Ordinance No. 4224

(Amending or Repealing Ordinances)

12/13/2016
Cable Television Communications
Repeals and replaces KCC Chapter 7.12

Repeals Ords. 3107
ORDINANCE NO. 4724

AN ORDINANCE of the City Council of the City of Kent, Washington, repealing and replacing Chapter 7.12 of the Kent City Code entitled, “Cable Television Communications.”

RECITALS

A. City Right-of-Way is critical for personal travel and the transport of goods. The use of this Right-of-Way area is also imperative to the provision of critical utility services to Kent citizens, including electric, water, and sewer. Federal law requires Cable Operators to obtain non-exclusive franchises before providing Cable Services, and the City is permitted to manage the installation, maintenance, and operation of cable systems through franchises and through the City’s police powers to ensure cable operators and their facilities do not interfere with the primary purpose of City Right-of-Way, which is for safe and efficient movement of vehicular and pedestrian traffic.

B. City Right-of-Way is a valuable and scarce community resource physically limited in dimension, which requires the City to manage the Right-of-Way for the most efficient and best use, to plan for future needed transportation improvements and maintenance, to minimize
costs to taxpayers, to protect against foreclosure of future economic expansion in City Right-of-Way because of premature exhaustion, and to minimize the inconvenience to and negative effects upon the public from such facilities’ construction, emplacement, relocation, and maintenance in City Right-of-Way.

C. The use of City Right-of-Way for purposes unrelated to public travel, such as cable facilities, is secondary and subordinate to the primary use for travel. Secondary uses are permissible only when they are not inconsistent with the primary purpose of the establishment of such City Right-of-Way, and such uses by private businesses is a mere privilege granted under state law. Except in limited circumstances as set forth in Applicable Law, there is no inherent right in a private individual or entity to conduct private business in the City’s public streets. The granting of a cable Franchise, and the authorization pursuant to such Franchise to utilize City rights-of-way for the placement, maintenance, and operation of a cable system, does not directly or indirectly grant any other rights to use the rights-of-way or any of the improvements the City has constructed in its rights-of-way.

D. The City has the inherent authority, through its general police powers and under state and federal law, to develop and implement policies, management principals, standards, and regulatory ordinances in order to balance the interests of both secondary and primary uses of City Right-of-Way, to meet the obligations of local government to manage and maintain City Right-of-Way, to ensure the efficient use of City Right-of-Way, and to protect the public health, safety, and welfare.

E. Cable Systems have the potential to benefit and impact Kent residents, and because of the complex and rapidly changing technology
associated with cable television, the public convenience, safety, and
general welfare can best be served by establishing regulatory powers
vested in the City and consistent with the federal Cable Communications
Policy Act of 1984 ("Cable Act"), as amended, Ch. 35.99 RCW, and RCW
35A.47.040. Further, due to changes in federal law and the information
local franchising authorities may obtain from both new and incumbent
Cable Operators, it is appropriate to repeal the City’s existing code
provisions pertaining to Cable Operators and Cable Service and enact a
new Chapter 7.12 of the Kent City Code to address these changes and
make other updates to the Cable Service regulations applicable in the City
of Kent.

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

**ORDINANCE**

**SECTION 1.** – **Repealer – Chapter 7.12 KCC, "Cable Television
Communications".** Title 7 of the Kent City Code is amended to repeal in its
entirety Chapter 7.12, entitled “Cable Television Communications."

**SECTION 2.** – **Adoption – Chapter 7.12 KCC, “Cable Systems –
Franchise and Administration”.** Title 7 of the Kent City Code is amended to
adopt a new chapter, Chapter 7.12, entitled “Cable Systems – Franchise
and Administration,” as follows:

**CHAPTER 7.12
CABLE SYSTEMS – FRANCHISE AND ADMINISTRATION

PART I. GENERAL PROVISIONS

Sec. 7.12.010. **Purpose.** The purpose of this chapter is to
regulate in the public interest the operation of Cable Systems and Cable
Operators and their use of City Right-of-Way by establishing procedures for the application and granting of Franchises, by prescribing rights and duties of Cable Operators, and by providing generally for Cable Service to the citizens of Kent.

**Sec. 7.12.020. Conflicting provisions.** In the event of a conflict between the provisions of this chapter 7.12 KCC, the terms of any issued Franchise, or any federal law or federal regulation, it is intended that the stricter standard shall apply unless the context clearly evidences a contrary intent, or unless the City is preempted on the issue by Applicable Law. Should any Franchise or other Applicable Law be silent on the issue of conflict, KCC 7.12.020 shall control.

**Sec. 7.12.030. Definitions.** In construing the provisions of this chapter, the following definitions shall be applied, unless the context or subject matter clearly requires otherwise. If specific provisions of law are referred to in this chapter, those references shall apply to any subsequent amendments or recodifications of those cited provisions of law.

A. "Affiliate" means a Person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

B. "Applicable Law" means any statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law, that determines the legal standing of a case or issue.

C. "Applicant" means a Person who applies for a Cable Franchise with the City of Kent, or submits a request to modify or renew an existing Cable Franchise in the City.
D. "Application Fee" means the charge specified in KCC 7.12.150 and designed to recover the City's actual costs in processing applications for initial Franchises, or modification requests to existing Franchises, including applications for the Transfer of a Franchise, as authorized under Applicable Law.

