

4. Depiction of existing utilities and other public and/or private facilities including but not limited to cross streets, permanent landmarks or other points of reference;

5. Existing right-of-way boundaries;

6. Cross-section(s) of existing roadway(s) with proposed facilities, including offsets and depth;

7. Proposed construction notes stating compaction and testing requirements;

8. Restoration details conforming to adopted City standards;

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9. All maps, including a required area map, shall have centerline stations and a north arrow orienting the map;

10. Temporary erosion and sedimentary control plan utilizing best management practices.

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

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

1. The excess capacity currently available in such public ducts or conduits before installation of applicant's facilities;

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

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

1. The location proposed for the new ducts or conduits;

2. The excess capacity that will exist in such public ducts or conduits after installation of applicant's telecommunications facilities;

3. Provision to be made for the installation of public conduit pursuant to Section 12.08.220.

H. A preliminary construction schedule and completion date;

I. A preliminary traffic control plan in accordance with the City's adopted street standards and the Manual of Uniform Traffic Control Devices (MUTCD) and current City and State standards;

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

K. Information in sufficient detail to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services;

M. An application fee which shall be set by the City Council by resolution and any deposits or charges established by resolution.

N. Requirements in Subsections J through L of this section may be satisfied pursuant to the relevant requirement of a valid franchise issued to the applicant by the City.

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12.08.090 Issuance/denial of a Master Use Permit. The City Council shall hold a public hearing and receive testimony and other evidence regarding the issuance of a Master Use Permit.

What does the City want to do? If the City staff act on the master use permit without a public hearing, the final decision must be made in 120 days after the complete application is submitted. RCW 35.99.030(1)(b). If the City Council holds a public hearing, the City Council can make findings that it couldn't make a final decision in 120 days *if this is true.* RCW 35.99.030(1)(b)(ii).

The City Council's decision shall be confirmed in writing, shall be based on the record of the proceeding and shall consider/apply the factors set forth below:

A. The financial and technical ability of the applicant;

B. The capacity of the right-of-way to accommodate the applicant's proposed facilities;

C. The capacity of the right-of-way to accommodate additional utility, cable and telecommunications facilities if the Master Use Permit is granted;

D. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the Master Use Permit is granted;

E. The public interest in minimizing the cost of the disruption of construction within the right-of-way;

F. The effect, if any, on public health, safety and welfare if the master use permit is granted;

G. The availability of alternate routes and/or locations for the proposed facilities;

H. Applicable federal and state laws, regulations and policies;

I. Such other factors as may demonstrate that the grant to use the right-of-way will serve the community interest.

12.08.100 Time Period for Action on Master Use Permit.

The City shall act on a Master Use Permit application in _____ days after submission of the complete application. "Act" means to grant without conditions, grant with conditions or deny the Permit. No Master Use Permit shall be deemed to have been granted until the City has issued a written permit setting forth the particular terms and provisions under which the permittee has been granted the right to occupy and use the right-of-way of the City and all preconditions thereto, such as bonding, have been satisfied.

12.08.110 Non-Exclusive Permit. No Master Use Permit granted under this Chapter shall confer any **exclusive** right, privilege, license or franchise to occupy or use the right-of-way of the City for delivery of telecommunications, cable television services, or any other services or purposes.

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12.08.120 Rights Granted under Master Use Permit.

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

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

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

12.08.140 Renewal of Master Use Permit. A permittee that desires to renew its master use permit under this Chapter shall, not more than 180 days nor less than 90 days before expiration of the current permit, file an application with the City for renewal of its master use permit, which shall include the following:

A. The information required in Section 15.04.090;

B. Any information required pursuant to the prior master use agreement between the City and the permittee. (This requirement may be satisfied through information previously required of a franchisee;

C. All deposits or charges required pursuant to this Chapter;

D. An application fee which shall be set by the City Council by resolution and any deposits or charges established by resolution, ordinance or franchise.

12.08.150 Standards for renewal of Master Use Permits. Within 90 days after receiving a complete application for master use permit renewal, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying the renewal of a permit under this Chapter, the City Council shall make a decision based upon the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal:

A. The financial and technical ability of the applicant;

B. The continuing capacity of the rights-of-way to accommodate the applicant's existing facilities;

C. The applicant's compliance with the requirements of this Chapter and the expired master use permit;

D. Such other factors as may demonstrate that the continued grant to use the right-of-way will serve the community interest.

