

TITLE 7
PUBLIC WAYS AND PROPERTY

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CHAPTER 1 EXCAVATIONS

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7.01.101: DEFINITIONS:

In this chapter the following words shall have the following meanings:

APPLICANT:	Any person who makes application for a permit.
APPURTENANCES:	Miscellaneous concrete surfaces within the public way, such as parking bays and carriage walks.
BUSINESS:	Any place in the Town in which there is conducted or carried on principally or exclusively any pursuit or occupation for the purpose of gaining a livelihood.
TOWN:	Town of Hideout, a municipal corporation of the state of Utah.
TOWN ENGINEER:	The Town engineer, or his/her authorized representative.
EMERGENCY:	Any unforeseen circumstances or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility services.
ENGINEERING REGULATIONS, SPECIFICATIONS AND DESIGN STANDARDS:	The latest version of the engineering regulations, or standard specifications and detail for municipal construction published by the Town engineer.
EXCAVATION OR EXCAVATE:	Digging in, cutting into the surface of, or breaking the surface of a public way.
EXCAVATION SITE RESTORATION:	Means and includes the restoring of the original ground or paved hard surface area to comply with engineering regulations, and includes, but is not limited to, repair, cleanup, backfilling, compaction and stabilization, paving and other excavation necessary to place the site in acceptable condition following the

conclusion of the excavation, or the expiration or revocation of the permit.

FAILURE:

An excavation site restoration which fails to meet Town engineer specifications, or which results in a deteriorated or substandard condition within the duration of the warranty period. Failure may be settlement of surfaces, deterioration of materials, or other surface irregularities. Measurement of failure shall be further defined in the engineering regulations.

INFRASTRUCTURE PROVIDER:

A person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system which uses the right of way.

OPERATOR:

Any person who provides service over a telecommunications system and directly or through one or more affiliates owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

PERMITTEE:

Any person which has been issued a permit and thereby has agreed to fulfill the requirements of this chapter.

PERSON:

Means and includes any natural person, partnership, firm, association, provider, corporation, company, organization, or entity of any kind.

PIPE DRIVEWAY:

A driveway approach which uses a pipe or other means to bridge the gutter.

PRIVATE DRAIN LINE:

A pipe installed solely for the transmission of water collected or generated on private property such as drainage, spring or storm water, or condensate into the public drainage system.

PROPERTY OWNER:

Person or persons who have legal title to property and/or equitable interest in the property, or the ranking official or agent of a company having legal title to property and/or equitable interest in the property.

PROVIDER:

An operator, infrastructure provider, reseller, system lessee or public utility company.

PUBLIC UTILITY COMPANY:

Any company subject to the jurisdiction of the Utah State Public Service Commission, or any mutual corporation providing gas, electricity, water, telephone, or other utility

product or services for use by the general public.

PUBLIC WAY:

Means and includes all public rights of way and easements, public footpaths, walkways and sidewalks, public streets, public roads, public highways, public alleys, and public drainage ways. It does not, however, include utility easements not within public ways of the Town.

RESELLER:

Refers to any person that provides service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission and does not install any

system in the rights of way.

RESIDENT:

The person or persons currently making their home at a particular dwelling.

STORM DRAIN:

A dedicated pipe, conduit, waterway or ditch installed in a right of way or easement for the transmission of storm and drainage water. This term does not include private drain lines.

SYSTEM LESSEE:

Refers to any person that leases a system or a specific portion of a system to provide services.

TELECOMMUNICATIONS SYSTEM OR SYSTEM:

All conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a provider located in the construction, ownership, operation, use or maintenance of a telecommunications system.

TRAFFIC BARRICADE MANUAL:

The manual on proper barricading and traffic control practices, published by the Town engineer.

7.01.102: PERMIT REQUIRED; BASIS FOR ISSUANCE:

Any person desiring to excavate in any kind in a public way within the Town, shall make application for a permit. The decision by the Town to issue a permit shall include, among other factors determined by the Town, the following:

A. The capacity of the public way to accommodate the facilities or structures proposed to be installed in the public way;

B. The capacity of the public way to accommodate multiple wire in addition to cables, conduits, pipes or other facilities or structures of other users of the public way, such as electrical power, telephone, gas, sewer and water;

C. The damage or disruption, if any, of public or private facilities, improvements, or landscaping previously existing in the public way;

D. The public interest in minimizing the cost and disruption of construction from numerous excavations of the public way.

7.01.103: APPLICATION REQUIREMENTS:

A. Filing; Contractors: Application for a permit shall be filed with the Town on a form or forms to be furnished by the Town. Property owners and/or tenants for whom excavation is being done shall be responsible for obtaining the permits; provided, however, contractors may obtain the permit in the contractor's name.

B. Eligible Persons: No person shall be eligible to apply for or receive permits to excavate within the public ways of the Town, save and except the following:

1. Contractors licensed by the state as general contractors;
2. Providers;
3. Property owners installing, replacing or maintaining less than five hundred (500) square feet or one hundred (100) linear feet of sidewalk, curb and gutter, or driveway approach, or other excavation approved by the Town engineer, upon a portion of the public way adjacent to their residence; or
4. Persons offering a service which requires occupation of the public way, such as scaffolding or staging, staging of a crane, installation or maintenance of electric signs, glass, awnings, and painting or cleaning of buildings or sign boards or other structures.

C. Denial Based on Past Performance: The Town engineer may deny the issuance of permits to contractors, utility companies, or other permit applicants who have shown by past performance that in the opinion of the Town engineer they will not consistently conform to the engineering regulations, specifications, design standards, or the requirements of this chapter.

D. Plans And Sketches May Be Required: When necessary, in the judgment of the Town engineer, to fully determine the relationship of the excavation proposed to existing or proposed facilities within the public ways, or to determine whether the excavation proposed complies with the engineering regulations, construction specifications and design standards, the Town engineer may require the filing of engineering plans, specifications and sketches showing the proposed excavation in sufficient detail to permit determination of such relationship or compliance, or both, and the application shall be deemed suspended until such plans and sketches are filed and approved.

E. Excavation without Permit Unlawful: It shall be unlawful for any person to commence excavation upon any public way until the Town engineer has approved the application and until a permit has been issued for such excavation, except as specifically approved to the contrary in this chapter.

F. Appeal: The disapproval or denial of an application by the Town engineer may be appealed by the applicant to the governing body by filing of a written notice of appeal within ten (10) days of the action of the Town engineer. The governing body shall hear such appeal, if written request therefor be timely filed as soon as practicable, and render his/her decision within two (2) weeks following notice of such appeal.

G. Authority of Town Engineer: In approving or disapproving excavation within any public way, or permits therefor, in the inspection of such excavation; in reviewing plans, sketches or specifications; and generally in the exercise of the authority conferred upon him/her by this chapter, the Town engineer shall act in such manner as to preserve and protect the public way and the use thereof, but shall have no authority to govern the actions or inaction of permittees and applicants or other persons which have no relationship to the use, preservation or protection of the public way.

H. Exemptions from Permit Requirements: A permit is not required from the Town engineer for hand digging excavations for installation or repair of sprinkler systems and landscaping within the non-paved areas of the public way. However, conformance to all Town specifications is required.

7.01.104: EMERGENCY EXCAVATION:

A. Authorized: Any person maintaining pipes, lines or facilities in the public way may proceed with excavation upon existing facilities without a permit when emergency

circumstances demand that the excavation be done immediately; provided a permit could not reasonably and practicably have been obtained beforehand.

B. Commencement During Business Hours: In the event that emergency excavation is commenced on or within any public way of the Town during regular business hours, the Town engineer shall be notified within one-half (1/2) hour from the time the excavation is commenced. The person commencing and conducting such excavation shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall ensure that excavation is accomplished according to Town engineering regulations, the manual on uniform traffic control devices and other applicable laws, regulations, or generally recognized practices in the industry.

C. Commencement During Other Than Business Hours: Any person commencing emergency excavation in the public way during other than business hours without a permit shall immediately thereafter apply for a permit or give notice during the first hour of the first regular business day on which Town offices are open for business after such excavation is commenced. A permit for such emergency excavation may be issued which shall be retroactive to the date when the excavation was begun, at the discretion of the Town engineer.

7.01.105: FEES FOR PERMIT:

A. Required: The Town shall charge and the permittee shall pay upon issuance of the permit, fees for costs associated with the excavation performed under the permit as outlined in the consolidated fee schedule. Such costs could include costs for reviewing the project and issuing the permit, inspections of the project, deterioration of the public way or diminution of the useful life of the public way, and other costs to the Town associated with the excavation to be done under the permit. All costs shall be assessed in a nondiscriminatory manner.