E. "Basic Cable Service" means any Service Tier that includes the retransmission of local television broadcast signals.

F. "Business Days" means a working day for the Cable Operator which day is included within the definition of Normal Business Hours provided for in KCC 7.12.030(V).

G. "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq.; as amended by the Cable Television Consumer Protection and Competition Act of 1992; as further amended by the Telecommunications Act of 1996; and as may be further amended from time to time.

H. "Cable Operator" means any Person or group of Persons who: (1) provides Cable Service in the City over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System; or (2) otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System in the City.

I. "Cable Service" means:
   1. The one-way transmission to Subscribers of (a) video programming, or (b) other programming service; and
   2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
J. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming and which is provided to multiple Subscribers within a community; but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations; or

2. A facility that serves Subscribers without using any City Right-of-Way; or

3. A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; or

4. An Open Video System that complies with 47 U.S.C. § 573; or

5. Any facilities of any electric utility used solely for operating its electric utility systems.

K. "City" means the City of Kent, Washington.

L. "City Rights-of-Way" and "City Right-of-Way" mean the surface of, and the space above and below, any City street, highway, freeway, bridge, alley, court, boulevard, sidewalk, way, lane, drive, circle, conduit, manhole, or utility easement that, by its terms, permits location of Cable System facilities within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel. Excluded from this definition are railroad right-of-way, airports, harbor areas, buildings,
parks, open spaces, nature trails, poles, dedicated but un-opened Right-of-Way, environmentally sensitive areas, and such similar facilities or property owned, maintained, or leased by the City and which the City determines based upon the property's characteristics is not conducive for Cable Operator's facilities. For purposes of this definition, the phrase "dedicated but un-opened Right-of-Way" shall mean Right-of-Way that has been dedicated to the City for Right-of-Way purposes, but not yet put to that use by the City.

M. "Complaint" means any issue raised by a Subscriber that is a violation of the minimum Customer Service Performance Standards provided for in KCC 7.12.210.

N. "Customer Service Representative" or "CSR" means any person employed or retained by the Cable Operator, or with whom Cable Operator may contract with, to assist or provide service to Subscribers, whether by answering telephone lines, writing service or installation orders, answering Subscribers' questions, receiving and processing payments, performing installation or interacting with Subscribers in the field, or performing other Subscriber service-related tasks.

O. "Franchise" refers to the authorization granted by the City to a Cable Operator for the non-exclusive right to occupy City Rights-of-Way to provide Cable Service within a designated Franchise Area. A Franchise shall be authorized by ordinance, and must be accepted by the Cable Operator to become effective. A Cable Franchise shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on business within the City, including without limitation a business license; or
2. Any permit, agreement, or authorization required in connection with operations on or in public streets or property, including without limitation, a street cut permit, a street use permit, or other construction permit or approval; or

3. Any permits or agreements for occupying any other property in the City for which access is not specifically granted by the Franchise, including without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City or any other public or private entity, or for providing any service other than Cable Service.

P. "Franchise Area" means the geographical area of the City that a Cable Operator is authorized to serve by the terms of its Franchise or by operation of law.

Q. "FCC" means the Federal Communications Commission or its successor.

R. "Interactive voice response" or "IVR" means a technology that allows a computer to interact with humans through the use of voice and dual-tone multi-frequency signaling tones input via keypad.

S. "Necessary" means required or indispensable.

T. "Non-Standard Installation" means any installation of Cable Service that requires the installation of plant facilities from a point more than 125 feet from the Subscriber’s property line to one of the following locations: (1) for a dwelling unit, the “demarcation point” as that term is defined in 47 C.F.R. § 76.5; or (2) any underground installation in an area where plant facilities are not underground; or (3) a commercial installation.
U. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

V. "Normal Operating Conditions" means those service conditions that are within the control of the Cable Operator. Those conditions that are ordinarily within the control of the Cable Operator include without limitation special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, maintenance or upgrade of the Cable Systems. Those conditions that are not within the control of the Cable Operator include but are not limited to natural disasters, civil disturbances other than labor strikes by Cable Operator’s employees or agents, power outages, telephone network outages, and severe or unusual weather conditions.

W. "Other Service" means any wire or radio communication service, provided through the use of any of the facilities of a Cable Operator that are used in the provision of a Cable Service.

X. "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

Y. "Service Tier" means a group of channels for which a single periodic subscription fee is charged.

Z. "Standard Installation" means an installation of Cable Service to the Subscriber’s dwelling unit that is located up to 125 feet from the existing distribution system, plus additional inside wire and at least one (1) outlet
sufficient to receive Cable Service; or as otherwise defined in a Cable Franchise if necessary to address a Cable Operator’s specific technology.

AA. “Subscriber” means the City, any government entity, or any Person who legally receives any Cable Service from a Cable Operator delivered over that Cable Operator’s Cable System.

Sec. 7.12.040. Franchise required.

A. Franchise required. An Operator of a Cable System must obtain a non-exclusive Franchise prior to providing Cable Service in the City. No Franchise shall become effective without the Cable Operator’s written acknowledgement of its unconditional acceptance of the Franchise.

