



## ORDINANCE NO. 28409

1 AN ORDINANCE relating to franchise insurance requirements; amending  
2 Tacoma Municipal Code (“TMC”) Subtitle 16A, Cable Systems, Open  
3 Video Systems, and Private Communications Systems, by amending  
4 Subsection 16A.01.070.B thereof; and amending TMC Subtitle 16B,  
5 Telecommunications Systems, by amending Subsection 16B.05.090.B  
6 thereof, to update language to reflect current insurance requirements  
7 necessary to adequately protect the City.

8 WHEREAS Title 16 of the Tacoma Municipal Code (“TMC”) addresses  
9 cable systems, open video systems, telecommunications systems, and private  
10 communications systems, and

11 WHEREAS TMC 16A.01.070.B and 16B.05.090.B define and address  
12 minimum insurance requirements for cable television and telecommunications  
13 providers installing infrastructure in the City Public Right-of-Way, and

14 WHEREAS staff desires to update the language in these sections to reflect  
15 the current insurance requirements necessary to adequately protect the City, and

16 WHEREAS the proposed changes are the result of a routine review of the  
17 insurance sections of TMC Subtitles 16A and 16B by the Risk Manager, Legal  
18 staff, and Franchise Services staff, and

19 WHEREAS the proposed changes will update and define current insurance  
20 requirements, which will protect the City and allow for a more efficient negotiating  
21 process for all franchises under TMC Title 16; Now, Therefore,

22 BE IT ORDAINED BY THE CITY OF TACOMA:

23 Section 1. That Tacoma Municipal Code (“TMC”) Subtitle 16A, Cable  
24 Systems, Open Video Systems, and Private Communications Systems, is hereby  
25 amended by amending Subsection 16A.01.070.B thereof, as set forth in the  
26 attached Exhibit “A.”



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Section 2. That TMC Subtitle 16B, Telecommunications Systems, is hereby amended by amending Subsection 16B.05.090.B thereof, as set forth in the attached Exhibit "B."

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:  
  
\_\_\_\_\_  
City Clerk

Approved as to form:  
  
\_\_\_\_\_  
Deputy City Attorney



**EXHIBIT "A"**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**Subtitle 16A  
Cable Systems, Open Video Systems, and Private Communications Systems**

\*\*\*

**16A.01.070 Protection of the City and residents.**

\*\*\*

B. Insurance. Unless otherwise approved by the City’s Risk Manager, no Franchise or other authorization to use the Public Rights-of-Way issued to a Cable Operator shall be valid or effective until and unless the City obtains assurance that such Operator (and those acting on its behalf) has adequate insurance. At a minimum, the following requirements must be satisfied:

1. A Cable Operator shall not commence construction or operation of the facility without obtaining all insurance required under this paragraph and approval of such insurance by the Risk Manager of the City, nor shall a Cable Operator allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the Cable Operator has facilities in the Public Rights-of-Way, and for a period thereafter as specified in the minimum coverages described below. If the Operator, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.

2. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured for both ongoing and completed operations, as provided below, shall be filed with the City’s Risk Manager. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and, as provided below, in the event of a lapse in coverage. For entities that have facilities in the Public Rights-of-Way as of the effective date of this subtitle, the certificate shall be filed within 60 days of the effective date of this subtitle, annually thereafter, and as provided below in the event of a lapse in coverage, unless a pre-existing Franchise provides for filing of certificates in a different manner.

These certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least 30 days’ prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the state of Washington (or issued as a surplus line by a Washington Surplus lines broker). Financial Ratings must be no less than “(A-)VII” in the latest edition of “Bests Key Rating Guide,” published by A.M. Best Guide.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Franchise, then, in that event, the Cable Operator shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the Franchise under which the Cable System operates.

3. A Cable System owner or Operator, and its contractors or subcontractors engaged in work on the Operator’s behalf in, on, under, or over Public Rights-of-Way, shall maintain the following



minimum insurance. The City shall be named as an additional insured for both ongoing and completed operations on the general liability and additional insured on the automotive policies.