B. Waiver: The Town engineer may waive permit fees or penalties or portion thereof provided for in this chapter, when he/she determines that such permit fee or penalty:

1. Pertains to construction or rehabilitation of housing for persons whose income is below the median income level for the Town; or
2. Pertains to an encroachment on the public way involving a beautification project which furthers specific goals and objectives set forth in the Town strategic

plan, master plans, or other official documents, including decorative street lighting, building facade lighting, flower and planter boxes, and landscaping.

C. Additional Charges: Additional charges to cover the reasonable cost and expenses of any required engineering review, inspection and excavation site restoration associated with each undertaking may be charged by the Town to each permittee, in addition to the permit fee.

7.01.106: CONTENTS, DURATION AND EXTENSIONS OF PERMIT:

A. Contents; Duration: Each permit application shall state the starting date and estimated completion date. Excavation shall be completed within five (5) days from the starting date or as determined by the Town engineer. Such determination shall be based upon factors reasonably related to the excavation to be performed under the permit. Such factors may include, in addition to other factors related to the excavation to be performed, the following:

1. The scope of excavation to be performed under the permit;
2. Maintaining the safe and effective flow of pedestrian and vehicular traffic on the public way affected by the excavation;
3. Protecting the existing improvements to the public way impacted by the excavation;
4. The season of the year during which the excavation is to be performed as well as the current weather and its impact on public safety and the use of the public way by the public;
5. Use of the public way for extraordinary events anticipated by the Town.

B. Notification of Commencement: The Town engineer shall be notified by the permittee of commencement of the excavation within twenty-four (24) hours prior to commencing excavation. The permit shall be valid for the time period specified in the permit.

C. Extensions:

1. If the excavation is not completed during such period, prior to the expiration of the permit, the permittee may apply to the Town engineer for an additional permit or an extension, which may be granted by the Town engineer for good cause shown.
2. The length of the extension requested by the permittee shall be subject to the approval of the Town engineer. No extension shall be made that allows excavation to be completed in the winter period without payment of winter fees. Winter fees shall be double the permit fee for any excavation made between October 15 and May 15.

7.01.107: TRANSFER OR ASSIGNMENT OF PERMIT PROHIBITED:

Permits shall not be transferable or assignable, and excavation shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the excavation to be performed under a permit; provided, however, that the holder of the permit shall be and remain responsible for the performance of the excavation under the permit, and for all bonding, insurance and other requirements of this chapter and under said permit.

7.01.108: COMPLIANCE REQUIRED; SITE PERMITTEE IDENTIFICATION; BARRICADES:

A. Compliance: The excavation performed in the public way shall strictly conform to the requirements of this chapter and the engineering regulations, design standards, construction specifications and traffic control regulations of the Town, copies of which shall be available from the Town engineer, kept on file in the office of the Town recorder and be open to public inspection during office hours.

B. Site Permittee Identification: Where a job site is left unattended, before completion of the excavation, signage with minimum two inch (2") high letters shall be attached to a barricade or otherwise posted at the site, indicating the permittee's name, or company name, telephone number, and after hours telephone number.

C. Barricades: All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to residents and businesses fronting on the public way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or persons. Barricades must be in place until all of the permittee's equipment is removed from the site and the excavation has been backfilled and proper temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the Town; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill excavation is actually commenced by the Town. From sunset to sunrise, all barricades and excavations must be clearly outlined by adequate signal lights, torches, etc. The police department and fire department shall be notified at least twenty four (24) hours in advance of any planned excavation requiring street closure or traffic detour.

7.01.109: GENERAL REQUIREMENTS:

Each applicant shall:

A. Hauling off Excavated Materials; Refilling Trench: For single excavated areas less than fifty feet (50') in length and twenty feet (20') in width, all materials that are dug out of the trench or excavation shall be hauled off and disposed of. The trench or excavation shall be refilled with new crushed gravel and compacted to ninety five percent (95%) and made ready for the asphalt finish surface. The trench or excavation shall be patched by the contractor with a minimum of three inches (3") of asphalt.

B. Protection Of Public: Before any excavation begins under this permit and at all times during the excavation, make proper provisions for protecting the public with necessary guards, barricades, lights, signals and with all other appurtenances necessary to safeguard the lives and property of the users of such roadway, sidewalk and other facilities. Visible flasher lights shall be used in hours of darkness.

C. Liability; Insurance: Be responsible for any liability or personal injury resulting from neglect. The applicant shall indemnify the Town against all claims, demands, costs, damages, attorney fees or other expenses of any kind occasioned by such neglect. The applicant shall, upon request of the Town, produce evidence of insurance adequate to cover such claims.

D. Restoration: Be responsible for restoring all public ways, including sidewalk surfaces, curb and gutter, driveways, ditches, and other landscaping, to their original condition, whether public or private, in a manner conforming to current Town specifications.

E. Minimum Excavation Area: On any project, regardless of the age or condition of the pavement, keep excavations to a minimum and, wherever possible, locate excavations so that one "common" patch can cover as many excavations as possible.

F. Road Restoration; Trench Maintenance: Restore roads to a passable and safe condition within twelve (12) hours. All remaining repairs and restoration shall take place within seven (7) calendar days from the date of the first excavation. All debris generated as a result of said excavation will be removed immediately from the area upon completion of the excavation. If, within the standard seven (7) days, or other time period authorized by the Town engineer, the road cut or excavation has not been repaired as required, the Town may revoke the excavation bond and cause the repairs to be made. The costs of repair shall include administrative costs. The permittee shall be responsible for trench maintenance for one year after the date it was inspected and approved by the public works department. If repair of the road cut or trench is necessary within the initial one year period, the permittee shall make repairs to the satisfaction of the Town engineer or, in the alternative, the Town may revoke the excavation bond and cause the repairs to be made.

G. Trench Length: Limit the trench length left at grade but unpaved to a maximum of one thousand feet (1,000'). No excavation shall be allowed to continue until the one thousand feet (1,000') of trench has been restored with proper asphalt surface.

7.01.110: PATCHING REQUIREMENTS:

Patching requirements shall meet the following standards:

A. Cuts Parallel to Street: For cuts parallel to the street, the patch required is the lane width by thirty feet (30') minimum or ten feet (10') beyond the cut at each end, whichever is larger.

B. Cuts Perpendicular to Street: For cuts perpendicular to the street or diagonal, the patch required is the lane width by twelve feet (12') minimum or five feet (5') beyond the cut on each side, whichever is larger.

7.01.111: OTHER HIGHWAY PERMITS:

A. Holders of permits for excavation on highways owned or under the jurisdiction of other government entities, but located within the Town limits, shall not be required to obtain permits from the Town under the provisions of this chapter, unless the excavation extends beyond the back side of the curb, or beyond any other designated jurisdictional boundary. Any Town permit shall not be construed to permit or allow excavation on a County road or a State highway within the Town without an applicable County or State permit.

B. The Town engineer, in his or her discretion, shall have the right and authority to regulate excavation under permits issued by other governmental entities with respect to hours and days of excavation, and measures required to be taken by the permittee of said governmental entity for the protection of traffic and safety of persons and property. Notwithstanding the foregoing, nothing in this chapter shall be construed to impose any duty, implied or express, on the Town or its employees, officers, agents or assigns, relative to the protection of traffic and safety of persons or property, arising out of the issuance of any permit issued by government entities other than the Town, or arising out of any excavation performed on any public way owned or within the jurisdiction of the Town.

7.01.112: INSPECTION:

After completion, and the engineer or public works director is satisfied that the requirements have been met, a memo will be written to the community development department indicating that the excavation is satisfactory. Payment adjustments to the applicant will then be made accordingly.

7.01.113: RELOCATION OF STRUCTURES IN PUBLIC WAYS:

A. Town May Request: The Town engineer may direct any person owning or maintaining facilities or structures in the public way to alter, modify or relocate such facilities or structures as the Town engineer may require. Sewers, pipes, drains, tunnels, conduits, pipe driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, telecommunication and communication facilities shall specifically be subject to such directives. The person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the Town, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as

directed by the Town. In the event that such person refuses or neglects to conform to the directive of the Town, the Town shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such person. Such person shall pay to the Town all costs incurred by the Town in connection with such excavation performed by the Town, including also design, engineering, construction, materials, insurance, court costs and attorney fees.

B. Basis for Directive by Town: Any directive by the Town engineer shall be based upon of the following:

1. The facility or structure was installed, erected or is being maintained contrary to law, or determined by the Town engineer to be structurally unsound or defective;
2. The facility or structure constitutes a "nuisance" as defined under statute or Town ordinance;
3. The permit under which the facility or structure was installed has expired or has been revoked;
4. The public way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction; or
5. The grades or lines of the public way are to be altered or changed.

C. Failure to Comply; Penalty: Any person owning or maintaining facilities or structures in the public way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the Town engineer shall be guilty of a class B misdemeanor, and subject to penalty as provided in section 1A.4.101 of this code. All costs of alteration, modification or relocation shall be borne by the person owning or maintaining the facilities or structures involved.