B. Authorization granted by Franchise. A Franchise shall not convey title, equitable or legal, in City Right-of-Way. The right granted is only the right to occupy those portions of City Right-of-Way to which the City has the right to grant access, for the purposes and for the period stated in the Franchise, and, subject to the limitations in this chapter, the right may not be subdivided or subleased by Cable Operator.

C. No guarantee of rights conferred. No reference herein, nor in any Franchise, to City Right-of-Way shall be deemed to be a representation or guarantee by the City that the City’s interest or other right to control the use of such property is sufficient to permit the property’s use for such purposes, and a Franchise shall be deemed to grant no more than those rights that the City may have the undisputed right and power to give.

Sec. 7.12.050. General conditions upon use of City Right-of-Way. In addition to the provisions of this Chapter 7.12 KCC and any Franchise, a Cable Operator shall comply with all Applicable Law that applies to Cable Operator, its business operation within the City of Kent,
or its installation and operation of its Cable System within the City Right-of-Way, including City Construction Standards, the Kent Special Provisions, and any necessary permit application, review, and City or other government agency approval.

Section 7.12.060. Protection of the City and residents. No Franchise shall issue unless it includes adequate indemnity, insurance, and security from the Cable Operator to protect the City and its residents.

Section 7.12.070. Transfers.

A. Transfer/Change of Control Requests. A Cable Operator shall be required to make written request and obtain City approval of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Cable Operator or the Cable Franchise. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Cable Operator shall make a Cable Franchise subject to cancellation unless and until the City shall have consented in writing thereto. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Cable Operator in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by the Cable Operator; provided, however, the new cable operator under subsections (i) or (ii) must have the financial and technical capabilities to comply with the terms of the Franchise.

B. Costs. As part of its application for approval, and as authorized under Applicable Law, the Cable Operator and transferee shall be responsible to reimburse the City for all costs reasonably incurred in
connection with the City’s evaluation of whether to grant the request, which shall include, without limitation, reasonable attorney and consultant fees.

C. Criteria. In deciding whether to approval a request for transfer or change in control, the City may consider any criteria permitted by Applicable Law, and may impose conditions of approval consistent with Applicable Law.

Sec. 7.12.080. Books and records.

A. City access to books and records. Each Cable Operator shall provide the City reasonable access to all books and records related to the City’s oversight and enforcement authority pursuant to its Cable Franchise, this chapter, or any other Applicable Law. To the extent that books and records related to the City’s oversight and enforcement authority are confidential, the information may be provided to the City or its duly authorized agent(s) pursuant to a non-disclosure agreement whereby the City and/or its duly authorized agent agrees not to make such information public, to the extent such nondisclosure compiles with the state Public Records Act, Chapter 42.56 of the Revised Code of Washington (“RCW”). If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then within 10 days of its receipt of the City’s request, the Cable Operator may request that the City inspect Operator’s books and records at the Cable Operator’s local offices or at one of Cable Operator’s offices more convenient to the City or its duly authorized agent. In such event, however, all reasonable travel expenses incurred in making such examination shall be paid by the Cable Operator.
B.  *Open records and confidentiality.* Unless otherwise provided by law, information and records received by the City from the Cable Operator are generally open to public inspection and subject to the State of Washington Public Records Act, Ch. 42.56 RCW. It is the responsibility of the Operator to be familiar with the Washington Public Records Act.

**Sec. 7.12.090. Discrimination prohibited by Operator.**

A.  *Retaliation for exercising rights.* A Cable Operator shall not discriminate among persons, or take any retaliatory action against a person or the City because of that entity’s exercise of any right it may have under Applicable Law, nor may the Operator require a person or the City to waive such rights as a condition of receiving Cable Service.

B.  *Employment discrimination.* A Cable Operator shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability. A Cable Operator shall comply with all Applicable Law governing equal employment opportunities, as the same may be from time to time amended.

**Sec. 7.12.100. Redlining prohibited.** A Cable Operator shall not deny access or charge different rates to any group of Subscribers because of the income of the residents of the local area in which such group resides.

**Sec. 7.12.110. Delegation of authority—Chief administrative officer.** The City’s Chief Administrative Officer or designee is authorized to perform the following:
A. To enforce and administer this chapter and any Franchise granted by the City Council; and

B. To give any notice required by law or under any Franchise, including by way of example and not limitation, a notice required under 47 U.S.C. § 546 to review the performance of the Cable Operator and identify the community's future cable-related needs and interests; and

C. To seek information from any Cable Operator; and

D. To establish forms for submission of applications and other information; and

E. To make a staff recommendation to the hearing examiner following any hearing held in accordance with 47 USC § 541, 47 USC § 546, and Ch. 7.12 KCC; and

F. To make all decisions or take all other actions required under this chapter or in any Franchise on behalf of the City; and

G. To take all other actions necessary or appropriate on behalf of the City in the administration of this chapter or any Franchise.

Notwithstanding the foregoing, however, a Franchise may only be granted by formal action of the City Council.

