

## Chapter 5B

### TELECOMMUNICATIONS SERVICE PROVIDERS\*

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## ARTICLE I. PURPOSE, FINDINGS AND DEFINITIONS

### Sec. 5B-1. Purpose and findings.

(a) The purpose of this chapter is to establish a policy governing the management of public highways for the provision of telecommunications services and interstate telecommunications services to enable the City to:

- (1) Issue licenses or franchises to telecommunications corporations who use the public highways to provide telecommunications services and interstate telecommunications services on a competitively neutral and nondiscriminatory basis, except in cases where state law forbids establishment of a license or franchise requirement; and
- (2) Manage the public highways in order to minimize the impact and cost to Phoenix citizens of the placement of telecommunications facilities within public highways; and
- (3) Manage the highways so as to maximize their efficient use, thereby minimizing the foreclosure of future additional uses of such rights-of-way; and
- (4) Provide for the compensation for the commercial use of public highways to provide telecommunications services and interstate telecommunications services; and
- (5) Minimize congestion, inconvenience, visual impact, and other adverse effects from such use on the City's public highways.

(b) The City Council finds that the City's public highways constitute a valuable public asset:

- (1) Having been acquired and maintained by the City over many years at great taxpayer expense;

- (2) Providing uniquely valuable property that private telecommunications providers may wish to use for profit-making purposes that may not necessarily benefit all the residents of the City;
- (3) Representing public investments for which the taxpayers are entitled to a fair monetary return on the City's past and future investment in the City's infrastructure;
- (4) Comprising significant assets, which the City must manage as a public fiduciary trust to enhance the public health, safety, and welfare.

(c) Therefore, in this chapter the City Council intends:

- (1) To ensure that locally elected officials manage local public highways consistent with their fiduciary trust obligations;
- (2) To ensure compliance with public health, safety, and welfare measures for public highways;
- (3) To encourage public-private partnerships to provide telecommunications facilities needed for the most cost-effective delivery of public services, including schools, libraries, police and fire protection, as well as private services;
- (4) To conserve the limited physical capacity of the public highways held in public trust by the City;
- (5) To assure that the City's current and ongoing costs of granting and regulating private access to and use of the public highways are fully paid by the persons seeking such access and causing such costs.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998; Ord. No. G-4135, § 1, passed 11-4-1998, eff. 12-4-1998; Ord. No. G-4351, § 1A, passed 5-16-2001, eff. 5-16-2001)

**Sec. 5B-2. Definitions.**

For the purpose of this chapter, unless the context otherwise requires, the following terms, phrases, words, and their derivatives shall have the meanings given herein.

*Cable services* and *cable system* shall have the same meaning as defined in Chapter 5 of the Phoenix City Code.

*Commercial mobile radio services* means two-way voice commercial mobile radio services as defined by the Federal Communications Commission in 47 United States Code Section 157.

*Facilities* means the plant, equipment, and property used in the provision of telecommunications services and not owned by the City, including but not limited to poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under public highways.

*Interstate telecommunications services* means a telecommunications corporation that places underground or above ground facilities in the public highway, exclusive of facilities used by the local networks and the portion of the interstate network that carries intrastate calls, for interstate telecommunications services.

*Provider* means a telecommunications corporation who constructs, installs, operates or maintains telecommunications facilities or interstate telecommunications services in the City public highways.

*Public highway* or *highway* means all roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the City.

*Rights-of-way* shall have the same meaning as public highway or highway.

*Telecommunications* means the transmissions between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services, pay phone services, interstate services or cable services provided by a cable system.

*Telecommunications corporation* means any public service corporation to the extent that it provides telecommunications services in the State of Arizona.