D. Directive under Police Power: Any directive of the Town engineer under this section shall be under and consistent with the Town's police power. Unless an emergency condition exists, the Town engineer shall make a good faith effort to consult with the person regarding any condition that may result in a removal or relocation of facilities in the public way to consider possible avoidance or minimization of removal or relocation requirements and provide the directive as far enough in advance of the required removal or relocation to allow the person a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.

E. Exception for Private Easements: This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the public way, if that prior private easement grants a superior vested right.

F. Emergency Work by Town: The Town may, at any time, in case of fire, disaster or other emergency, as determined by the Town in its reasonable discretion, cut or move any parts of the system and appurtenances on, over or under the public way, in which event the Town shall not be liable therefor to a person. The Town shall notify a person in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this subsection.

7.01.114: IMPACT OF EXCAVATION ON EXISTING IMPROVEMENTS:

A. Temporary Sidewalks or Curb Ramps: If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel and convenient for users, and consistent with Town standards for such.

B. Temporary Gravel Surfaces: Where excavations are made in paved areas, the surface shall be replaced with a temporary gravel surface until such time as the permanent repairs are completed.

C. Disturbance of Private or Public Property:

1. At any time a permittee disturbs the yard, residence or the real or personal property of a private property owner or the Town, such permittee shall ensure that such property is returned, replaced and/or restored to a condition that is comparable to the condition that existed prior to the commencement of the excavation.

2. The costs associated with the disturbance and the return, replacement and/or restoration shall be borne by the permittee. Further, a permittee shall reimburse a property owner or the Town, for any actual damage caused by the permittee, its subcontractor, or its independent contractor, in connection with the disturbance of such property. However, nothing in this subsection shall require the permittee to pay a subscriber or private property owner when that subscriber or private property owner requests that the permittee remove, replace or relocate

improvements associated with the service provided by the permittee to the property owner and when the permittee exercises due care in the performance of that service, or when the subscriber or private property owner provided false information to the permittee on which the permittee relied to its detriment.

D. Acts Specifically Included: Examples of types of acts specifically included in this section are the following:

1. Removal of sod, lawn, shrubbery, flowers, trees, driveways, or fence, to install, trench, repair, replace, remove or locate, equipment, cable or other appurtenances of the permittee;
2. Installation or removal of equipment or other appurtenances of the permittee's system within a private property owner's property or residence which requires drilling, excavating, plastering, or the like on the part of the permittee;
3. Temporarily relocating or moving a piece of personal property or a fixture of a private property owner (such as a motor vehicle, fence, air conditioning, heating unit, or the like) in order to perform some sort of construction, maintenance or repair by the permittee; or
4. Permanently removing a permittee's equipment or other appurtenances due to the revocation, termination or non-renewal of the franchise.

E. Drainage Channels Not Interrupted: Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the Town engineer prior to the blockage of the channel.

F. Applicable to Subcontractors or Independent Contractors: The requirements imposed upon the permittee extend to any subcontractor or independent contractor that the permittee might employ to perform the tasks pursuant to the permit.

G. Permanent Structures Placed In Public Way Excepted: The requirements of this section shall not apply to the removal by a permittee, of a permanent structure placed by a property owner in a public way, unless such property owner has received prior written permission from the Town granting the property owner the right to install a permanent structure on a public way, and such written permission has been recorded in the office of the County recorder.

7.01.115: RESTORATION OF PUBLIC PROPERTY:

A. Required: The permittee shall, at its own expense, restore the surface of any public way to its original condition and replace any removed or damaged pavement with the same type and depth of pavement as that which is adjoining, including the gravel base material. All restoration shall conform to the engineering regulations, design standards and specifications promulgated by the Town and shall be accomplished within the time limits set forth in the permit, unless additional time is granted in writing by the department.

B. Request for Restoration by Town: At its option, the permittee doing the actual excavation work may request that the Town restore the surface to its original condition. The fee for such resurfacing shall be determined by the Town engineer in accordance with its reasonable costs for such excavation and shall be charged to the person, firm, or corporation making the excavation. Payment for said excavation shall be received by the Town prior to the release of the bond.

7.01.116: INSURANCE REQUIREMENTS:

A. Required; Limits: Before a permit is issued, the applicant shall furnish to the Town evidence that such applicant has a comprehensive general liability and property damage policy that includes contractual liability coverage endorsed with the following limits and provisions or with such alternative limits and provisions as may be approved by the Town:

1. A minimum of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage and not less than one million dollars (\$1,000,000.00) in the aggregate. The general aggregate limit shall apply separately to the permit, or the general aggregate limit shall be two (2) times the required occurrence limit. The coverage shall be in the nature of broad form commercial general liability coverage. The Town attorney may increase or decrease minimum insurance limits, depending upon the potential liability of any project.
2. All policies shall include the Town, its employees, officers, officials, agents, volunteers and assigns, as insureds. Any reference to the "Town" shall include the Town, its employees, officers, officials, agents, volunteers and assigns.

3. The coverage shall be primary insurance as respects the Town, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the Town, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of the permittee's insurance and shall not contribute to or with it.

4. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its employees, officers, officials, agents, volunteers, and assigns.

5. Coverage shall state that the permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Underwriters shall have no right of recovery or subrogation against the Town, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

7. The insurance companies issuing the policy or policies shall have no recourse against the Town for payment of any premiums due or for any assessments under any form of any policy.

8. Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, sent to the Town.

9. Each policy shall be endorsed to indemnify, save harmless and defend the Town and its officers and employees against any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of permit excavation done by the permittee, his/her subcontractor or agent, whether or not the excavation has been completed and whether or not the right of way has been opened to public travel.

10. Each policy shall be endorsed to indemnify, hold harmless and defend the Town, and its officers and employees against any claim or loss, damage or expense sustained by any person occurring by reason of doing any excavation pursuant to the permit, including, but not limited to, falling objects or failure to maintain proper barricades and/or lights as required from the time excavation begins until the excavation is completed and right of way is opened for public use.

B. Rating: Insurance is to be placed with insurers with an AM Best rating of no less than an A carrier, with a rating of "7" or higher.

C. Certificates and Endorsements: The permittee shall furnish the Town with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Town expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the permittee shall be prepared to provide such copies prior to the issuance of the permit.

D. Unsatisfactory Policy: If any of the required policies are, or at any time become, unsatisfactory to the Town as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the Town, the permittee shall promptly obtain a new policy, submit the same to the Town for approval, and thereafter submit verification of coverage as required by the Town. Upon failure to furnish, deliver and maintain such insurance as provided herein, the Town may declare the permit to be in default and pursue any and all remedies the Town may have at law or in equity, including those actions outlined in this chapter.

E. Subcontractors Included: The permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Approval by Town Of Deductibles Or Self-Insured Retentions: Any deductibles or self-insured retentions shall be declared to and approved by the Town. At the option of the Town, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its employees, officers, officials, agents, volunteers or assigns, or the permittee shall procure a bond, in a form acceptable to the Town, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

G. Property Owner Performing Excavation; Homeowner's Insurance: A property owner performing excavation adjacent to his/her residence may submit proof of a homeowner's insurance policy in lieu of the insurance requirements of this section.

H. Exceptions to Submission of Insurance Certificates: A provider may be relieved of the obligation of submitting certificates of insurance under the following circumstances: If such company shall submit satisfactory evidence in advance that:

1. It is insured in the amounts set forth in this chapter, or has complied with State requirements to become self-insured. Public utilities may submit annually evidence of insurance coverage in lieu of individual submissions for each permit; and
2. Said coverage provides to the Town the same scope of coverage that would otherwise be provided by a separate policy as required by this chapter; or
3. The excavation to be performed under the permit issued to the applicant is to be performed by the Town, in which case insurance requirement or other risk transfer issues shall be negotiated between the Town and the applicant by separate agreement.

7.01.117: BOND REQUIREMENTS:

A. Bond Required: Except as noted in this chapter, each applicant, before being issued a permit, shall provide the Town with an excavation bond to guarantee faithful performance of the excavation authorized by a permit granted pursuant to this chapter. The amount of the bond required may be increased or decreased at the discretion of the Town engineer whenever it appears that the amount and cost of the excavation to be performed, and not satisfactorily completed, may vary from the amount of bond otherwise required under this chapter. The form of the bond and the entity issuing the bond shall be subject to the approval of the Town attorney.

B. Public Utilities: Public utilities franchised by the Town shall not be required to file any security if such requirement is expressly waived in the franchise documents.