Sec. 7.12.120. Delegation of authority—Hearing examiner. The City’s hearing examiner is authorized to conduct any hearing required under 47 USC § 541(a)(1), 47 USC § 545, 47 USC § 546, or other provision of Applicable Law in accordance with the provisions required therein, and prepare a recommendation to the City Council for final action.
Sec. 7.12.130. Calculation of time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any Franchise, and a relevant period of time or duration is prescribed in this chapter or any Franchise, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time. In the event the last day of the period so computed shall fall on a Saturday, Sunday, or legal holiday, the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. Unless otherwise indicated, when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

PART II. FRANCHISE APPLICATION AND REVIEW

Sec. 7.12.140. Franchise application. All requests for an initial Franchise, to renew an existing Franchise, or to modify an existing Franchise shall be submitted in accordance with this KCC 7.12.140.

A. Initial Franchise. All requests for an initial or new Franchise must be made by application to the City.

1. Written application. Each entity required to hold a Franchise under this chapter, who has not already been granted an initial Franchise by the City, must submit a complete written application for an initial Franchise. To be accepted for filing, an Applicant must file an original and six copies of a complete application for an initial Franchise. An application may be filed by any Person on that Person’s own initiative or in response to a request for Franchise proposals, which may be authorized by the City from time to time.

a. Complete application. An application is deemed complete for purposes of KCC 7.12.140(A), 47 U.S.C. § 541(a), and 47

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C.F.R. § 76.41(d) when the application includes a complete response to every requirement of the application, this chapter, and includes payment of the full Application Fee required by KCC 7.12.150(A). Submission of an application that does not meet these requirements will not commence the running of the time period for granting or denying any application governed by 47 U.S.C. § 541(a) and 47 C.F.R. §76.41(d). The Applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the City’s review of the application.

2. **Application contents.** Except as expressly modified by the City for good cause, any application submitted pursuant to this chapter shall contain, at a minimum, all information that may be required by 47 C.F.R. § 76.41 and the following additional information:

   a. **Applicant Information.** Identity of the Applicant, including the name, address, telephone number, and web site (if applicable); the name, address, telephone number, and e-mail address of all individual(s) authorized to represent the Applicant before the City during its consideration of the Franchise(s) requested; and management/organizational information, showing the management structure of the Applicant. In addition, an Applicant must provide a chart, or other similar document, that identifies the relationship of the Applicant to all general partners, parent corporations, subsidiaries, Affiliates, and all other subsidiaries of parent corporations or other entities with any ownership share or control, direct or indirect of the Applicant, including a brief description of each entity’s relationship to the Applicant.

   b. **Other Cable Systems.** A list of all Cable Systems in which the Applicant or any of its Affiliates owns more than five percent of the System. For each Cable System, the Applicant shall include the name of the community served, number of subscribers, number of homes
passed, date of system award, duration (start and end date) of franchise, status of construction, and percent of penetration of homes passed as of most recently available date (indicate date).

c. **Potential Franchises.** An Applicant shall list communities where it or any Affiliate currently has a formal or informal request pending for an initial Franchise or the approval of a transfer of ownership. The Applicant shall include the name of the communities, date of application, and date of expected action.

d. **Applicant’s technical qualifications to provide Cable Service.** The application shall describe the Applicant’s planned initial and proposed Cable Services geographic area, including a map of all areas proposed to be served and proposed dates for offering Cable Service to each area. The application shall additionally state a proposed timetable for providing Cable Service to the entire proposed Franchise Area. The Applicant shall additionally describe with particularity:

(1) its planned system technical design, upstream and downstream capacity and speed, provision for digital services or packages, distribution of fiber, planned count of households per residential node, and any other information necessary to demonstrate that the Applicant’s technology will be deployed so as to be able to successfully offer Cable Services in the proposed locations; and

(2) A description of the size of equipment cabinets, shielding, and electronics that will be installed along the plant route; and

(3) The power sources that will be used and a description of the noise, exhaust, and pollutants, if any, that will be generated by the operation of the same.

Notwithstanding these requirements, if some of the descriptive data is not available at the time of application, a Franchise may be granted subject to conditions that the data be filed and approved by the City.
before construction begins and that the Franchise will be deemed to be forfeited if the data is not supplied and approved.

e. **Existing authority for Right-of-Way access.** If the Applicant has or asserts existing authority to access City Right-of-Way in any of the service areas proposed by Applicant in accordance with this section, the Applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority.

f. **Description of planned residential Cable Services.** The Applicant shall describe with particularity its planned residential Cable Services, including Basic Cable Services; other cable programming Service Tiers; and any additional pay-per-view, on-demand, or digital services.

g. **Description of planned non-residential Cable Service.** The Applicant shall describe with particularity its planned non-residential Cable Services.

h. **Description of intended construction.** The Applicant shall describe any planned construction and extension or phase schedule, as applicable. In providing the necessary description under this section, the following minimum information must be included:

   (1) system extension plans or policy, describing when and where construction will begin, how it will proceed, and when it will be completed;

   (2) a description of the current status of the Applicant’s existing or proposed arrangements, with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable. Information sufficient under this section must include:

   (a) A designation of the portions of the system that will be placed above ground, the portions that will be placed
and the construction techniques that the Applicant proposes to use in installing the system above ground and underground; and

(b) The expected effect on City Right-of-Way usage, including information on the ability of City Right-of-Way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities; and

(c) A description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities.

i. **Description of protective measures to be taken.** Applicant shall provide a description of the various protective measures it will take in carrying out any Franchise it may be granted. At a minimum, the following specific areas must be addressed:

1. **Protection of persons and property.** The Applicant shall describe its plan to ensure that the safety, function, appearance of property, and the convenience and safety of other persons are not adversely affected by the installation or construction of the Applicant’s facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation, or removal of the facilities as set forth in this chapter.