1 Comprehensive general liability insurance to cover ~~liability~~ bodily injury, personal injury, and  
2 property damage. Exposures to be covered are: premises, operations, products/completed  
3 operations, and ~~ertain~~ contractuals liability. Coverage must be written on an occurrence basis,  
with the following limits of liability:

4 (a) Bodily Injury and Property Damage

5 (1) Each occurrence \$1,000,000.00

6 (2) Annual aggregate \$~~32~~,000,000.00

7 ~~(b) Property Damage~~

8 ~~(1) Each occurrence \$1,000,000.00~~

9 ~~(2) Annual aggregate \$3,000,000.00~~

10 ~~(b) Personal Injury and Advertising Injury~~

11 ~~(1) \$1,000,000 any one person or organization~~

12 ~~(2) Annual aggregate \$32,000,000.00~~

13 ~~(c) Completed operations and products liability shall be maintained for twothree~~ years after the  
14 termination of the Franchise (in the case of the Cable Operator) or completion of the work for  
15 the Cable Operator (in the case of a contractor or subcontractor).

16 ~~(d) Property damage liability insurance shall include coverage for the following hazards:~~  
17 X - explosion, C - collapse, U - underground.

18 ~~(e) The foregoing limits may be met through any combination of primary and umbrella and/or~~  
19 ~~excess policies.~~

20 4. Workers' compensation insurance shall be maintained during the life of ~~this contractany~~  
21 franchise to comply with statutory limits for all employees, and, in the case any work is sublet,  
22 each Cable Operator shall require the subcontractors similarly to provide workers'  
23 compensation insurance for all the latter's employees unless such employees are covered by the  
24 protection afforded by each Cable Operator. Each Cable Operator and its contractors and  
25 subcontractors shall maintain employer's liability insurance and commercial auto liability  
26 insurance for the duration of the Franchise and for three years after the termination of the  
Franchise (in the case of the Cable Operator) or completion of the work for the Cable Operator  
(in the case of a contractor or subcontractor) during the life of this policy employers liability  
insurance. The following minimum limits must be maintained:

(a) Workers' Compensation Statutory

(b) Employer's Liability \$51,000,000.00 per occurrence

(c) Comprehensive Auto Liability

~~(d) Bodily Injury and Property Damage~~

~~(1) Each ~~occurrence~~accident \$1,000,000.00~~

~~(2) Annual aggregate \$32,000,000.00~~



Property Damage

1 ~~(1) Each occurrence \$1,000,000.00~~

2 ~~(2) Annual aggregate \$3,000,000.00~~

3 Coverage shall include owned (if any), hired, and non-owned vehicles.

4 5. Excess or umbrella liability providing coverage in excess of the above required commercial  
5 general liability, commercial auto liability, and employer's liability with limits not less than  
6 \$5,000,000 each occurrence and \$5,000,000 aggregate.

7 56. Each Cable Operator shall hold the City, its agents, and employees, harmless on account of  
8 claims for damages to persons, property or premises arising out of its construction, operation or  
9 repair of its Cable System and name the City as an additional insured, for both ongoing and  
10 completed operations on the General Liability and additional insured on the automobile  
11 liability, as provided above.

12 67. In every Franchise agreement, the City shall reserve the right to require any other insurance  
13 coverage it deems necessary depending upon the exposures.

14 8. The insurance shall include a waiver of subrogation rights to the extent that any liability for  
15 costs, losses, and damages resulting from any personal injury, death, and/or property damage  
16 may be covered by the proceeds of such insurance policies, and include an endorsement that  
17 such policy is primary and noncontributing.

18 \* \* \*

19  
20  
21  
22  
23  
24  
25  
26



**EXHIBIT "B"**

**Subtitle 16B  
Telecommunications Systems**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

\*\*\*

**16B.05.090 Protection of the City and residents.**

\*\*\*

B. Insurance. Unless otherwise approved by the City’s Risk Manager, no Franchise, Special Street Use Permit, License, or other authorization to use the Public Rights-of-Way issued to a Telecommunications System Operator shall be valid or effective until and unless the City obtains assurance that such Operator (and those acting on its behalf) has adequate insurance. At a minimum, the following requirements must be satisfied:

1. A Telecommunications System Operator shall not commence construction of the facility without obtaining all insurance required under this paragraph and approval of such insurance by the Risk Manager of the City, nor shall a Telecommunications System Operator allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the Telecommunications System Operator has facilities in the Public Rights-of-Way, and for a period thereafter as specified in the minimum coverages described below. If the Operator, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.

2. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured [for both ongoing and completed operations](#), as provided below, shall be filed with the City’s Risk Manager. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage. For entities that have facilities in the Public Rights-of-Way as of the effective date of this Subtitle, annually thereafter, and as provided below in the event of a lapse in coverage, unless a pre-existing Franchise or License provides for filing of certificates in a different manner.