*Telecommunications services* means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998; Ord. No. G-4135, § 1, passed 11-4-1998, eff. 12-4-1998; Ord. No. G-4351, § 1B, passed 5-16-2001, eff. 5-16-2001)

**Cross reference**—Definitions and rules of construction generally, § 1-2.

**ARTICLE II. LICENSE OR FRANCHISE TO OCCUPY RIGHTS-OF-WAY\*****Sec. 5B-3. License or franchise required.**

(a) No telecommunications corporation shall install, maintain, construct or operate telecommunications facilities in any public highway in the City, or provide telecommunications services or interstate telecommunications services

**\*Editor's note**—Ord. No. G-4135, § 2, provided as follows: "The provisions of Article II of Chapter 5B of the Phoenix City Code shall sunset and be of no force and effect, two (2) years from the effective date of this ordinance unless this Section 2 is repealed prior to such date." The ordinance was passed November 4, 1998, and effective December 4, 1998. Subsequently, Ord. No. G-4351, § 1D, passed 5-16-2001, eff. 5-16-2001, amended the title of Article II to read as herein set out.

by means of such facilities, unless a license to use the highways to provide telecommunications services and interstate telecommunications services as appropriate has first been granted by the City Council under this chapter or a franchise awarded by the electorate under Article XIII of the Arizona Constitution and this chapter to such telecommunications corporation.

(b) Notwithstanding subsection (a), any telecommunications corporation that was providing telecommunications service within this State on November 1, 1997 pursuant to a grant made to it or its lawful predecessors prior to the effective date of the Arizona Constitution, may continue to provide telecommunications services pursuant to that state grant, until and unless the state grant is lawfully repealed, revoked or amended, and need not obtain any further grant from the City to provide telecommunication services; provided, however, that such entity must in all other respects comply with the requirements applicable to telecommunications corporations as provided in Title 9, Chapter 5, Article 7 of the Arizona Revised Statutes.

(c) Nothing in this ordinance shall be deemed to affect the terms or conditions of any franchise, license or permit issued by the City prior to the effective date of the adoption of this ordinance or if this ordinance is amended, the effective date of the adoption of such amendments to this ordinance, or to release any party from its obligations thereunder. Existing franchises, licenses or permits shall remain fully enforceable in accordance with their terms. The City Manager, with the consent of the City Council, may enter into agreements with franchise holders, licensees or permittees to modify or terminate an existing franchise, license or agreement.

(d) A franchise or license to any telecommunications corporation to use the highways to install, maintain, construct or operate telecommunications facilities or to provide telecommunications services or interstate telecommunications services under this chapter shall not authorize the use of the highways to provide any other service; nor shall the issuance of the same invalidate any franchise, license or permit that authorizes the use of the highways for such other services; nor shall the fact that a telecommunications corporation holds a franchise, license or permit to make any other use of the highway or to provide any other service, authorize installation, maintenance, construction or operation of telecommunications facilities in any highway in the City, or permit such telecommunications corporation to provide telecommunications services or interstate telecommunications services by means of such facilities without obtaining a license or franchise hereunder.

(e) Any license or franchise granted shall not be exclusive.

(f) A telecommunications licensee may enter into contracts for use of interstate telecommunications services facilities within the public highways to provide telecommunications services. Persons using such licensee's facilities must themselves obtain a telecommunications license if such person constructs, installs, operates or maintains telecommunication facilities within the public highway of the City/town. If the persons using such licensee's facilities do not construct, install, operate or maintain telecommunications facilities within the public highway of the City/town, such persons need not

obtain a separate license but the telecommunications licensee must disclose the identity of such persons to the City/town.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998; Ord. No. G-4135, § 1, passed 11-4-1998, eff. 12-4-1998; Ord. No. G-4351, § 1D, passed 5-16-2001, eff. 5-16-2001)

**State law reference**—Authority to require license, A.R.S. § 9-583(B).

**Sec. 5B-4. License or franchise application.**

(a) Any telecommunications corporation desiring a license or franchise under this chapter to occupy the streets and other highways of the City to provide telecommunications services or interstate telecommunications services shall file an application with the City Manager requesting at the applicant's election either a franchise or license, in the form prescribed by the City Manager, and shall pay an application fee determined by the City Manager. The amount of the application fee shall be reasonably related to the costs directly incurred by the City relating to the granting or administration of the license. The amount of the application fee can be appealed to the City Manager.