C. Conditions of Bond: The bond required by this section shall be conditioned as follows:

1. The permittee shall fully comply with the requirements of the Town ordinances and regulations, specifications and standards promulgated by the Town relative to excavation in the public way, and respond to the Town in damages for failure to conform therewith;
2. After excavation is commenced, the permittee shall proceed with diligence and expedition and shall promptly complete such excavation and restore the public

way to construction specifications, so as not to obstruct the public place or travel thereon more than is reasonably necessary;

3. The permittee shall guarantee the materials and workmanship for a period of two (2) years from completion of such excavation, with reasonable wear and tear excepted; and

4. Unless authorized by the Town engineer on the permit, all paving, resurfacing or replacement of street facilities on major or collector streets shall be done in conformance with the regulations contained herein within three (3) calendar days, and within seven (7) calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to engineering regulations. In winter, a temporary patch must be provided. In all excavations, restoration or pavement surfaces shall be made immediately after backfilling is completed or concrete is cured. If excavation is expected to exceed the above duration, the permittee shall submit a detailed construction schedule for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.

7.01.118: HOLD HARMLESS AGREEMENT; LIMITATIONS ON TOWN LIABILITY:

A. The permittee agrees to save the Town, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any excavation performed under the permit. The issuance and acceptance of any permit under this chapter shall constitute such an agreement by the permittee to this section.

B. This chapter shall neither be construed as imposing upon the Town, its officers, employees and agents, any liability or responsibility for damages to any person injured by or by reason of the performance of any excavation within the public way, or under a permit issued pursuant to this chapter; nor shall the Town, its officers, officials, employees, agents, volunteers or assigns thereof be deemed to have assumed any such liability or responsibility by reason of inspection authorized hereunder, the issuance of any permit, or the approval of any excavation.

7.01.119: EXCAVATION WITHOUT PERMIT; PENALTY:

A. Stop Order: A stop order may be issued by the Town engineer directed to any person or persons doing or causing any excavation to be done in the public way without a permit. The abutting property owner shall be responsible for causing excavation to be done.

B. Penalty: Any person found to be doing excavation in the public way without having obtained a permit, as provided in this chapter, shall be required to pay a permit fee equal to two (2) times the normal permit fee. For replacement excavation, where a fee is not normally charged, the normal permit fee for new construction shall apply.

7.01.120: FAILURE TO COMPLY; DEFAULT IN PERFORMANCE:

A. Revocation, Suspension Or Stop Order; Conditions: Any permit may be revoked or suspended and a stop order issued by the Town engineer, after notice to the permittee for:

1. Violation of any condition of the permit, the bond, or of any provision of this chapter;
2. Violation of any provision of any other ordinance of the Town or law relating to the excavation; or
3. Existence of any condition or the doing of any act which does constitute, may constitute, or cause a condition endangering life or property.

B. Immediate Effect: A suspension or revocation by the Town engineer, and a stop order, shall take effect immediately upon entry thereof by the Town engineer and notice to the person performing the excavation in the public way. Notice to the person performing the excavation shall be accomplished when the Town engineer has posted a stop work order at the location of the excavation and written notice has been mailed, return receipt requested, to the address indicated by the permittee on the permit.

C. Notice to Surety or Escrow Agent: Whenever the Town engineer finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof may be given to the principal and to the surety or escrow agent on the bond, if there is a surety or escrow bond. Such notice shall state the excavation to be done, the estimated cost thereof, and the period of time deemed by the Town engineer to be reasonably necessary for the completion of the excavation.

D. Performance by Town: In the event that the surety or escrow agent (or principal), within a reasonable time following the giving of such notice (taking into consideration the exigencies of the situation, the nature of the excavation, the requirements of public safety and for the protection of persons and property), fails either to commence and cause the required excavation to be performed with due diligence, or to indemnify the Town for the cost of doing the excavation, as set forth in the notice, the Town may perform the excavation, at the discretion of the Town engineer, with Town forces or contract forces or both, and suit may be commenced by the Town attorney against the principal and bonding company or escrow and such other persons as may be liable, to recover the entire amount due to the Town, including attorney fees, on account thereof. In the event that cash has been deposited, the cost of performing the excavation may be charged against the amount deposited, and suit brought for the balance due, if any.

**7.01.121: FAILURE TO CONFORM TO DESIGN STANDARDS;
PENALTY:**

For failure to conform to the design standards and regulations, the Town engineer may:

- A. Suspend or revoke the permit;
- B. Issue a stop order;
- C. Order removal and replacement of faulty excavation;
- D. Require an extended warranty period; and/or
- E. Negotiate a cash settlement to be applied toward future maintenance costs.

**7.01.122: APPEAL OF SUSPENSION, REVOCATION OR STOP
ORDER:**

Any suspension, revocation or stop order by the Town engineer may be appealed by the permittee to governing body by filing a written notice of appeal within ten (10) days of the action of the Town engineer. The governing body shall hear such appeal, if written request therefor be timely filed, as soon as practicable, and render his/her decision within a reasonable time following filing of notice of appeal.

7.01.123: TAMPERING WITH TRAFFIC BARRICADES:

It shall be unlawful for any person to maliciously or wantonly or without authorization and legal cause, extinguish, remove or diminish any light illuminating any barricade or excavation, or to tear down, remove or in any manner alter any rail, fence or barricade protecting any excavation or other construction site.

7.01.124: CONFLICTING PROVISIONS:

Should there be a conflict between the provisions of this chapter and the provisions of any other ordinance, agreement, franchise or other document governing the excavation of a public way, the more restrictive provisions of the aforesaid documents shall apply.

7.01.125: PENALTY:

Unless otherwise specified in this chapter, a violation of any provision of this chapter, or failure to comply with an order of suspension, revocation or stop work, shall be a class B misdemeanor, and subject to penalty as provided in section 1A.4.101 of this code. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying with the provisions of this chapter.

CHAPTER 2

OBSTRUCTIONS OF PUBLIC STREETS AND PROPERTY

Sections

- 7.02.101: DEFINITIONS
- 7.02.102: REGULATIONS AND REQUIREMENTS
- 7.02.103: NOTICE TO REMOVE

7.02.101: DEFINITIONS:

The following words and phrases used in this chapter shall have the following meaning unless a different meaning clearly appears from the context:

OBSTRUCTION:

Any condition or use of premises or of building exteriors which are deleterious or injurious, noxious or unsightly, which includes, but is not limited to, keeping or depositing on, or scattering over any of the following:

A. Lumber, junk, trash, or debris

B. Abandoned, discarded or unused objects or equipment such as furniture, stoves, refrigerators, freezers, cans or containers

C. Abandoned, discarded or unused vehicles, trucks or trailers.

STORAGE OF PERSONAL PROPERTY:

Unsheltered storage of old, unused, stripped and junked machinery, implements, equipment or personal property of any kind which is no longer safely usable for the purpose for which is no longer safely usable for the purpose for which it was manufactured, for a period of thirty (30) days or more (except in

licensed junk yards) within this Town, is hereby declared to be an obstruction and dangerous to the public safety.

7.02.102: REGULATIONS AND REQUIREMENTS:

A. It shall be unlawful for any person to put, place or leave upon any public street, parking lot or sidewalk, or any property owner to suffer or permit to remain upon or leave such obstruction on a public street, parking lot or public property for more than seventy two (72) hours, any automobile, lumber, wood, fencing or other building materials.

B. It shall be unlawful for any person or property owner to put, place or leave upon any public street any automobile, lumber, wood, fencing, other building material or any obstruction, for the months of October through May.

C. No person owning, leasing, occupying or having charge of any premises shall maintain or keep any obstruction thereon, nor shall any such person keep or maintain such premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which such premises are located.

7.02.103: NOTICE TO REMOVE:

Any obstruction, as set forth in this section, which shall have remained on the public street, parking lot, sidewalk or public property for more than twenty four (24) hours after notice of the violation of this section shall have been given to the owner of such obstruction by attaching a copy of such notice to the obstruction or delivered to the property owner, will be deemed abandoned and worthless, and the Town may at its option remove such obstruction at the expense of the owner thereof or at the expense of the Town without liability for such removal to any such owner.

CHAPTER 3
SUFFICIENT INFRASTRUCTURE FOR PROPOSED
DEVELOPMENT

Section

7.03.101: SUFFICIENT INFRASTRUCTURE FOR PROPOSED DEVELOPMENT

7.03.101: SUFFICIENT INFRASTRUCTURE FOR PROPOSED DEVELOPMENT:

No development, nor permit for development, shall be granted, approved or issued unless the necessary public facilities in the applicable area have been determined to exist and have adequate capacity to accommodate the proposed development at the adopted level of service standard, and are available or are to be available when the development occurs. The applicable area includes all facilities that directly or indirectly deliver the services to or are impacted by the proposed development. Such a determination is to be made by the Town engineer, using the accepted methods and measurements of the profession.

CHAPTER 4 STREETS AND SIDEWALKS

Section

- 7.04.101: CONSTRUCTION AND REPAIR
- 7.04.102: OBSTRUCTIONS
- 7.04.103: TRESPASS

7.04.101: CONSTRUCTION AND REPAIR:

A. Standards For Individuals: It shall be unlawful for any person, either as owner, agent, servant, contractor or employee, to construct any sidewalk in the Town unless such sidewalk be constructed to lines and grades given and established by the Town engineer or an authorized representative of the Town, unless special permission to deviate from such lines and grades is first obtained from the Town council.

