

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. 02-19

AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON AMENDING TITLE 13 OF THE BUCKLEY MUNICIPAL CODE TO INCLUDE REVISIONS GOVERNING THE DEPLOYMENT OF SMALL WIRELESS FACILITIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Federal Communications Commission (FCC) recently adopted a Declaratory Ruling, Order and Regulation (“FCC Order”), and which Ruling imposes limitations on the processing and review of all permits associated with the deployment of small wireless facilities, including setting presumptive safe harbor review periods for the consideration of such facilities; and

WHEREAS, poles within the public rights-of-way have been identified by the FCC as a primary resource for the deployment of small wireless facilities which are intended to increase the density and accessibility of radio frequency signals employed by such devices; and

WHEREAS, contemporaneously with the consideration of this ordinance, the Buckley City Council enacted amendments to BMC Title 19 by amending BMC Chapter 19.25 and adopting a new BMC chapter 19.25A authorizing and establishing aesthetic standards for the deployment of small wireless facilities;

WHEREAS, the City Council deems it to be in the public interest to revise, update, and add to its franchising requirements to address specifically small wireless facilities to be located in the City’s rights-of-way,

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Amendment to BMC 13.35.040. The Buckley Municipal Code Section 13.35.040 - Definitions is hereby amended in its entirety as follows:

The following words and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

- (1) “Applicant” means any person or corporation submitting an application for a franchise.
- (2) “City administrator” means the individual or his/her designated representative appointed by the mayor to oversee day-to-day operations of the city.
- (3) “City” means the City of Buckley, a municipal corporation of the state of Washington in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.
- (4) “City engineer” means the engineer appointed as such by the city or his/her designated representative.

- (5) “City inspector” means the employee or agent designated by the city to inspect permitted work.
- (6) “City property” means any real property owned by City, whether in fee or other ownership estate of interest.
- (7) “Civil violation” or “violation” means an act or omission contrary to a regulation as defined in Chapter 1.12 BMC. A violation continues to exist until abated and each day, or a portion thereof, that a violation exists constitutes a separate and distinct offense.
- (8) “Complaint” means a written document initiating a procedure pursuant to Chapter 1.12 BMC.
- (9) “Cost of construction” means the cost incurred for design, acquisition for right-of-way and/or easements, permit and plan review fees, construction (including materials and installation), in accordance with all applicable laws, ordinances and standards, including the city’s public works standards. The cost of construction shall be documented in writing on final invoices or other documents showing the amounts paid by the applicant. The city will not accept written estimates in determining the cost of construction. In the event of a disagreement between the city and the applicant concerning the cost of the improvements and/or infrastructure, the city engineer’s determination shall be final.
- (10) “Department” means the public works and utilities department or other department designated by the mayor.
- (11) “Director” means the director of public works or his/her designated representative as appointed by the mayor.
- (12) “Emergency” means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, but not limited to, damage to persons, property, or environment from natural or manmade consequences, such as storms, earthquakes, riots or wars.
- (13) “Enforcement officer” means the city’s code enforcement officer(s) or any other person or persons assigned or directed by the city administrator, or his or her designee, to enforce the regulations subject to the provisions of this chapter.
- (14) “FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.
- (15) “Franchise” or “franchise agreement” is a contract by which a grantee is allowed to use City right-of-way for the purpose of carrying on the business in which it is generally engaged, including furnishing service to members of the public.
- (16) “Franchised utilities” means utilities that have city approval to use city rights-of-way for the purpose of providing their services within or beyond the city, whether by written franchise granted by the city, state tariff or other similar city authorization.
- (17) “Grantee” means the person, firm or corporation to whom or which a franchise, as defined in this section, is granted by the council under this Chapter and the lawful successor, transferee or assignee of such person, firm or corporation.

- (18) “Grantor” means the City of Buckley acting through its City council.
- (19) “Investigative” means the gathering of information about the proposed location of utilities, right-of-way, subsoil or subgrade conditions, etc., to assist in identifying ascertaining surface and subsurface conditions within a project area.
- (20) “Light Pole” means a pole owned by the City and used primarily for lighting streets, parking areas, parks or pedestrian paths.
- (21) “Minor repair or construction” means any activity which, in the discretion of the city engineer, includes a short-term temporary use of the right-of-way and where pavement or sidewalk is not to be disturbed or broken. Examples of such activities include, but are not limited to, the sweeping and/or cleaning of debris from the right-of-way and trimming, cutting and pruning vegetation within the right-of-way, placement or replacement of gravel on parking shoulders that were previously used for on street parking.
- (22) “Notice of violation” means a document mailed to a permittee or unauthorized user and posted at the site of a nonconforming or unsafe condition.
- (23) “Oral directive” means a directive given orally by city personnel designated by the director to correct or discontinue a specific condition.
- (24) “Permit” means a document issued by the city granting permission to engage in an activity not allowed without a permit.
- (25) “Permit center” means the city building and planning office.
- (26) “Permittee” means the person, partnership, group, organization, company, or corporation so designated on the permit application, or designee.
- (27) “Person” includes corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities, and individuals.
- (28) “Policy” means a policy adopted by the director to implement this chapter, or to carry out other responsibilities as may be required by this chapter or by other codes, ordinances, or resolutions of the city or other agencies.
- (29) “Private use” means use of the public right-of-way for the benefit of a person, partnership, group, organization, company, or corporation, other than as a thoroughfare for any type of vehicles, pedestrians or equestrians.
- (30) “Public right-of-way” or “right-of-way” means land acquired or dedicated for public roads and streets but does not include:
- (a) State highways;
 - (b) Land dedicated for road, streets, and highways not opened and not improved for motor vehicle use by the public;
 - (c) Structures, including poles and conduits, located within the right-of-way;