2. **Protection of privacy.** The Applicant shall describe its plan to comply with the Subscriber privacy protections set forth in 47 U.S.C. §551, and the privacy protections of any Applicable Law, including those contained in this chapter.

j. **Ability to meet future needs.** An Applicant must demonstrate how it will reasonably meet the future cable-related needs and interests of the Kent community.

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k. **Financially qualified.** An Applicant must demonstrate that it is financially qualified, including at a minimum, a statement certified by the Applicant’s chief financial officer regarding the Applicant’s financial ability to complete construction to meet the proposed time frame and to operate the proposed Cable System. In addition:

(1) Unless SEC Forms 10K and 10Q are available on the EDGAR database, Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three fiscal years for the Applicant and any Parent Corporation.

(2) Applicants that are new (start-up) entities shall provide pro forma projections for the next five fiscal years, if available, but at a minimum the next three fiscal years from the date of the application.

l. **Legally qualified.** An Applicant must demonstrate that it is legally qualified, which demonstration must include a statement from the Applicant that includes the following minimum information:

(1) Whether it has received, or is in a position to receive, necessary authorizations from state and federal authorities;

(2) Whether it has engaged in fraud or racketeering or violated antitrust laws, consumer protection laws, or similar laws;

(3) Whether it or any Affiliate has been found in violation by a regulatory authority or franchising authority of any Franchise ordinance or agreement, contract or regulation governing a Cable System. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal, case number (if applicable), and result or disposition of that proceeding;

(4) Whether it has been found in violation by a regulatory authority of any other type (e.g. utility) of Franchise,
ordinance, agreement, permit, contract, or regulation. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal, case number (if applicable), and result or disposition of that proceeding; and

m. Declaration of Applicant. Each application shall be accompanied by a declaration substantially in the form set forth below:

This application is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the Applicant and certifies the representations are true and correct.

The Applicant recognizes that all representations are binding on it, that all application commitments are enforceable, and that material misrepresentations or omissions, or failure to adhere to any such representation, may result in a denial of an application by the City.

The Applicant shall comply with all applicable local laws.

Consent is hereby given to the City and its representatives to make inquiry into the legal, character, technical, financial, and other qualifications of the Applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

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(Date and Place) (Signature)

3. Application review and negotiation. Once a complete application is received by the City for an initial Franchise, the City and Applicant will meet informally, discuss Applicant's initial Franchise request, and negotiate an initial Franchise, if appropriate. Once those efforts are complete, and within the time period required by 47 CFR § 76.41, or such
other time period as the parties may mutually agree, City staff will present its recommendation to the City Council on the Applicant’s application for an initial Franchise. Prior to the City Council taking action to grant or deny a proposed initial Franchise, the public will be provided adequate notice and an opportunity for comment.

B. **Renewal of existing Franchise.** Requests for cable Franchise renewal under the Cable Act will be received and reviewed in a manner consistent with Section 626 of the Cable Act (47 U.S.C. § 546) and in accordance with the provisions of this chapter.

1. **Formal applications for renewal.** Either a Cable Operator or the City may, in accordance with the time limitations provided for in 47 U.S.C. § 546(a)(1), commence a formal proceeding for Franchise renewal. To seek formal renewal of a Franchise, the Cable Operator must timely submit to the City a written renewal request as provided for in 47 U.S.C. § 546(a). The Cable Operator’s renewal request must clearly indicate the Cable Operator seeks formal renewal under the process provided for in 47 U.S.C. § 546(a) and KCC 7.12.170.

2. **Informal applications for renewal.** Concurrently or as an alternative to the formal process provided for in KCC 7.12.140(B)(1) and 47 U.S.C. § 546(a), a Cable Operator may submit an informal proposal for renewal of a Franchise pursuant to 47 U.S.C. § 546(h). To seek informal renewal of a Franchise, the Cable Operator must submit a written renewal request to the City clearly indicating the Cable Operator seeks an informal renewal under the alternative process provided for in 47 U.S.C. § 546(h). Such a proposal may be submitted at any time and the City may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time, including after formal proceedings have been commenced in accordance with 47 U.S.C. § 546(a). The City and Applicant will then meet informally and attempt to resolve Franchise
issues through negotiation. If negotiations are successful and all issues are resolved, a renewal Franchise may be adopted after the public is provided an opportunity for comment. An informal application for renewal may be denied for any reason.

C. **Modification of existing Franchise.** An existing Franchise may be modified in accordance with 47 U.S.C. § 545 and this chapter.