B. Specifications: It shall be unlawful to construct any such sidewalk in violation of the specifications given by the proper Town official.

C. Permit Required: No person, either as owner, agent, servant, contractor or employee, shall construct any permanent sidewalk in the Town without first having obtained from the office of the Town clerk a permit to do so. The acceptance of such a permit shall be deemed as an agreement upon the part of such person to construct said sidewalk in accordance with the specifications furnished by the Town, as to the character and quality of the work, and if the sidewalk be constructed of cement, the character and quality of the cement, and constituent parts of the mixture, and the thickness of the walk.

D. Supervision: All sidewalks shall be constructed under the inspection of the street supervisor or his duly authorized representative.

E. Driveways:

1. It shall be unlawful for any person to construct any driveway across sidewalk space, or cut or change the construction of sidewalk, curb or gutter without first making written application and obtaining from the Town clerk a permit to do so. The acceptance of such permit shall be deemed an agreement on the part of such person to construct said driveway in accordance with specifications furnished by the Town.

2. No permit shall be granted by any authorized Town employee for any driveway exceeding forty feet (40') in width unless special permission is granted by action of the Town council.

7.04.102: OBSTRUCTIONS:

A. Prohibited; Exception: All persons are hereby forbidden to obstruct the sidewalks, crosswalks or streets of the Town, or to permit any gate or other obstruction to swing across any sidewalk of the Town or to the annoyance of another; provided, however, that special permission may be granted by the Town council to place obstructions on sidewalks or streets when necessary for improving the same or to provide protection when buildings are in the course of construction.

B. Weed And Snow Removal: It shall be unlawful for any owner or occupant, or the agent of any owner or occupant of any property in the Town to fail to remove all weeds and noxious vegetation from such property, and in front thereof to the curb line of the street, and in the business district to fail to keep the sidewalks in front of such property free from snow, ice and other obstructions.

C. Materials In Gutter: It shall be unlawful for any person removing snow from the sidewalk, as provided in subsection B of this section, or for any person by any means whatsoever, to deposit snow, dirt, leaves or any other material in the gutter so as to clog the same or prevent the free flow of water therein.

D. Overflowing Of Water: No person shall allow water to overflow from any irrigation ditch or canal upon the streets or sidewalks of the Town.

E. Encroachments:

1. Enforcement: If any street is encroached upon by a fence or building, or otherwise, the street supervisor may orally or in writing require the encroachment to be removed.

2. Notice to Remove: Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence, or by mailing to his last known address, if he is known and resides in the Town. If not, such notice shall be posted on the encroachment specifying the breadth of the street, the place and extent of the encroachment and requiring him to remove the same within ten (10) days thereafter.

3. Refusal: If the encroachment is not removed or commenced to be removed and the removal not diligently prosecuted prior to the expiration of ten (10) days from the date of service or posting of notice, the person who causes, owns or controls the encroachment shall be in violation of this subsection and subject to prosecution therefor.

F. Sod, Earth Removal: No person shall dig, cut or remove any sod or earth from any street or other public place within the Town without a permit from the street supervisor or from any premises not his own without the consent of the owner.

7.04.103: TRESPASS:

A. Criminal Trespass: The Town council may, by posted sign, prohibit access to and designate the use of any part of a street or sidewalk including bridges, park strip or other appurtenances, as dangerous, hazardous, or illegal. Use of the street, bridge, etc., contrary to the sign that is posted, shall constitute a violation of this section and shall be considered a criminal trespass.

B. Penalty: Every person convicted of violating the regulations as prescribed herein shall be guilty of a class C misdemeanor and subject to penalty as provided in section 1A.4.101 of this code.

CHAPTER 5

TELECOMMUNICATIONS USE OF RIGHTS OF WAY

Section

- 7.05.101: DECLARATION OF FINDINGS AND INTENT; SCOPE
- 7.05.102: DEFINITIONS
- 7.05.103: FRANCHISE REQUIRED
- 7.05.104: COMPENSATION AND OTHER PAYMENTS
- 7.05.105: FRANCHISE APPLICATIONS
- 7.05.106: CONSTRUCTION AND TECHNICAL REQUIREMENTS
- 7.05.107: FRANCHISE AND LICENSE NONTRANSFERABLE
- 7.05.108: OVERSIGHT AND REGULATION
- 7.05.109: RIGHTS OF TOWN
- 7.05.110: OBLIGATION TO NOTIFY; PUBLICIZING WORK
- 7.05.111: GENERAL ADMINISTRATIVE PROVISIONS
- 7.05.112: FEDERAL, STATE AND TOWN JURISDICTION

7.05.101: DECLARATION OF FINDINGS AND INTENT; SCOPE:

A. Declaration of Findings and Intent:

1. Specified: The Town finds that the rights of way within the Town:
 - a. Are critical to the travel and transport of persons and property in the business and social life of the Town;
 - b. Are intended for public uses and must be managed and controlled consistent with that intent;
 - c. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the Town and its citizens; and
 - d. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and

negative effects upon the public from such facilities' construction, placement, relocation and maintenance in the rights of way.

2. Findings Regarding Compensation: The Town finds that the Town should receive fair and reasonable compensation for use of the rights of way.
3. Findings Regarding Local Concern: The Town finds that while telecommunications systems are in part an extension of interstate commerce, their operations also involve rights of way, municipal franchising, and vital business and community services, which are of local concern.
4. Findings Regarding Promotion of Telecommunications Services: The Town finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of telecommunications services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.
5. Findings Regarding Franchise Standards: The Town finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:
 - a. Fairly and reasonably compensates the Town on a competitively neutral and nondiscriminatory basis as provided herein;
 - b. Encourages competition by establishing terms and conditions under which providers may use the rights of way to serve the public;
 - c. Fully protects the public interests and the Town from any harm that may flow from such commercial use of rights of way;
 - d. Protects the police powers and rights of way management authority of the Town, in a manner consistent with federal and state law;
 - e. Otherwise protects the public interests in the development and use of the Town infrastructure;
 - f. Protects the public's investment in improvements in the rights of way; and
 - g. Ensures that no barriers to entry of telecommunications providers are created and that such franchising is accomplished in a manner that does

not prohibit or have the effect of prohibiting telecommunication services, within the meaning of the Telecommunications Act of 1996 ("Act").

6. Power to Manage Rights of Way: The Town adopts this telecommunications chapter pursuant to its power to manage the rights of way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable compensation for the use of rights of way by providers as expressly set forth by section 253 of the Act.

B. Scope: This chapter shall provide the basic local scheme for providers of telecommunications services and systems that require the use of the rights of way, including providers of both the system and service, those providers of the system only, and those providers who do not build the system but who only provide services. This chapter shall apply to all future providers and to all providers in the Town prior to the effective date hereof, whether operating with or without a franchise as set forth in subsection 7.05.103 of this chapter.

C. Excluded Activity:

1. Cable TV: This chapter shall not apply to cable television operators otherwise regulated by the Town cable television ordinances regulating TCI Cable and Insight Communications Company.

2. Wireless Services: This chapter shall not apply to personal wireless service facilities.

3. Provisions Applicable to Excluded Providers: Providers excused by other law that prohibits the Town from requiring a franchise shall not be required to obtain a franchise, but all of the requirements imposed by this chapter through the exercise of the Town police power and not preempted by other law shall be applicable.

7.05.102: DEFINITIONS:

For purposes of this chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

APPLICATION: The process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights of way of all, or a part, of the Town. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the Town concerning: the construction of a telecommunications system over, under, on or through the rights of way; the telecommunications services proposed to be provided in the Town by a provider; and any other matter pertaining to a proposed system or service.

TOWN: Town of Hideout, Utah.

COMPLETION DATE: The date that a provider begins providing services to customers in the Town.

CONSTRUCTION COSTS: All costs of constructing a system, including make ready costs, other than engineering fees, attorney or accountant fees, or other consulting fees.

CONTROL OR CONTROLLING INTEREST: Actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than twenty five percent (25%) of any provider (which person or group of persons is hereinafter referred to as "controlling person"). "Control" or "controlling interest", as used herein, may be held simultaneously by more than one person or group of persons.

FCC: The federal communications commission, or any successor thereto.

FRANCHISE: The rights and obligations extended by the Town to a provider to own, lease, construct, maintain, use or operate a system in the rights of way within the boundaries of the Town. Any such authorization, in whatever form granted, shall not mean or include: a) any other permit or authorization required for the privilege of transacting and carrying on a business within the Town required by the ordinances and laws of the Town; or b) any other permit, agreement or authorization required in connection with operations on rights of way or public property, including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the Town or a private entity, or for excavating or performing other work in or along the rights of way.