(b) Each application shall, (i) show where the facilities the applicant will use will be located, or contain such other information as the City may deem necessary in order to ensure that the applicant will comply with requirements for use of and location of facilities in the highways; (ii) identify the applicant, its name, address and telephone number, (iii) describe the services to be provided; and (iv) describe any agreement with any other entity that permits such entity to use the facilities.

(c) Upon receiving an application for a franchise or license that satisfies the conditions of section (b), the City shall promptly proffer a telecommunications franchise or license to the applicant for its review, and may inquire into

matters relevant to the issuance of the license or franchise. If the applicant agrees to the terms and conditions of the franchise or license, the request shall be submitted to City Council with a recommendation for approval (in the case of a license) or scheduled for a franchise election (in the case of an application for a franchise). Notwithstanding the foregoing, the City need not issue or renew a license, or schedule a franchise election if the applicant has previously had its telecommunications services license, interstate telecommunications services license or franchise revoked, or for any other reason permitted under Arizona law.

(d) As a condition of issuing or renewing a license or franchise to use the public highways to provide telecommunications services or interstate telecommunications services, the City may require:

- (1) Proof that the applicant has received a certificate of convenience and necessity from the Arizona Corporation Commission; except that this requirement shall not apply to a telecommunication corporation that provides solely interstate telecommunications services within this State;
- (2) The applicant to agree to comply with highway use requirements provided for in this chapter;
- (3) The applicant to agree to provide and maintain accurate maps showing the location of all its facilities and the facilities it will use in the highways within the City, and to comply with such other mapping requirements as the City may establish from time to time. Applicant shall provide the City with electronic mapping information in a format compatible with the current City electronic mapping format;

- (4) The applicant to obtain the insurance, and provide proof of insurance as required by the City; to post the performance bonds and security fund required by the City; and to agree to fully indemnify the City, its officers, agents, boards and commissions, in a form satisfactory to the City; and to agree that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of any provision or requirement of the City because of the enforcement of the license or franchise.
- (5) The applicant to agree to comply with and be bound by the administrative and enforcement provisions as may be prescribed by the City.

(e) Every franchise or license shall be subject to the following administrative and enforcement provisions:

- (1) Franchises and licenses shall be personal to the franchisee or licensee. Except as provided in the license or franchise, no transfer of a franchise, franchisee, licensor or licensee, or change of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made to the City and the City's prior written consent is obtained, which consent will not be unreasonably withheld or delayed.

In making a determination as to whether to approve a transfer the City may consider the same information and qualifications required of an original application for a license or franchise; whether

the licensee or franchisee is in compliance with its license or franchise and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transfer would result in an evasion of other applicable provisions of law, or impair lawful contracts; and the effect of the transfer on the City's interests.

No application for a transfer of a license or franchise shall be granted unless the proposed transferee agrees in writing that it will abide by and accept all terms of this chapter and the license or franchise, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous licensee or franchisee under this chapter and the license or franchise for all purposes, including renewal.

Approval by the City of a transfer of a license or franchise does not constitute a waiver or release of any of the rights of the City under this chapter or the franchise or license, whether arising before or after the date of the transfer.

- (2) Every franchisee or licensee shall be subject to the City's exercise of such police, regulatory and other powers as it now has or may later obtain, and a franchise or license may not waive the application of the same.
- (3) Every franchise or license shall be subject to revocation if the franchisee or licensee fails to comply with the material terms and conditions of the license or franchise, or applicable law. Provided, however, that a franchise or license shall not be revoked unless the franchisee or licensee is given written notice of the defect in performance, and

fails to cure the performance within sixty days of the notice, except where the City finds that the defect in performance is due to intentional misconduct, is a violation of criminal law, or is part of a pattern of violations where the franchisee or licensee has already had notice and opportunity to cure. A hearing shall be held before a license is revoked if the licensee requests a hearing.