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12.08.160 Obligation to cure as a condition of renewal. No master use permit shall be renewed until any ongoing violations or defaults in the permittee's performance of the master use permit, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the permittee has been approved by the City.

12.08.170 Notification – Transportation improvement plan element of the comprehensive plan. The City maintains a transportation improvement element as a part of its comprehensive plan addressing a six-year planning horizon. All franchisees and applicants for master use permits are notified that the plan contains a list of city street improvements, sidewalks and other utility projects in the rights-of-way. Franchisees and holders of master use permits as well as any service provider who files notice with the City Clerk of their intent to place facilities in the City are hereby placed on notice with respect to the existence of the transportation improvement plan (TIP).

A. Annually, the City Clerk shall provide notice regarding the hearing on the transportation improvement plan to telecommunications and cable television service providers as well as all service providers who have provided written notice of intent to the clerk within the past twelve (12) months of their intent to place facilities with the City.

B. Cable television and telecommunications service providers and those wishing to place facilities in the City's rights-of-way shall then be on notice of the City's intent and may participate in any public hearing regarding the City's transportation improvement plan. Upon publication of notice of the adoption of an ordinance regarding the transportation improvement plan, cable television and telecommunications service providers and others desiring to establish facilities within the City's rights-of-way shall commence the process of consultation with the City regarding such placement.

C. Upon adoption of the transportation improvement plan, the City, through the City engineer or his/her designee, shall notify service providers as soon as practicable thereafter of the need for relocation of service provider's facilities, specifying the date by which relocation shall be completed. The City shall consult with the affected service providers regarding the date the relocation must be completed. When a project is listed on the City's TIP, such notice is secondary. Service providers are placed on inquiry and record notice through the adoption of the City's annual update to the six-year TIP regarding the nature and extent of facilities to be constructed by the City. The service provider shall, at its earliest convenience, provide information to the City in appropriate written format, outlining the extent of facilities to be relocated, the service requirements and the construction sequence for the relocation. The City shall utilize this information through a consulting process to establish the City's overall construction sequence and constraints, and the construction sequence shall be designed to safely complete the relocation. After the consultation, the City Public Works Director shall establish a final relocation date.

D. Service providers shall complete the relocation by the date specified by the City Public Works Director unless a reviewing court establishes a later date for completion. The standard for review by the Public Works Director and by any reviewing court shall be based upon a showing of substantial and competent evidence by the services provider, that the relocation cannot be completed by the date specified, using best efforts in meeting safety and service requirements.

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12.08.180 Notice and Liability. The City is not liable for damages for failure to provide individual notice to any permittee or franchisee under Section 12.08.170 (above). Where the City has failed to provide notice of plans to open a right-of-way consistent with Section 12.08.170 (above), the City may not deny a use permit to a service provider on the basis that the service provider failed to coordinate with another City project. No service provider may claim a lack of notice where a project has been included on the City's annually amended transportation improvement plan and notice of the transportation improvement plan element of the comprehensive plan has been published in accordance with the provisions of state law.

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

A. Obtain either all use permits and City-required bonds, including, but not limited to, a right-of-way use permit under chapter 12.06 EMC or master use permit for the installation, maintenance, repair, or removal of facilities in the designated right-of-way;

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

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

D. Provide information and plans reasonably necessary following notification of projects through publication of the City's transportation improvement plan. The provision of advance planning information shall conform to requirements established by the Public Works Director.

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

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

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

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

12.08.200 Relocation of facilities – Cost. Service providers may not seek reimbursement for relocation expenses from the City following the City's request to relocate under Section 12.06.150, except in the following circumstances:

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A. Where the service provider paid for the relocation costs of the same facilities at the request of the City within the past five years. In this case, the service provider's share of the cost of relocation shall be paid by the City;

B. Where the aerial to underground relocation of authorized facilities is required by the City, service providers with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in an approved tariff if less, will be paid by the City;

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

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

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

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

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

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

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

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

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

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Section 3. Severability. If any portion of this ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the ordinance or the application of the remainder to other persons or circumstances.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of ___, this day of , 2017

CITY OF EDGEWOOD

_____
Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

_____
Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

_____
Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:

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