FRANCHISE AGREEMENT: A contract entered into in accordance with the provisions of this chapter between the Town and a franchisee that sets forth, subject to this chapter,

the terms and conditions under which a franchise will be exercised.

GROSS REVENUE: Includes all revenues of a provider that may be included as gross revenue within the meaning of Utah Code Annotated Title 11, Chapter 26, as amended.

INFRASTRUCTURE PROVIDER: A person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system which uses the rights of way.

OPEN VIDEO SERVICE: Any video programming services provided to any person through the use of rights of way, by a provider that is certified by the FCC to operate an open video system pursuant to sections 651 et seq., of the Telecommunications Act (to be codified at 47 USC Title VI, Part V), regardless of the system used.

OPEN VIDEO SYSTEM: The system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing open video services to or from subscribers or locations within the Town.

OPERATOR: Any person who provides service over a telecommunications system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

ORDINANCE OR TELECOMMUNICATIONS ORDINANCE: This telecommunications chapter concerning the granting of franchises in and by the Town for the construction, ownership, operation, use or maintenance of a telecommunications system.

PSC: The Public Service Commission, or any successor thereto.

PERSON: Includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the Town.

PERSONAL WIRELESS SERVICES FACILITIES: Has the same meaning as provided in section 704 of the Act (47 USC 332(c)(7)(c)), which includes what is commonly known as cellular and PCS services that do not install any system or portion of a system in the rights of way.

PROVIDER: An operator, infrastructure provider, reseller or system lessee.

RESELLER: Refers to any person that provides local exchange service over a system for

which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.

RIGHTS OF WAY: The surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Town.

SIGNAL: Any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

SYSTEM LESSEE: Refers to any person that leases a system or a specific portion of a system to provide services.

TELECOMMUNICATIONS: The transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video and voice), without change in the form or content of the information sent and received.

TELECOMMUNICATIONS SERVICE OR SERVICES: Any telecommunications services provided by a provider within the Town that the provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the services provided within the Town, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 USC 521 et seq.), and the Telecommunications Act of 1996. Telecommunications system or systems also includes an open video system.

TELECOMMUNICATIONS SYSTEM OR SYSTEM: All conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a provider, located in the rights of way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services. Telecommunications system or systems also includes an open video system.

WIRE: Fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

7.05.103: FRANCHISE REQUIRED:

A. Nonexclusive Franchise: The Town is empowered and authorized to issue nonexclusive franchises governing the installation, construction and maintenance of systems in the Town rights of way, in accordance with the provisions of this chapter. The franchise is granted through a franchise agreement entered into between the Town and provider.

B. Every Provider Must Obtain: Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every provider must obtain a franchise prior to constructing a telecommunications system or providing telecommunications services using the rights of way, and every provider must obtain a franchise before constructing an open video system or providing open video services via an open video system. Any open video system or service shall be subject to the customer service and consumer protection provisions applicable to the cable TV companies to the extent the Town is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide telecommunications services over the same system, must also obtain a telecommunications franchise.

C. Nature of Grant: A franchise shall not convey title, equitable or legal, in the rights of way. A franchise is only the right to occupy rights of way on a nonexclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned or subleased. A franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including Town property. This section shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise.

D. Current Providers: Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date hereof shall request issuance of a franchise from the Town within ninety (90) days of the effective date hereof. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a franchise is not granted, the provider shall comply with the provisions of subsection 7.05.109 of this chapter.

E. Nature of Franchise: The franchise granted by the Town under the provisions of this chapter shall be a nonexclusive franchise providing the right and consent to install, repair, maintain, remove and replace its system on, over and under the rights of way in order to provide services.

F. Regulatory Approval Needed: Before offering or providing any services pursuant to the franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to the Town upon the written request of the Town evidence of all such approvals, permits, authorizations or licenses.

G. Term: No franchise issued pursuant to this chapter shall have a term of less than five (5) years or greater than fifteen (15) years. Each franchise shall be granted in a nondiscriminatory manner.

7.05.104: COMPENSATION AND OTHER PAYMENTS:

A. Compensation: As fair and reasonable compensation for any franchise granted pursuant to this chapter, a provider shall have the following obligations:

1. Application Fee: In order to offset the cost to the Town to review an application for a franchise and in addition to all other fees, permits or charges, a provider shall pay to the Town, at the time of application, a nonrefundable application fee as set by ordinance of the Town council.

2. Franchise Fees: The franchise fee, if any, shall be set forth in the franchise agreement. The obligation to pay a franchise fee shall commence on the completion date. The franchise fee is offset by any business license fee or business license tax enacted by the Town.

3. Excavation Permits: The provider shall also pay fees required for an excavation permit as provided in Chapter 4 of this title.

B. Timing: Unless otherwise agreed to in the franchise agreement, all franchise fees shall be paid on a monthly basis within forty five (45) days of the close of each calendar month.

C. Fee Statement and Certification: Unless a franchise agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

D. Future Costs: A provider shall pay to the Town or to third parties, at the direction of the Town, an amount equal to the reasonable costs and reasonable expenses that the Town incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal or provider initiated renegotiation, or amendment of this chapter or a franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association.

E. Taxes And Assessments: To the extent taxes or other assessments are imposed by taxing authorities, other than the Town on the use of the Town property as a result of a provider's use or occupation of the rights of way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this chapter.

F. Interest on Late Payments: In the event that any payment is not actually received by the Town on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

G. No Accord And Satisfaction: No acceptance by the Town of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the Town may have for additional sums payable.

H. Not In Lieu Of Other Taxes or Fees: The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this chapter, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the Town owned poles are not waived and remain applicable.

I. Continuing Obligation and Holdover: In the event a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this chapter and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation; provided, that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the

remedies, if any, available to the Town as a result of such continued operation after the term, including, but not limited to, damages and restitution.

J. Costs of Publication: A provider shall assume any publication costs associated with its franchise that may be required by law.

7.05.105: FRANCHISE APPLICATIONS:

A. Required: To obtain a franchise to construct, own, maintain or provide services through any system within the Town, to obtain a renewal of a franchise granted pursuant to this chapter, or to obtain the Town approval of a transfer of a franchise, as provided in subsection 7.05.103 of this chapter, granted pursuant to this chapter, an application must be filed with Town on the form attached to the ordinance codified herein as exhibit A, which is hereby incorporated by reference. The application form may be changed by the governing body so long as such changes request information that is consistent with this chapter. Such application form, as amended, is incorporated by reference.

B. Application Criteria: In making a determination as to an application filed pursuant to this chapter, the Town may, but shall not be limited to, request the following from the provider:

1. A copy of the order from the PSC granting a certificate of convenience and necessity.
2. Certification of the provider's financial ability to compensate the Town for provider's intrusion, maintenance and use of the rights of way during the franchise term proposed by the provider;
3. Provider's agreement to comply with the requirements of section 7.05.103 of this chapter.

C. Franchise Determination: The Town, in its discretion, shall determine the award of any franchise on the basis of these and other considerations relevant to the use of the rights of way, without competitive bidding.

7.05.106: CONSTRUCTION AND TECHNICAL REQUIREMENTS:

A. General Requirement: No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this section governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the Town or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with Town utilities. A provider shall obtain an excavation permit, pursuant to Chapter 4 of this title, before commencing any work in the rights of way.

B. Quality: All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by Federal law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions.

C. Licenses And Permits: A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including, but not limited to, any necessary approvals from persons and/or the Town to use private property, easements, poles and conduits. A provider shall obtain any required permit, license, approval or authorization, including, but not limited to, excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

D. Relocation of System:

1. New Grades Or Lines: If the grades or lines of any rights of way are changed at any time in a manner affecting the system, then a provider shall comply with the requirements of the excavation ordinance.

2. Town Authority to Move System in Case of Emergency: The Town may, at any time, in case of fire, disaster or other emergency, as determined by the Town in its reasonable discretion, cut or move any parts of the system and appurtenances on, over or under the rights of way of the Town, in which event the Town shall not be liable therefor to a provider. The Town shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the

next business day following any action taken under this section. Notice shall be given as provided in subsection 7.05.111 of this chapter.

3. **Provider Required To Temporarily Move System For Third Party:** A provider shall, upon prior reasonable written notice by the Town or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A provider may impose a reasonable charge on any person other than the Town for any such movement of its systems.

4. **Rights of Way Change; Obligation to Move System:** When the Town is changing a rights of way and makes a written request, a provider is required to move or remove its system from the rights of way, without cost to the Town, to the extent provided in the excavation ordinance. This obligation does not apply to systems originally located on private property pursuant to a private easement, which property was later incorporated into the rights of way, if that private easement grants a superior vested right. This obligation exists whether or not the provider has obtained an excavation permit.