- (4) Damages caused to public highways. Any remedies available to the City are cumulative, and are not limited by the recovery of any amounts pursuant to the insurance provisions of the license or franchise, or pursuant to any indemnity clause.
  - (5) A requirement that if the franchisee or licensee fails to pay amounts owed to the City by the time prescribed for payment, the franchisee or licensee shall pay interest on the amounts owed, at the rate of one percent per month.
  - (6) A requirement that franchisee or licensee shall produce books and records for the City's inspection and copying, prepare reports, respond to questions and permit the City to have access to its facilities as the City may request in order to determine whether licensee or franchisee has complied with its obligations under the franchise or license, or other applicable law.
- (f) A licensee that receives a telecommunications services and interstate telecommunications services license as appropriate, pursuant to this chapter may apply for a renewal of its license, which renewal shall be reviewed in accordance with the requirement of State law.

(g) The issuance of a license, permit or other authorization by the City is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and it not a representation or warranty that a franchise is not required.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998; Ord. No. G-4135, § 1, passed 11-4-1998, eff. 12-4-1998; Ord. No. G-4351, § 1E, passed 5-16-2001, eff. 5-16-2001)

State law reference—License conditions, A.R.S. § 9-583(B).

#### **Sec. 5B-5. License or franchise terms.**

(a) *Franchise election.* Upon finding that a franchise proposal is acceptable and in good order, the City Manager shall promptly notify the persons seeking the franchise, and advise them to pay a franchise election fee to the City Clerk within a specified number of days in an amount to be determined by the City Clerk that recovers all City costs to schedule and hold an election. Upon the City Clerk's receipt of the fee, the City Clerk shall schedule a franchise election at the next date determined by the City Council.

(b) *Length of license.* Any license granted by the City pursuant to this chapter shall commence upon adoption of the license or franchise and acceptance of the license by the provider within thirty days of the grant. The license shall be effective for a period of five years, and subject to the conditions and restrictions provided in the license and this chapter.

(c) *License or franchise agreement.* The City reserves the right, at its discretion, to require providers seeking a license or franchise under this chapter to execute a license or franchise setting forth all terms and provisions of the relationship between the City and the provider regarding the presence of telecommunications facilities within City rights-of-way.

(d) *No warranty.* Providers may choose between requesting a license or franchise under this chapter. The City makes no warranty or representation to providers about which form of authorization meets their business and legal needs.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998; Ord. No. G-4135, § 1, passed 11-4-1998, eff. 12-4-1998; Ord. No. G-4351, § 1F, passed 5-16-2001, eff. 5-16-2001)

State law reference—Authorized fee, A.R.S. § 9-582.

### Sec. 5B-6. Compensation.

(a) The City shall not levy a tax, rent, fee or charge to a telecommunications corporation for the use of a public highway to provide telecommunications services or interstate telecommunications services, or levy a tax, fee or charge upon the privilege of engaging in the business of providing telecommunications services or interstate telecommunications services, except that, in connection with its provisions of telecommunications services and interstate telecommunications services, and its use of the highways to provide the same, each telecommunications corporation shall:

- (1) Pay a transaction privilege tax on the business of providing telecommunications services or applicable use tax, as may be specified from time to time in Chapter 14 of the Phoenix City Code, except that this subsection does not authorize the imposition of a transaction privilege tax on the business of providing interstate telecommunications services.
- (2) A telecommunication corporation that has placed facilities in public highways that carry interstate traffic between and among the telecommunication corporation's points of presence, exclu-

sive of facilities used by the local network and the portion of the interstate network that carries intrastate calls, shall pay an annual fee based on the number of linear feet of trench in the public highways. For licenses issued after May 16, 2001 the rate per linear foot shall be seventy-six cents. The rate per linear foot shall be increased in any calendar year thereafter by the increase in the average consumer price index as published by the United States Department of Labor, Bureau of Labor Statistics. The City shall calculate the annual footage fee using as the number of lineal feet, the total amount of lineal feet approved for installation in the City less any footage removed or abandoned as provided in the license or this ordinance. The total annual fee shall be due and payable by the first business day of the annual billing period.

- (3) Pay public highway construction permit fees established by the City.
- (4) Pay all reasonable costs associated with the construction, maintenance and operation of its facilities in the public highways used to provide telecommunications services, including reasonable costs associated with damage caused to the public highways.