- (d) Federally granted trust lands or forest board trust lands;
 - (e) Lands owned or managed by the state parks and recreation commission; or
 - (f) Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec 912 and related provisions of federal law that are not open for motor vehicle use.
- (31) “Revocation” means the cancellation of a permit.
- (32) “Service provider” is defined consistently with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.
- (33) “Small wireless” and “small wireless facility” shall have the same meaning as a “small wireless facility” as set forth in 47 CFR 1.6002.
- (34) “State” means the state of Washington.
- (35) “Stop work order” means an oral directive or a written notice posted at the site of activity that requires all work to be stopped until the city approves continuation of work.
- (36) “Structure” means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).
- (37) “Suspension” means the temporary stay of a permit.
- (38) “Telecommunications facilities” means the plant, equipment and property including, but not limited to, cables, wires, conduits, ducts, pedestals, electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide or offer wireline or wireless telecommunications service.
- (39) “Telecommunications service” means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this Chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.
- (40) “Temporary” as used in this chapter shall mean of a limited duration generally considered not to exceed three days after an event or a total duration of 14 days unless otherwise stated in this chapter or extended by exception.
- (41) “Traffic Signal Poles” means a pole that supports equipment used for controlling traffic, including but not limited to traffic lights, rapid flashing beacons, speed radar, and school zone flashers.
- (42) “Underground location service” means the underground utilities location center that will locate all underground utilities prior to an excavation.

(43) “Unsafe condition” means any condition which the director determines is a hazard to health, or endangers the safe use of the right-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the right-of-way, or which may cause damage thereto.

(44) “Wireline” means services provided using a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

Section 2. Amendment to BMC 13.35.025. The Buckley Municipal Code Section 13.35.025 – Activities Regulated is hereby amended as follows:

This chapter shall regulate the following activities:

(1) Street Disturbance. Any activity which digs up, breaks, excavates, tunnels, undermines or in any manner disturbs any street or makes or causes to be made any excavation in or under the surface of any street for any purpose. This includes the placement of earth or other excavated material obstructing or tending to interfere with the free use of the street;

(2) Sidewalk, Curb and Gutter Disturbance. Activities which disturb curbs, gutters and sidewalks where such curbs, gutters and sidewalks are located within city rights-of-way. Other chapters of this title contain additional provisions concerning sidewalk regulations;

(3) Side Sewers and Water Connections. Activities involving the installation or repair of side sewers and water services not installed by the city, whether or not city rights-of-way are disturbed. BMC Title 14 outlines specific requirements for filing applications for water and sewer service and shall be read as supplemented by this chapter;

(4) Miscellaneous Activities. Activities which may involve disturbance to the rights-of-way, but more generally involve a long-term permanent installation of aboveground features in the rights-of-way such as street trees or vegetation, bus shelters, fountains, clocks, flagpoles, awnings, marquees, benches, permanent sales structures, permanent signs, fixed street furniture or similar fixtures; telecommunications facilities as defined in BMC 13.35.040(41).

Section 3. Amendment to BMC 13.35.060. The Buckley Municipal Code Section 13.35.060 – Permit Required is hereby amended as follows:

(1) No person, firm or corporation shall trench, dig, excavate or penetrate any city right-of-way, roadway, street, alleyway, sidewalk, curb or gutter by creating a ditch, excavation or other subgrade penetration for water, sewer, storm sewer, natural gas, telephone, cable TV, electrical power or other utility, or for any other purpose, without first obtaining a right-of-way use permit issued by the city.

(2) It is unlawful for anyone to make private use of any public right-of-way without first having obtained a right-of-way use permit issued by the city.

(3) It is unlawful for anyone to use any right-of-way without complying with all the provisions of such right-of-way use permit issued by the city.

(4) The city does not waive its right to use the right-of-way by issuance of any permit.

(5) A franchise shall be required of any telecommunications provider who desires to make use of telecommunications facilities which occupy rights-of-way and to provide telecommunications services to any person or area in the City. The franchise is a “master permit” within the meaning of RCW 35.99.010(3).