E. **Protect Structures:** In connection with the construction, maintenance, repair, upgrade or removal of the system, a provider shall, at its own cost and expense, protect any and all existing structures belonging to the Town and all designated landmarks, as well as all other structures within any designated landmark district. A provider shall obtain the prior written consent of the Town to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the rights of way of the Town required because of the presence of the system. Any such alteration shall be made by the Town or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the Town to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the Town, any municipal structure or any other rights of way of the Town involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the franchise.

F. **No Obstruction:** In connection with the construction, maintenance, upgrade, repair or removal of the system, a provider shall not unreasonably obstruct the rights of way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the Town without the prior consent of the appropriate authorities.

G. **Safety Precautions:** A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and

suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state and local requirements including, but not limited to, the national electrical safety code.

H. Repair: After written reasonable notice to the provider, unless, in the sole determination of the Town, an eminent danger exists, any rights of way within the Town which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the Town at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the Town shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights of ways intruded upon. The provider shall, within thirty (30) days after receipt of the statement, pay to the Town the entire amount thereof.

I. System Maintenance: A provider shall:

1. Install and maintain all parts of its system in a non-dangerous condition throughout the entire period of its franchise.
2. Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the national electrical safety code and all applicable other federal, state and local laws or regulations.
3. At all reasonable times, permit examination by any duly authorized representative of the Town of the system and its effect on the rights of way.

J. Trimming Of Trees: A provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights of way so as to prevent the branches of such trees from coming in contact with its system.

7.05.107: FRANCHISE AND LICENSE NONTRANSFERABLE:

A. Notification of Sale:

1. Notification and Election: When a provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the

provider or its successor entity shall promptly notify the Town of the nature of the transaction. The notification shall include either:

- a. The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement; or
- b. The successor entity's application in compliance with section 7.05.105 of this chapter.

2. Transfer of Franchise: Upon receipt of a notification and certification in accordance with subsection A1a of this section, the Town designee, as provided in subsection 7.05.109 of this chapter, shall send notice affirming the transfer of the franchise to the successor entity. If the Town has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application for the transfer. The application shall comply with section 7.05.105 of this chapter.

3. If PSC Approval No Longer Required: If the PSC no longer exists, or if its regulations or State law no longer requires approval of transactions described in subsection A1 of this section, and the Town has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application. The application shall comply with section 7.05.105 of this chapter.

B. Events Of Sale: The following events shall be deemed to be a sale, assignment or other transfer of the franchise requiring compliance with subsection A of this section: a) the sale, assignment or other transfer of all or a majority of a provider's assets to another person; b) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in a provider; c) the issuance of additional capital stock or partnership, membership or other equity interest by a provider so as to create a new controlling interest in such a provider; or d) the entry by a provider into an agreement with respect to the management or operation of such provider or its system.

7.05.108: OVERSIGHT AND REGULATION:

A. Insurance, Indemnity And Security: Prior to the execution of a franchise, a provider will deposit with the Town an irrevocable, unconditional letter of credit or surety bond as required by the terms of the franchise, and shall obtain and provide proof of the insurance coverage required by the franchise. A provider shall also indemnify the Town as set forth in the franchise.

B. Oversight: The Town shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the system, and any part thereof, in accordance with the provisions of the franchise and applicable law. A provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a provider to prove, in reasonable detail, to the satisfaction of the Town at all times throughout the term, that a provider is in compliance with the franchise. A provider shall retain such records for not less than the applicable statute of limitations.

C. Maintain Records: A provider shall at all times maintain:

1. On file with the Town, a full and complete set of plans, records and "as built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the Town's existing GIS system, of all existing and proposed installations and the types of equipment and systems installed or constructed in the rights of way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all rights of ways where work will be undertaken. As used herein, "as built" maps includes "file construction prints". Maps shall be drawn to scale. "As built" maps, including the compatible electronic format, as provided above, shall be submitted within thirty (30) days of completion of work or within thirty (30) days after completion of modification and repairs. "As built" maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.

2. Throughout the term of the franchise, complete and accurate books of account and records of the business, ownership, and operations of a provider with respect to the system in a manner that allows the Town at all times to determine whether a provider is in compliance with the franchise. Should the Town reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this section. All financial books and records which are maintained in accordance with the regulations of the FCC and any

governmental entity that regulates utilities in the State, and generally accepted accounting principles shall be deemed to be acceptable under this section.

D. Confidentiality: If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a provider, such information shall be classified as a protected record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the Town; provided, that a provider notifies the Town of, and clearly labels the information which a provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the provider.

E. Provider's Expense: All reports and records required under this chapter shall be furnished at the sole expense of a provider, except as otherwise provided in this chapter or a franchise.

F. Right Of Inspection: For the purpose of verifying the correct amount of the franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the Town at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the Town shall not audit the books and records of the provider more often than annually. The provider agrees to reimburse the Town the reasonable costs of an audit if the audit discloses that the provider has paid ninety five percent (95%) or less of the compensation due the Town for the period of such audit. In the event the accounting rendered to the Town by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the Town may accept any amount offered by the provider, but the acceptance thereof by the Town shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

7.05.109: RIGHTS OF TOWN:

A. Enforcement and Remedies:

1. Enforcement; Town Designee: The Town is responsible for enforcing and administering this chapter, and the Town or its designee, as appointed by the governing body, is authorized to give any notice required by law or under any franchise agreement.

2. Enforcement Provision: Any franchise granted pursuant to this chapter shall contain appropriate provisions for enforcement, compensation and protection of the public, consistent with the other provisions of this chapter, including, but not limited to, defining events of default, procedures for accessing the bond/security fund, and rights of termination or revocation.

B. Force Majeure: In the event a provider's performance of any of the terms, conditions or obligations required by this chapter or a franchise is prevented by a cause or event not within a provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, "causes or events not within the control of a provider" shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

C. Extended Operation and Continuity of Services:

1. Continuation after Expiration: Upon either expiration or revocation of a franchise granted pursuant to this chapter, the Town shall have discretion to permit a provider to continue to operate its system or provide services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A provider shall continue to operate its system under the terms and conditions of this ordinance and the franchise granted pursuant to this chapter.

2. Continuation by Incumbent Local Exchange Carrier: If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

D. Removal or Abandonment of Franchise Property:

1. Abandoned System: In the event that: a) the use of any portion of the system is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the Town to the last known address of provider; b) any system has been installed in the rights of way without complying with the requirements of this chapter or franchise; or c) the provisions of subsection 7.05.103 of this chapter are applicable and no franchise is granted, a provider, except the provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such system.

2. Removal Of Abandoned System: The Town, upon such terms as it may impose, may give a provider written permission to abandon, without removing, any system, or portion thereof, directly constructed, operated or maintained under a franchise. Unless such permission is granted or unless otherwise provided in this ordinance, a provider shall remove within a reasonable time the abandoned system and shall restore, using prudent construction standards, any affected rights of way to their former state at the time such system was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights of way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The Town shall have the right to inspect and approve the condition of the rights of way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and any security fund provided in a franchise shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this section.

3. Transfer of Abandoned System to Town: Upon abandonment of any system in place, a provider, if required by the Town, shall submit to the Town a written instrument, satisfactory in form to the Town, transferring to the Town the ownership of the abandoned system.

4. Removal of Aboveground System: At the expiration of the term for which a franchise is granted, or upon its revocation or earlier expiration, as provided for by this chapter, in any such case without renewal, extension or transfer, the Town shall have the right to require a provider to remove, at its expense, all aboveground portions of a system from the rights of way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the provider is the incumbent local exchange carrier, it shall not be required to remove its system, but shall negotiate a renewal in good faith.

5. Leaving Underground System: Notwithstanding anything to the contrary set forth in this chapter, a provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights of way or with the use thereof by any public utility, cable operator or other person.

7.05.110: OBLIGATION TO NOTIFY; PUBLICIZING WORK:

Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.

7.05.111: GENERAL ADMINISTRATIVE PROVISIONS:

A. Severability: If any provision of this chapter is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the Town and the provider; provided, that the Town shall give the provider thirty (30) days, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

B. New Developments: It shall be the policy of the Town to liberally amend this chapter, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of telecommunications which will afford the provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

C. Notices: All notices from a provider to the Town required under this chapter or pursuant to a franchise granted pursuant to this chapter shall be directed to the officer as designated by the governing body. A provider shall provide in any application for a franchise the identity, address and phone number to receive notices from the Town. A provider shall immediately notify the Town of any change in its name, address, or telephone number.

D. Exercise of Police Power: To the full extent permitted by applicable law either now or in the future, the Town reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

7.05.112: FEDERAL, STATE AND TOWN JURISDICTION:

A. Construction: This chapter shall be construed in a manner consistent with all applicable federal and state statutes.

B. Applicability: This chapter shall apply to all franchises granted or renewed after the effective date hereof. This chapter shall further apply, to the extent permitted by applicable federal or state law, to all existing franchises granted prior to the effective date hereof and to a provider providing services, without a franchise, prior to the effective date hereof.