(b) The license or franchise may include in-kind payments if agreed to by the City and licensee or franchisee. The calculation of the in-kind benefits shall be set forth in such license or franchise and shall be limited to the costs of the in-kind facility. Any in-kind facilities provided the City by such license or franchise shall remain in possession and ownership of the City after the term of the license or franchise expires. The value of in-kind benefits shall be offset against either payments of inter-

state linear foot charges or transaction privilege taxes as provided in Chapter 14 of the Phoenix City Code, however, such offset shall not be allowed against any combination of intrastate transaction privilege tax and interstate linear foot charge.

(c) Nothing in this section is intended to limit the obligation of any person to pay amounts owed under any franchise or license issued prior to the effective date of this ordinance or if this ordinance is amended, the effective date of the adoption of such amendment to this ordinance.

(Ord. No. G-4135, § 1, passed 11-4-1998, eff. 12-4-1998; Ord. No. G-4351, § 1G, passed 5-16-2001, eff. 5-16-2001)

#### **Sec. 5B-7. Rights-of-way permit.**

The City shall not issue a permit for construction in the right-of-way or other authorization for a provider to construct or install Telecommunications facilities in the City's Rights-of-way under Chapter 31, Article III of the Phoenix City Code, or any other chapter of the Phoenix City Code, unless the provider has first obtained the license or franchise required to occupy the City's rights-of-way under this Chapter.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998; Ord. No. G-4351, § 1H, passed 5-16-2001, eff. 5-16-2001)

#### **Secs. 5B-8—5B-10. Reserved.**

### **ARTICLE III. LOCATION AND RELOCATION OF FACILITIES IN RIGHTS-OF-WAY\***

#### **Sec. 5B-11. Location and relocation of facilities in rights-of-way.**

(a) Each provider is responsible for ensuring that its facilities are installed, constructed and maintained in strict accordance with the City

\*Cross reference—Excavations in streets, § 23-26.

Code; that all required licenses, franchises and permits are applied for and obtained before any work commences; and that the terms and conditions thereof are strictly followed. If a facility has more than one provider, each provider is fully responsible for ensuring that all requirements are satisfied. Facilities shall be installed, constructed and maintained so that no additional costs are imposed upon the City, and so that the facility does not interfere with other uses or users of the public rights-of-way. Without limiting the requirement of any other provision of the City Code, or the provisions of any license, permit, or franchise issued by the City, this shall require, at a minimum, compliance with the provisions of this chapter.

(b) The facilities to be constructed, installed, operated, and maintained by the provider shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses over, under, or through the rights-of-way. Those phases of construction relating to traffic control, backfilling, compaction, and paving, as well as the location or relocation of said facilities shall be subject to regulation by the City Council.

(c) The provider shall keep accurate installation records of the location of all facilities in the rights-of-way and furnish them to the City upon request or at such periodic intervals as the City may require. Upon completion of new or relocation construction of underground facilities in the rights-of-way, the provider shall provide the City, if requested or as required, with installation records in a format compatible with the then-current City mapping format showing the location of the underground and above ground facilities.

(d) Whenever the provider shall cause any opening or alteration whatever to be made for any purpose in any rights-of-way, the work shall be completed within the time specified in

the license, permit, or franchise, or if no time is specified then within a reasonable time. In addition, the provider shall, without expense to the City and upon the completion of such work, restore the property disturbed in a manner consistent with the City's duly adopted standards, or as required by its permits, licenses, or franchises.

(e) The installation, use, and maintenance of the provider's facilities within the rights-of-way authorized in this chapter shall be in such a manner as not to interfere with the City's placement, construction, use, and maintenance of its rights-of-way, street lighting, water pipes, drains, sewers, traffic signal systems, or other City systems that have been, or may be, installed, maintained, used or authorized by the City. Upon the City's request, provider's facilities will be relocated at provider's expense, unless State law expressly requires otherwise. Upon the City's request, by a time specified by the City, if the provider fails to move its facilities, the City may do so and may bill the provider the costs therefor and the provider shall pay those costs within thirty days after its receipt of the invoice therefor. Further, the provider shall reimburse the City any additional cost the City incurs due to the location or relocation of the provider's facilities, including all design and construction costs.