Section 4. Amendment to BMC 13.35 – Adoption of New Section 13.35.095. Chapter 13.35 of the Buckley Municipal Code is hereby amended by the addition of a new BMC Section 13.35.095 – Telecommunications Franchise Application and Review to provide in its entirety as follows:

- (1) Any person that desires a franchise hereunder shall file an application with the following information:
 - (a) The identity of the applicant;
 - (b) A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services;
 - (c) To the extent locations for installations are known, preliminary engineering plans, specifications and a map showing where the telecommunications facilities are to be located within the City, all in sufficient detail to identify:
 - i. The location and route requested for the applicant’s proposed telecommunications facilities;
 - ii. The location of applicant’s overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the rights-of-way along the proposed route;
 - iii. The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate;
 - (d) If the applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way and to the extent specific locations are known:
 - i. The location proposed for the new ducts or conduits;
 - ii. Evidence that there is sufficient capacity within the rights-of-way for the proposed telecommunications facilities;
 - (e) A preliminary construction schedule and completion date;
 - (f) Evidence that the applicant is registered to participate in the one-number locator service, as described in RCW Chapter 19.122, if applicable;
 - (g) If the applicant is proposing personal wireless facilities, an accurate map showing the existing locations, if any, of any existing personal wireless facilities in the rights-of-way, owned or operated by the applicant;

- (h) An application fee which shall be set by the City Council to recover City costs in accordance with applicable federal and state law; and
- (i) Such other information as the Director, in his/her discretion, shall deem appropriate.

(2) Determination by the City. Within the time periods established by state and/or federal law, as applicable, after receiving a complete application hereunder, the City Council shall grant or deny a franchise application. If the City Council denies a franchise, such denial must be based on one of the following:

- (a) The financial and technical ability of the applicant;
- (b) The legal ability of the applicant to provide the telecommunications service;
- (c) The capacity of the rights-of-way to accommodate the applicant's facilities;
- (d) The capacity of the rights-of-way to accommodate additional utility and telecommunications facilities if the application is granted;
- (e) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;
- (f) The public interest in minimizing the cost and disruption of construction with the rights-of-way;
- (g) The service that the applicant will provide to the region;
- (h) The effect, if any, on general public health, safety, and welfare in City's sole opinion if the application is granted;
- (i) Applicable federal, state and local laws, regulations, rules and policies;
- (j) Such other factors as may demonstrate that the grant to use the rights-of-way will serve the community interest.

(3) Franchise agreement. No franchise shall be granted hereunder unless the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use rights-of-way will be granted.

(4) Term of grant. Unless otherwise specified in a franchise, a franchise granted hereunder shall be valid for a term of not more than 10 years.

(5) Nonexclusive grant. No franchise granted hereunder shall confer any exclusive right, privilege, or franchise to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes.

(6) Rights granted.

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

(b) No franchise granted hereunder shall authorize or excuse a grantee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use the rights-of-way. Grantee shall obtain the written approval of the facility or structure owner, including the City, if the grantee does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way.

(c) No franchise granted hereunder shall be construed as any warranty of title.

Section 5. Amendment of BMC 13.35 – Adoption of New Section 13.35.105. Chapter 13.35 of the Buckley Municipal Code is hereby amended by the addition of a new BMC section 13.35.105 – Amendment and Renewal Applications.

- (1) A new franchise application and grant shall be required of any grantee that desires to extend its franchise territory or to locate its telecommunications facilities in rights-of-way which are not included in a franchise previously granted hereunder.
- (2) A new franchise application and grant shall be required of any grantee that desires to add to or modify the telecommunications services provided pursuant to a franchise previously granted.
- (3) A grantee that desires to renew its franchise hereunder shall, not less than 180 days before expiration of the current franchise, file an application with the City for renewal of its franchise which shall include the following information: the applicable information required pursuant to the franchise and any other information required by the City.
 - a. Franchise renewal determination. The City Council shall grant or deny a renewal application within the time periods established by state or federal law, as applicable. If the City Council determines to deny a franchise application, it shall make such determination consistent with BMC 13.35.095(2). As part of any franchise renewal determination the City Council shall consider grantee’s compliance with the requirements of this Chapter and the franchise agreement.
 - b. Obligation to cure as a condition of renewal. No franchise shall be renewed until any ongoing violations or defaults in the grantee’s obligations under the franchise, or the requirements of this Chapter, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

Section 6. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.


Section 7. Severability. If any section, sentence, clause, or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 8. Effective date. This ordinance shall be in full force and effective five (5) days from the passage and published in accordance with law.

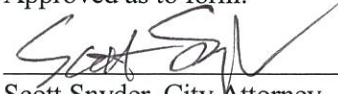
Introduced, passed, and approved this 22nd day of January 2019.



Patricia Johnson, Mayor

Attested to by:


Treva Percival, City Clerk

Approved as to form:


Scott Snyder, City Attorney

PUBLISHED: January 30, 2019
EFFECTIVE: February 4, 2019