1. **Application for modification.** An application for modification of a Franchise shall include, at a minimum, the following information:
   a. The specific modification requested;
   b. The justification for the requested modification;
   c. An explanation as to how the requested modification will impact others, including Subscribers and the City;
   d. An explanation of the financial impact to Applicant if the modification is approved or disapproved, which impacts must be demonstrated through submission of pro forma financial statements or similar financial documentation, or other documents that sufficiently evidence the financial impacts;
   e. A statement indicating whether the modification is sought pursuant to Section 625 of the Cable Act (47 U.S.C. § 545), and if so, the Applicant must additionally demonstrate that the requested modification meets the standards set forth in 47 U.S.C. § 545;
   f. Any other information that the Applicant believes is necessary for the City to consider in making an informed determination on the application for modification; and
   g. A declaration of the Applicant’s authorized officer, substantially similar to that provided in KCC 7.12.140(A)(2)(m), certifying the truth and accuracy of the information in the modification application, and certifying that the application is consistent with the requirements of Applicable Law.

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2. **City response to modification.** Upon receipt of a complete application for modification, the City may request additional information that it deems reasonably necessary to address the request, and may enter into informal negotiations with the Cable Operator regarding the terms of the proposed modifications. The City shall approve or deny the request, or approve a further modification as may be agreed to by the Cable Operator, consistent with 47 U.S.C. § 545.

**Sec. 7.12.150. Application fee and Franchise fee.**

A. **Application fee.** Every Cable Operator must pay an Application Fee for the consideration of an application for an initial Franchise, or an application to modify, or transfer an existing Franchise. The Application Fee shall be in an amount to cover the actual costs incurred by the City in connection with the processing of the application, which shall be considered incidental to the award of a franchise, unless otherwise categorized under Applicable Law. This Application Fee shall cover all reasonable costs incurred by the City to process the application and, to the extent consistent with Applicable Law, shall be excluded from any Franchise Fee assessed and collected under a Cable Franchise. As provided for in KCC 7.12.140(A)(1), an application will not be deemed complete until sufficient funds to cover the application fee are received by the City. The City may, at any time, require that the Applicant deposit additional sums if it appears that the initial deposit made in accordance with this section or subsequent deposits will be exhausted prior to final action by the City on the Franchise application. The Applicant will not be entitled to further consideration by the City of the Applicant's Franchise application until the additional deposit has been received by the City, and in accordance with KCC 7.12.150(A)(2), no Franchise shall be effective until all required fees and costs are paid. In the event the amount of an
Applicant's deposit is in excess of the amount of the administrative expenses of the City related to the action requested, then the Applicant shall be entitled to a return of any such excess amount.

1. **Minimum deposit.** Every application for an initial Franchise shall be accompanied by an initial minimum deposit in the amount of $5,000 or such higher amount as may be necessary to cover the City's anticipated costs in processing the application. Every application for a franchise transfer or modification shall be accompanied by an initial minimum deposit in the amount of $3,500 or such higher amount as may be necessary to cover the City's anticipated costs in processing the application, including the City's reasonable attorney and consultant fees as may be authorized by Applicable Law.

2. **Failure to remit fees.** No Franchise shall become effective until all required fees and costs are paid. These fees shall not be credited from future Franchise fees owed. Notwithstanding the foregoing, the City may collect any unpaid fees in any lawful manner, including without limitation, under Chapter 3.10 KCC.

B. **Franchise fee.** Every Operator of a Cable System shall pay to the City a Franchise fee in an amount equal to five percent of gross revenues to compensate the City for Operator's use of City Right-of-Way. However, this Franchise fee need not be paid if Applicable Law requires otherwise. An Operator who is engaged in one line of business that is subject to this exception shall not be excused from paying the Franchise fee for its other lines of business for which a Franchise and Franchise fee are required, including those provided over a Franchised Cable System. The Franchise fee specifically excludes the Application Fee to the extent the Application Fee is deemed to be incidental to the awarding of the Franchise, and any requirements or charges incidental to the awarding or enforcing of the
Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages.

Sec. 7.12.160. Franchise application—Determination of completeness.
A. Application review.
1. Determination of completeness. Within 20 calendar days of receipt of an application under the formal process for an initial Franchise or a Franchise renewal or modification, the City will review the application for completeness as provided for in KCC 7.12.140(A)(1). If the application is not complete, the City will notify the Applicant in writing, listing the requisite information that is required to complete the application. This notification will also inform the Applicant that the time period set forth in 47 C.F.R. § 76.41(d) for granting or denying the application, if applicable, will not begin to run until the required information is received. If the City’s review determines the application is complete, the City will notify the Applicant in writing that all requisite information has been received and the application is complete as provided for in KCC 7.12.140(A)(1).

2. Additional information necessary. If any time during the Franchise review process, and after a determination of completeness has been made, the City reasonably requires additional information from the Applicant to evaluate Applicant’s Franchise request and ability to perform the proposed Franchise’s requirements, the City will promptly request the information from the Applicant. This request will additionally notify the Applicant that the time period set forth in 47 C.F.R. § 76.41(d) for granting or denying the application will be tolled until the requested information is received by the City.