(f) The provider shall not install, maintain, or use any of its facilities in such a manner as to damage or interfere with facilities of another located within the rights-of-way of the City.

(g) All facilities shall be installed according to plans approved by the City. Provider may install facilities on existing utility poles or in existing conduit where permission is granted by owner of the utility pole or conduit, except where those same poles are scheduled to be replaced with buried facilities. The City may require the provider to prove that it has such

permission from the owner to use the owner's facilities. No new poles, or longer poles, will be permitted in the rights-of-way for any new facilities, without the express written permission of the City. If provider installs facilities on existing poles as provided herein, the provider shall bury its facilities when such poles are removed and not replaced in kind for any reason. If the provider makes use of existing conduit of another provider, the provider shall be subject to the provisions of this chapter in the use of such conduit in the rights-of-way.

(h) Each provider must obtain and maintain such insurance, bonding, and security fund requirements as specified by the City, or if no specific requirements are designated, as are required by the City for similar facilities. No work shall commence unless these requirements have been satisfied, and the City may require the provider to remove or stop work on facilities, or require a provider to cease using the facility, when any insurance, bonding, or security fund requirements are not satisfied.

(i) A permit shall be obtained from the City prior to a provider removing, abandoning, relocating, or reconstructing, if necessary, any portion of a provider's facilities. Notwithstanding the foregoing, the City understands and acknowledges there may be instances when a provider is required to make repairs, in compliance with federal or State laws, that are of an emergency nature. The provider will notify the City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998)

**Sec. 5B-12. Conflict with City projects.**

(a) If, during the design process for public improvements, the City discovers a potential conflict with proposed construction, the provider shall either:

- (1) Locate and, if necessary, expose its facilities in conflict; or
- (2) Use a location service under contract with the City to locate or expose its facilities. The provider shall reimburse the City for the cost resulting from the use of such location service.

The City shall make reasonable efforts to design and construct projects pursuant to this subsection (a) so as to avoid relocation expense to the provider. Provider shall furnish location information to the City in a timely manner, but in no case longer than ten calendar days from the date of the City's request.

(b) The City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any rights-of-way, aerial, surface, or subsurface improvements, including, but not limited to, water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the rights-of-way of the City.

(c) When the City invokes its prior superior right to the rights-of-way, the provider shall move its facilities located in the rights-of-way, at its own cost, to such a location as the City directs.

(d) If, during the course of a project, the City determines provider's facilities are in conflict, the following shall apply:

- (1) Prior to City notice to proceed to contractor: The provider shall, within a reasonable time, but in no event exceed-

ing one month, remove or relocate the conflicting facility. This time period shall begin running upon receipt by the provider of written notice from the City. However, if both the City and the provider agree, the timeframe may be extended based on the requirements of the project.

- (2) Subsequent to City notice to proceed to contractor: The City and the provider will immediately begin the coordination necessary to remove or relocate the facility. Actual construction of such removal or relocation is to begin no later than seventy-two hours, if practicable, after written notification from the City of the conflict.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998)

**Sec. 5B-13. Damage to City rights-of-way and facilities.**

(a) If, in the installation, use, or maintenance of its facilities, the provider damages or disturbs the surface or subsurface of any rights-of-way or adjoining public property, or the public improvement located thereon, therein, or thereunder, the provider shall promptly, at its own expense, and in a manner acceptable to the City, restore the surface or subsurface of the rights-of-way or public property, or repair or replace the public improvement thereon, therein, or thereunder, in as good a condition as before such damage or disturbance. If such restoration, repair, or replacement of the surface, subsurface, or any structure located thereon, therein, or thereunder is not completed within a reasonable time, or such repair or replacement does not meet duly adopted standards, the City shall have the right to perform the necessary restoration, repair, or replacement, either through its own forces, or through a hired contractor. The

provider shall pay the City for its expenses in so doing within thirty days after its receipt of the City's invoice therefor.