These certificates shall contain a provision that the insurers providing coverages afforded under these policies will ~~endeavor to~~ not cancel same until at least 30 days’ prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the state of Washington [\(or issued as a surplus line by a Washington Surplus lines broker\)](#). Financial Ratings must be no less than “(A-)VII” in the latest edition of “Bests Key Rating Guide,” published by A.M. Best Guide.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse prior to the expiration of the Franchise, Special Street Use Permit, or License, then, in that event, the Telecommunications System Operator shall furnish, promptly following renewal or replacement of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination of insurance during the balance of the period of the Franchise, Special Street Use Permit, or License under which the Telecommunications System operates.

3. A Telecommunications System owner or Operator, and its contractors or subcontractors engaged in work on the Operator’s behalf in, on, under, or over Public Rights-of-Way, shall maintain the



1 following minimum insurance. The City shall be named as an additional insured for both ongoing  
2 and completed operations -on the general liability and additional insured on the -automobile  
3 policies.

4 Commercial general liability insurance to cover ~~liability~~ bodily injury, personal injury and property  
5 damage. Exposures to be covered are: premises, operations, products/completed operations, and  
6 contractual liability. Coverage must be written on an occurrence basis, with the following limits of  
7 liability:

8 (a) Bodily Injury and Property Damage

9 (1) Each occurrence \$1,000,000.00

10 (2) Annual aggregate ~~\$32,000,000.00~~

11 (b) Property Damage

12 ~~(1) Each occurrence \$1,000,000.00~~

13 ~~(2) Annual aggregate \$3,000,000.00~~

14 (c) Personal Injury and Advertising Injury

15 (1) \$1,000,000 any one person or organization

16 (2) Annual aggregate ~~\$32,000,000.00~~

17 (c) Completed operations and products liability shall be maintained for ~~two~~ three years after the  
18 termination of the Franchise (in the case of the Telecommunications System Operator) or  
19 completion of the work for the Telecommunications System Operator (in the case of a contractor or  
20 subcontractor).

21 (d) Property damage liability insurance shall include coverage for the following hazards:

22 X - explosion, C - collapse, U-underground

23 ~~U-underground.~~

24 (e) The foregoing limits may be met through any combination of primary and umbrella and/or  
25 excess policies.

26 4. Workers' compensation insurance shall be maintained during the life of ~~this contract~~ any  
franchise to comply with statutory limits for all employees, and, in the case any work is sublet, each  
Telecommunications System Operator shall require the subcontractors similarly to provide workers'  
compensation insurance for all the latter's employees unless such employees are covered by the  
protection afforded by each Telecommunications System Operator. Each Telecommunications  
System Operator and its contractors and subcontractors shall maintain employer's liability  
insurance and commercial auto liability insurance for the duration of the Franchise and for three  
~~two~~ years after the termination of the Franchise (in the case of the Telecommunications System  
Operator) or completion of the work for the Telecommunications System Operator (in the case of a  
contractor or subcontractor). The following minimum limits must be maintained, which limits may  
be met through any combination of primary and umbrella and/or excess policies:

(a) Workers' Compensation Statutory

(b) Employer's Liability ~~\$1,000,000~~ 500,000.00 per occurrence

(c) Commercial Auto Liability



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

(d) Bodily Injury and Property Damage

- (1) Each ~~accident occurrence~~ \$1,000,000.00
- (2) Annual aggregate ~~\$2,000,000.00~~

Property Damage

- ~~(1) Each occurrence \$1,000,000.00~~
- ~~(2) Annual aggregate \$3,000,000.00~~

Coverage shall include owned (if any), hired, and non-owned vehicles.

5. Excess or umbrella liability providing coverage in excess of the above required commercial general liability, commercial auto liability, and employer's liability with limits not less than \$5,000,000 each occurrence and \$5,000,000 aggregate.

56. Each Telecommunications System Operator shall hold the City, its agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of its construction, operation or repair of its Telecommunications System and name the City as an additional insured for both ongoing and completed operations on the General Liability and additional insured on the automobile liability, as provided above.

67. In every Franchise agreement, Special Street Use Permit or License, the City shall reserve the right to require any other insurance coverage it deems necessary depending upon the exposures.

78. The insurance shall include a waiver of subrogation rights to the extent that any liability for costs, losses, and damages resulting from any personal injury, death, and/or property damage may be covered by the proceeds of such insurance policies, and include an endorsement that such policy is primary and noncontributing.

\* \* \*