Sec. 7.12.170. Public notice concerning Franchise applications—Hearing on renewals under formal process. No
Franchise will be granted, renewed, or modified except by action of the City Council conducted at a public meeting for which notice has been given in accordance with the Open Public Meetings Act, Chapter 42.30 RCW. Neither the Cable Act nor the Open Public Meetings Act requires the City to provide individualized notice to Cable Operators concerning another Cable Operator’s Franchise and Council’s consideration of that Franchise. However, if the City has agreed in a Franchise to provide a Cable Operator individualized advance notice of anticipated Council action concerning another Cable Operator’s Franchise, the City will provide all Cable Operators with that same advance notice. Notwithstanding the foregoing, a failure to provide notification shall have no effect on any application to grant, renew, or modify an existing Franchise.

In the event a Cable Operator submits a formal application to renew a Franchise, or the City notifies a Cable Operator that its Franchise renewal shall be considered under the procedures provided in 47 U.S.C. § 546(b)-(g), the City shall hold a public hearing before acting on an application, affording participants the right to introduce evidence, to require the production of evidence, and to question witnesses, and creating a transcript of the proceedings. This public hearing shall be held before the City’s hearing examiner who, after completion of the proceeding, shall prepare and issue a decision containing the hearing examiner’s recommendation to the City Council regarding the application to renew an existing Franchise.

Sec. 7.12.180. Grant or denial of application. If the City finds that it is in the public interest to issue, modify, or renew a Franchise, the City may adopt a Franchise ordinance setting forth the terms and conditions of the Franchise, which Franchise shall become effective upon satisfaction of any conditions precedent to effectiveness and once signed and accepted by the Applicant. If the City denies a Franchise application
for an initial franchise or a request to modify or renew an existing Franchise, the City will explain the reasons for the denial in writing, which may be in any form deemed appropriate by the City. Without limiting its authority to deny an application for an initial Franchise or a request to modify or renew an existing application, the City specifically reserves the right to reject any application or request that is incomplete or fails to respond to a request for Franchise proposals. Nothing in this chapter shall be construed in any way to limit the discretion and legislative authority of the City Council to make a decision to grant or deny a Franchise or any request to modify or renew an existing Franchise.

PART III. FRANCHISE PROVISIONS

Sec. 7.12.190. Construction provisions and technical standards. The following construction provisions and technical standards apply to every Franchise for Cable Service awarded in the City, except as may be specifically and subsequently modified by any awarded Franchise. If the Franchise is silent on the issue, the provisions set forth in this Chapter 7.12 KCC shall apply.

A. Provision of quality cable service. In addition to satisfying any requirement established in a Franchise, every Cable Operator shall ensure the policies and practices stated below are adhered to during the operation of any Cable System within the City, unless any stated policy or practice is expressly prohibited by Applicable Law. The City retains the discretion to evaluate any Franchise proposal, and impose construction and service availability requirements in a Franchise in order to meet the needs of the community:
1. **Availability of Cable Service to Subscribers.**
   a. **Cable plant facilities within 125 feet of structure to be served.** A Cable Operator must extend Cable Service as a Standard Installation to any Person or to any government building that requests Cable Service within the City or, if smaller, its Franchise Area within seven business days of the request, where service can be provided by activating or installing a drop within 125 feet of the structure to receive service.
   b. **Cable plant facilities beyond 125 feet of structure to be served.** In cases where a potential Subscriber’s structure is more than 125 feet from Cable Operator’s existing cable plant, an Operator must still provide service as a Non-Standard Installation, so long as the potential Subscriber agrees to bear a share of extension or installation costs equal to the Cable Operator’s incremental cost of that portion of the extension that exceeds the 125-foot limit required to be provided under KCC 7.12.190(A)(1)(a). A Cable Operator that requires a potential Subscriber to bear a portion of installation or extension costs must prepare and provide the potential Subscriber a written estimate of the extension costs within seven business days of a request for an installation. Any estimate shall indicate the portion of costs attributable to both the Cable Operator and the Subscriber.
   c. **Other Technologies.** Notwithstanding subsections a and b above, if a Cable Operator’s Cable System is not constructed in a manner that is technologically compatible with cable plant availability requirements set forth above, the parties shall negotiate provisions in the Cable Franchise that address service availability standards in a manner that is compatible with the Cable Operator’s technology and mirrors the obligations in subsections a and b as closely as reasonably possible.

2. **Extension of distribution line—Charges.** Unless otherwise provided for in a Franchise, cable service shall be available to all residents
within the City, provided there are at least 35 dwelling units per street mile. In the event a request is made for service by a resident living in an area not meeting such criteria, the Cable Operator shall enter into a contractual agreement with the resident requesting service wherein the Operator shall be reimbursed for its construction costs. Whenever any subsequent Subscriber who did not contribute to the original cost of the extension connects to the extended distribution service line, that Subscriber shall pay his or her pro-rata share directly to the Operator prior to obtaining cable service. The Cable Operator shall then promptly tender such payment to the original Subscriber so long as the agreement remains in force. Reimbursement shall be calculated on a front foot basis as a percentage of the total cost of the service line extension. Reimbursements shall be made to the original Subscriber for a period of up to five years or to the point when the original Subscriber has recovered its incremental costs for construction of the distribution service line. The Operator shall record its contractual agreement with the original Subscriber in the King County Recorder’s Office before any subsequent Subscriber may connect to the extended service line.