(b) The provider shall reimburse the City for all costs arising from the reduction in the service life of any public road or pavement damage, to the extent required by any other City chapters, resulting from pavement cuts of the provider. The provider shall pay such costs within thirty days from the date of issuance of an invoice from the City.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998)

**Sec. 5B-14. Relocation of facilities and dispute resolution.**

(a) The City shall not bear any cost of relocating existing facilities, irrespective of the function served, where City facilities or other facilities occupying the rights-of-way under authority of a City permit, license, or franchise which must be relocated, are already located in the rights-of-way and the conflict between the provider's potential facilities and the existing facilities can only be resolved expeditiously as determined by the City by the movement of the existing City or other approved facilities.

(b) If provider's relocation effort so delays construction of a public project causing the City to be liable for delay damages, the provider shall reimburse the City for those damages attributable to the delay created by the provider.

(c) If the provider should dispute the amount of damages attributable to the provider, or the construction permit fee and other fees payable by provider pursuant to this chapter, the matter shall be referred to the Dispute Resolution Board. The Dispute Resolution Board shall consist of one member selected by the City, one member selected by the provider, and a third

person agreed upon by both parties. The person agreed upon by both parties shall be chairperson of the Dispute Resolution Board. Expenses for the Dispute Resolution Board shall be shared equally by the City and the provider. The Board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than sixty days after notification by the City of provider's allocated share of damages suffered by the City. All decisions of the Dispute Resolution Board are non-binding on either the City or the provider, however, the findings of the Dispute Resolution Board shall be admissible in any legal action.

The City and the provider shall accept or reject findings of the Dispute Resolution Board within thirty days after receipt of the findings. If damages are assessed by the Dispute Resolution Board, the provider shall pay the City within thirty days of receipt of an invoice. Late charges of five percent and interest charges of one and one-half percent per month shall be added for late payment.

(d) Except as otherwise provided in a license, franchise, or permit, or by other provision of law, the entire cost of relocation shall be borne by the City if the provider is required by the City to relocate facilities which are located in private easements obtained by the provider prior to the dedication of the public street or easement from which the facilities must be relocated. These prior rights of the provider would also be unaffected by any subsequent relocation. A prior rights as used in this subsection, means private easement rights obtained by the provider prior to the dedication of the streets or public ways from which the facilities are requested by the City to be relocated. In the case of a facility that serves multiple purposes, the prior rights must extend to all uses for this exception to apply.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998; Ord. No. G-4351, § II, passed 5-16-2001, eff. 5-16-2001)

## ARTICLE IV. GENERAL PROVISIONS

### Sec. 5B-15. Rights reserved to City.

Without limiting the rights that the City might otherwise have, the City does hereby expressly reserve the following rights, powers, and authorities:

- (1) To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the City.
- (2) To determine any question of fact relating to the meaning, terms, obligations, or other aspects of this chapter and the instruments issued under this chapter.
- (3) To grant multiple, nonexclusive licenses, franchises, licenses, or permits within the City to other persons.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998)

### Sec. 5B-16. City police power; continuing jurisdiction.

(a) The provider shall at all times be subject to all lawful exercise of the police power by the City, including any and all chapters, rules, or regulations which the City has adopted or may adopt, and all laws, rules, regulations, orders, and policies of the State and the United States government. In the event of a conflict between this chapter and other provisions of the City Code, the stricter requirement shall apply.

(b) The City shall have continuing jurisdiction and supervision over any facilities located within or on City rights-of-way. However, it is recognized that the daily administrative, supervisory, and enforcement responsibilities of the provisions of this chapter shall be delegated and entrusted to the City Manager or designee to interpret, administer, and enforce the provisions of this chapter, and to promulgate stan-

dards regarding the construction, reconstruction, relocation, maintenance, dismantling, abandonment, or use of the facilities within the City rights-of-way.

(Ord. No. G-4060, § 1, passed 12-10-1997, eff. 2-1-1998)

### Sec. 5B-17. Reserved.

**Editor's note**—Ord. No. G-4351, § 1J, passed May 16, 2001, effective May 16, 2001, repealed § 5B-17, which pertained to violation. See the Code Comparative Table.