

RCW 35.99.030

Master, use permits — Injunctive relief — Notice — Service providers' duties.

(1) Cities and towns may require a service provider to obtain a master permit. A city or town may request, but not require, that a service provider with an existing statewide grant to occupy the right-of-way obtain a master permit for wireline facilities.

(a) The procedures for the approval of a master permit and the requirements for a complete application for a master permit shall be available in written form.

(b) Where a city or town requires a master permit, the city or town shall act upon a complete application within one hundred twenty days from the date a service provider files the complete application for the master permit to use the right-of-way, except:

(i) With the agreement of the applicant; or

(ii) Where the master permit requires action of the legislative body of the city or town and such action cannot reasonably be obtained within the one hundred twenty day period.

(2) A city or town may require that a service provider obtain a use permit. A city or town must act on a request for a use permit by a service provider within thirty days of receipt of a completed application, unless a service provider consents to a different time period or the service provider has not obtained a master permit requested by the city or town.

(a) For the purpose of this section, "act" means that the city makes the decision to grant, condition, or deny the use permit, which may be subject to administrative appeal, or notifies the applicant in writing of the amount of time that will be required to make the decision and the reasons for this time period.

(b) Requirements otherwise applicable to holders of master permits shall be deemed satisfied by a holder of a cable franchise in good standing.

(c) Where the master permit does not contain procedures to expedite approvals and the service provider requires action in less than thirty days, the service provider shall advise the city or town in writing of the reasons why a shortened time period is necessary and the time period within which action by the city or town is requested. The city or town shall reasonably cooperate to meet the request where practicable.

(d) A city or town may not deny a use permit to a service provider with an existing statewide grant to occupy the right-of-way for wireline facilities on the basis of failure to obtain a master permit.

(3) The reasons for a denial of a master permit shall be supported by substantial evidence contained in a written record. A service provider adversely affected by the final action denying a master permit, or by an unreasonable failure to act on a master permit as set forth in subsection (1) of this section, may commence an action within thirty days to seek relief, which shall be limited to injunctive relief.

(4) A service provider adversely affected by the final action denying a use permit may commence an action within thirty days to seek relief, which shall be limited to injunctive relief. In any appeal of the final action denying a use permit, the standard for review and burden of proof shall be as set forth in RCW [36.70C.130](#).

(5) A city or town shall:

(a) In order to facilitate the scheduling and coordination of work in the right-of-way, provide as much advance notice as reasonable of plans to open the right-of-way to those service providers who are current

users of the right-of-way or who have filed notice with the clerk of the city or town within the past twelve months of their intent to place facilities in the city or town. A city is not liable for damages for failure to provide this notice. Where the city has failed to provide notice of plans to open the right-of-way consistent with this subsection, a city may not deny a use permit to a service provider on the basis that the service provider failed to coordinate with another project.

(b) Have the authority to require that facilities are installed and maintained within the right-of-way in such a manner and at such points so as not to inconvenience the public use of the right-of-way or to adversely affect the public health, safety, and welfare.

(6) A service provider shall:

(a) Obtain all permits required by the city or town for the installation, maintenance, repair, or removal of facilities in the right-of-way;

(b) Comply with applicable ordinances, construction codes, regulations, and standards subject to verification by the city or town of such compliance;

(c) Cooperate with the city or town in ensuring that facilities are installed, maintained, repaired, and removed within the right-of-way in such a manner and at such points so as not to inconvenience the public use of the right-of-way or to adversely affect the public health, safety, and welfare;

(d) Provide information and plans as reasonably necessary to enable a city or town to comply with subsection (5) of this section, including, when notified by the city or town, the provision of advance planning information pursuant to the procedures established by the city or town;

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

(f) Construct, install, operate, and maintain its facilities at its expense; and

(g) Comply with applicable federal and state safety laws and standards.

(7) Nothing in this section shall be construed as:

(a) Creating a new duty upon city [cities] or towns to be responsible for construction of facilities for service providers or to modify the right-of-way to accommodate such facilities;

(b) Creating, expanding, or extending any liability of a city or town to any third-party user of facilities or third-party beneficiary; or

(c) Limiting the right of a city or town to require an indemnification agreement as a condition of a service provider's facilities occupying the right-of-way.

(8) Nothing in this section creates, modifies, expands, or diminishes a priority of use of the right-of-way by a service provider or other utility, either in relation to other service providers or in relation to other users of the right-of-way for other purposes.

[2000 c 83 § 3.]

RCW 35.21.860

Electricity, telephone, or natural gas business, service provider — Franchise fees prohibited — Exceptions.

(1) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW [82.16.010](#), or telephone business, as defined in RCW [82.16.010](#), or service provider for use of the right-of-way, except:

(a) A tax authorized by RCW [35.21.865](#) may be imposed;

(b) A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter [43.21C](#) RCW;

(c) Taxes permitted by state law on service providers;

(d) Franchise requirements and fees for cable television services as allowed by federal law; and

(e) A site-specific charge pursuant to an agreement between the city or town and a service provider of personal wireless services acceptable to the parties for:

(i) The placement of new structures in the right-of-way regardless of height, unless the new structure is the result of a mandated relocation in which case no charge will be imposed if the previous location was not charged;

(ii) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, the replacement structure is higher than the replaced structure, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or

(iii) The placement of personal wireless facilities on structures owned by the city or town located in the right-of-way. However, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the city or town.

A city or town is not required to approve the use permit for the placement of a facility for personal wireless services that meets one of the criteria in this subsection absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city or town. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location, and zoning requirements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in

RCW [35.21.865](#) and [35.21.870](#) to the extent the fees exceed the costs allowable under subsection (1) of this section.

[2014 c 118 § 2; 2007 c 6 § 1020; 2000 c 83 § 8; 1983 2nd ex.s. c 3 § 39; 1982 1st ex.s. c 49 § 2.]

Notes:

Part headings not law -- Savings -- Effective date -- Severability -- 2007 c 6: See notes following RCW [82.32.020](#).

Findings -- Intent -- 2007 c 6: See note following RCW [82.14.495](#).

Construction -- Severability -- Effective dates -- 1983 2nd ex.s. c 3: See notes following RCW [82.04.255](#).

Intent -- Construction -- Effective date -- Fire district funding -- 1982 1st ex.s. c 49: See notes following RCW [35.21.710](#).

"Service provider" defined: RCW [35.99.010](#).