B. **System maintenance and technical quality.** A Cable Operator shall maintain all transmission equipment as necessary to carry a quality signal to Subscribers from the access facilities provided under this chapter or any Franchise.

C. **Cable Operator facilities in the community.** Cable Operator will properly maintain and promptly repair all Cable Operator-owned equipment (boxes, connectors, etc.) on private, public, or City Right-of-Way property to avoid the creation or maintenance of a public nuisance in violation of Chapter 8.01 of the Kent City Code.
D. **Emergency alert capability.** A Cable Operator shall provide an Emergency Alert System ("EAS") and comply with all Applicable Law and Franchise provisions.

**Sec. 7.12.200. Operator-provided public, education, and government access channels.** A Cable Operator must provide public, education, and government (PEG) access channels and capital support to meet community needs. The Operator-provided PEG channels made available must be of comparable quality and functionality as the other channels the Cable Operator makes available to Subscribers on the Cable System. A Cable Operator shall maintain all interconnects, and return lines at the same or better level of technical quality and reliability required by a Franchise and Applicable Law for other services, and interconnects.

**Sec. 7.12.210. Customer Service Standards.** [RESERVED]

**PART IV. ENFORCEMENT AND PENALTIES**

**Sec. 7.12.220. Performance Bonds/Security Fund.** A Cable Operator shall comply with any Franchise regarding the agreed upon Performance Bond or Security Fund. If a Franchise is silent on the provision of a Performance Bond or Security Fund, the following shall apply:

A. Within 30 calendar days of the written notification to a Cable Operator by the City that an alleged violation exists, a Cable Operator shall deposit with an escrow agent approved by the City $50,000 or, in the sole discretion of the City, such lesser amount as the City deems reasonable to protect Subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, the Operator may provide to the City security, in the form of a Performance Bond, irrevocable Letter of Credit, or other Security mutually agreeable to the City, in the same amount.
The escrowed funds, Performance Bond, Letter of Credit, or other agreed Security shall constitute the "Security Fund" for ensuring compliance with this chapter and the Franchise for the benefit of the City. The Security Fund shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of the Franchise, until any claims related to the alleged Franchise violation are paid in full.

B. The City may require the Cable Operator to increase the amount of the Security Fund if it finds that new risk factors exist that necessitate such an increase.

C. The Security Fund shall serve as security for the payment of any penalties, fees, charges, or credits as provided for herein or under the Franchise and for the performance by a Cable Operator of all its obligations.

D. The rights reserved to the City with respect to the Security Fund are in addition to all other rights of the City, whether reserved by any applicable Franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the City may otherwise have.

Sec. 7.12.230. Procedure for remedying violation.

A. Violations of Ch. 7.12 KCC, Customer Services Standards, or Franchise Provisions—Unlawful. It is unlawful for a Cable Operator to violate any provision of this chapter, any of the City’s lawfully adopted Customer Service Standards, or any negotiated Franchise provision. If the City has reason to believe that a violation has occurred, the City may pursue the contractual remedies provided for in its Franchise, including
monetary damages; a civil infraction as provided for in this section; or any other remedy that may be provided for by Applicable Law.

B. **Civil infractions—Kent Municipal Court.** Any Operator who violates KCC 7.12.230(A) may be issued a civil infraction in the amount of $1,000, plus court costs and assessments, which infraction shall be filed in the Kent Municipal Court and processed in the same manner as other civil infractions and subject to the Infraction Rules for Courts of Limited Jurisdiction (IRLJ), and all local rules and policies as promulgated by the Kent Municipal Court shall govern the infraction proceedings and appeals. Each separate date, or portion thereof, during which any violation occurs shall constitute a separate violation.

**Sec. 7.12.240. Remedies cumulative.** All remedies provided for in this chapter, within any Franchise, or under Applicable Law are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of penalties relieve a Cable Operator of its obligations to comply with its Franchise. Remedies may be used singly or in combination, and the City may exercise any rights it has at law or equity. Recovery by the City of any amounts under insurance, a performance bond, a Security Fund, or Letter of Credit, or otherwise, does not limit a Cable Operator’s duty to indemnify the City in any way; nor shall such recovery relieve a Cable Operator of its obligations under a Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

**SECTION 3.** - **Savings.** The existing Chapter 7.12 of the Kent City Code, which is repealed and replaced by this ordinance, shall remain in full force and effect until the effective date of this ordinance.
SECTION 4. - Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this ordinance and the same shall maintain its full force and effect.

SECTION 5. - Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

SECTION 6. - Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law. However, the version of Chapter 7.12 KCC that existed immediately before passage of this ordinance shall continue to apply to a Cable Operator until any Franchise now existing with that Operator is modified or renewed, at which time the terms of this ordinance will apply to that modified or renewed Franchise.

Suzette Cooke, Mayor

ATTEST:

Kimberly A. Komoto, City Clerk

Cable Chapter Ordinance
Repeal and Replace KCC 7.12

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APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 13 day of December, 2016.
APPROVED: 13 day of December, 2016.
PUBLISHED: 23 day of December, 2016.

I hereby certify that this is a true copy of Ordinance No. 4224 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

KIMBERLEY A. KOMOTO, CITY CLERK (SEAL)

Cable Chapter Ordinance
Repeal and Replace KCC 7.12