C. Other Applicable Ordinances: A provider's rights are subject to the police powers of the Town to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A provider shall comply with all applicable general laws and ordinances enacted by the Town pursuant to its police powers. In particular, all providers shall comply with the Town zoning and other land use requirements.

D. Town Failure to Enforce: A provider shall not be relieved of its obligation to comply with any of the provisions of this chapter or any franchise granted pursuant to this chapter by reason of any failure of the Town to enforce prompt compliance.

E. Construed According to State Law: This chapter and any franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the State.

CHAPTER 6 SNOW REMOVAL

Section

- 7.06.101 SNOW REMOVAL PRIORITIES FOR PUBLIC ROADWAYS.
- 7.06.102 PRIVATE ROADWAYS: DUTY TO REMOVE SNOW
- 7.06.103 SNOW REMOVAL AND ICE CONTROL STANDARDS FOR PRIVATE ROADS
- 7.06.104 REMOVAL OF ALL OBSTRUCTIONS FROM ROADWAYS.
- 7.06.105 SNOW STORAGE ON SITE.
- 7.06.106 UNLAWFUL TO DEPOSIT SNOW IN PUBLIC WAY.
- 7.06.107 TRAVELED PORTION DEFINED.
- 7.06.108 PRIVATE SNOW REMOVAL ON PUBLIC STREETS.
- 7.06.109 FAILURE TO REMOVE SNOW FROM PUBLIC STREETS.
- 7.06.110 SIDEWALKS TO BE CLEARED.
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- 7.06.115 DAMAGE TO IMPROVEMENTS.
- 7.06.116 FLAGGING IMPROVEMENTS.
- 7.06.117 PENALTIES
- 7.06.118 RESERVED.
- 7.06.119 DAMAGES TO SNOW REMOVAL EQUIPMENT.
- 7.06.120 DAMAGE TO VEHICLES DURING SNOW REMOVAL.

SNOW REMOVAL AND ICE CONTROL POLICY. Snow Removal and Ice Control Policy Established. Users of the streets and roads of the Town (hereinafter referred to as “public roadways”) shall exercise caution and drive with care at all times, and particularly during adverse weather conditions, recognizing that driving at the posted or otherwise lawful speed limit may not be possible at all times. When a snowfall event occurs, the following snow removal and ice control provisions will be in effect.

7.06.101. SNOW REMOVAL PRIORITIES FOR PUBLIC ROADWAYS.

Snow removal is provided for public roadways on a priority basis. Plowing priority is given first to arterial and collector streets, followed by secondary and residential streets and finally cul-de-sacs.

7.06.102. PRIVATE ROADWAYS: DUTY TO REMOVE SNOW.

It shall be the duty of every homeowners association (HOA), property owner, corporation, partnership, or other entity having control over a private roadway system within the Town, and the owners of properties abutting such private roadways which are

provided access from those streets, to provide regular snow removal and ice control service on those private roadways in accordance with the standards established in Section 7.05.103.

7.06.103. SNOW REMOVAL AND ICE CONTROL STANDARDS FOR PRIVATE ROADS.

"Regular snow removal and ice control service" shall mean that snow shall be cleared from the roadway to a minimum width of eighteen feet (18') within a period of sixteen (16) hours from the end of each snow storm which deposits an accumulation of four inches (4") of snow or more. It shall be unlawful to permit an accumulation of more than four inches (4") of snow to remain on private roadways for more than sixteen (16) hours after the end of the storm. Ice must be removed to bare pavement or treated with sand, salt, or ice melt.

7.06.104 REMOVAL OF ALL OBSTRUCTIONS FROM ROADWAYS.

It is the responsibility of all property owners to remove trash containers from public roadways during or prior to snow events so as to not interfere with the Town's snow removal efforts.

7.06.105. SNOW STORAGE ON SITE.

It is the duty of all private property owners and homeowner associations to make arrangements for the onsite storage of snow, which has accumulated on such property or properties owned or under their control. All private property owners and homeowner associations, and their employees, agents, and contractors, shall confine the accumulated snow to the property owned or under their control or to another property with that owner's express written consent. The Town is not responsible for removal of accumulated snow from private drives or other private property.

7.06.106. UNLAWFUL TO DEPOSIT SNOW IN PUBLIC WAY.

It shall be unlawful for any private property owner or homeowners association to haul, push, blow, or otherwise deposit snow onto the traveled portion of any public roadway.

7.06.107. TRAVELED PORTION DEFINED.

As used in this Chapter, the term "traveled portion of any public roadway" shall mean and refer to that portion of the public right-of-way that is paved and maintained for vehicular or pedestrian traffic. It shall not include the portions of the right-of-way outside of the paved area, and it shall not be a violation of this Chapter for any property owner or homeowner association to place accumulated snow within the non-traveled portion of the public right-of-way.

7.06.108. PRIVATE SNOW REMOVAL ON PUBLIC STREETS.

It shall be the duty of every homeowner association, corporation, partnership, or other entity having the responsibility for snow removal on a public street pursuant to any

applicable plat restriction, conditional use approval or other permit or agreement with the Town, and the duty of every owner of property abutting on and provided access from such public roadway to provide regular and adequate snow removal service on those public roadways according to the regular and adequate snow removal and ice control service standards detailed in Section 7.06.103.

7.06.109. FAILURE TO REMOVE SNOW FROM PUBLIC STREETS.

In the event the private party or parties responsible for private snow removal on public roadways, as provided in Section 7.05.108, fail to remove snow to the required standards of Section 7.05.103, the Town may, at its discretion, perform the snow removal necessary to achieve the required standards and obtain reimbursement of its snow removal costs (including administrative fees) from the responsible party or parties.

7.06.110. SIDEWALKS TO BE CLEARED.

It shall be the duty of every property owner and homeowners association (where snow removal is the responsibility of the homeowners association) to remove snow from City sidewalks at the perimeter of such owner's or association's property within a period of sixteen (16) hours from the end of each snow storm which deposits an accumulation of four inches (4") of snow or more. It shall be unlawful to permit an accumulation of more than four inches (4") of snow to remain on the sidewalk for more than sixteen (16) hours after the end of the storm. In addition, ice shall be removed to bare pavement or made as level as possible and treated with salt, ice melt, sand, or similar material.

7.06.111. FIRE HYDRANTS TO BE UNCOVERED.

It shall be the duty of every property owner and homeowners association (where snow removal is responsibility of the homeowners association) to mark, uncover, and remove accumulated snow and from, over and around fire hydrants located on such property. The hydrants shall be uncovered for a distance of not less than three feet (3') on all sides so the hydrants are accessible for emergency use. Hydrants shall be uncovered within sixteen (16) hours after the end of the storm.

7.06.112. HYDRANT LOCATIONS TO BE MARKED.

All fire hydrants on private street systems shall be marked with a minimum six (6) foot pole or other sign by the private property owner. The marker should extend well above the normally anticipated depth of accumulated snow so the location of the hydrant can be readily determined during periods when it is covered.

7.06.113. UNLAWFUL TO REMOVE MARKERS.

It shall be unlawful to remove or destroy the hydrant markers on either public or private roadways.

7.06.114. IMPROVEMENTS INSTALLED AT OWNER'S RISK.

The Town shall have no liability for damage to sprinklers, mailboxes, lights, communications equipment, trees, shrubs, or other improvements installed in the Town's right of way.

7.06.115. DAMAGE TO IMPROVEMENTS.

The Town will not assume any liability for damage to improvements or landscaping in the public rights-of-way which results from snow removal and ice control activity.

7.06.116. FLAGGING IMPROVEMENTS.

Owners of improvements within the right-of-way are requested to flag the location of improvements (during winter months). This request shall not be construed as a waiver or abandonment by the Town of the right-of-way or an acceptance by the Town of liability for damage to improvements within the right-of-way (whether or not marked). If flagged, flags must be removed once ongoing snow removal and ice control activities have completed for the season.

7.06.117. PENALTIES.

Any person convicted of a violation of this chapter is subject to a \$200.00 fine plus any costs incurred by the Town.

7.06.118 RESERVED.

7.06.119 DAMAGES TO SNOW REMOVAL EQUIPMENT.

If the Town's Snow removal equipment is damaged during the snow removal process and the damage is caused by construction equipment or debris, the builder or developer responsible for such construction equipment or debris is liable for the damages. The Town can use any performance bond to cover the expenses related to fixing the equipment and any rental charges needed to main the snow removal and ice control standards listed in 7.06.103.

7.06.120 DAMAGE TO VEHICLES DURING SNOW REMOVAL.

The Town is not liable if a vehicle is parked on the roadway during snow removal. Since the vehicle is parked in violation with the ordinance above, the owner of the vehicle will bear all vehicle repair, rental etc. costs and in addition, if the town equipment is damaged in anyway the owner of the vehicle will reimburse the town for all repair costs and rental costs if needed to continue snow removal while the repairs are performed.