

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1785
Series of 2012

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A BILL FOR AN ORDINANCE AMENDING SECTION 16-2-20 OF THE CITY OF NORTHGLENN MUNICIPAL CODE REGARDING THE CITY'S USE OF FACILITIES IN CITY RIGHTS-OF-WAY

WHEREAS, the City finds that the use of streets, alleys and other public places by utilities and providers of similar services within the City confers a public benefit on private sector, investor-owned entities;

WHEREAS, the City further finds that some of these entities hold franchises from the City and pay certain compensation to the City, which in turn is often directly passed through by the private entity to its customers;

WHEREAS, the City also finds that because the use of public property provides a direct and continuing benefit to private entities, it is both reasonable and appropriate, and an exercise of the City's general police power, that those who utilize public property should contribute to the City's ability to accomplish its public interest goals through the use of facilities located on public property in a manner that is not inconsistent with the facilities' primary use; and

WHEREAS, the City further finds that it is the intent of this Ordinance to create a process by which, as additional consideration for the use of the City's streets, alleys and other public places as may be granted by the City, utilities and providers of similar services may also be required to make their facilities in the public property available for City use, to the extent that such use does not create a material negative impact on a private entity's facilities or operations, and such use can be accomplished in a manner that is protective of public health and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Section 16-2-20 of the City of Northglenn Municipal Code is amended to read as follows:

Section 16-2-20. CITY'S Use of Trenches, ~~and~~ Bores AND OTHER FACILITIES LOCATED IN THE RIGHT-OF-WAY by the City.

(a) Should the City desire to place its own facilities in trenches or bores opened by a permittee, the permittee shall cooperate with the City in any construction by the permittee that involves trenching or boring provided that the City has first notified the permittee in writing that it is interested in sharing the trenches or bores in the area where the permittee's construction is occurring. The permittee shall allow the City to place its facilities in the permittee's trenches and bores, provided that: the City incurs any incremental increase in cost of the trenching and boring;

the City's installation does not unreasonably delay the permittee's work; and the City's facilities are used solely for noncommercial, City purposes. The City shall be responsible for maintaining its respective facilities buried in the permittee's trenches and bores. If requested by the permittee, the City shall have separate access structures, and shall not use the permittee's access structures.

(b) EVERY UTILITY AND EVERY PROVIDER OF SIMILAR SERVICE WITHIN THE CITY, REGARDLESS OF WHETHER IT HOLDS A FRANCHISE FROM THE CITY, MAY BE REQUIRED BY THE CITY TO PERMIT JOINT USE OF ITS FACILITIES LOCATED IN THE STREETS, ALLEYS, OR OTHER PUBLIC PLACES IN THE CITY, AS SUCH MAY BE REASONABLY PRACTICABLE. EXAMPLES OF SUCH JOINT USE MAY INCLUDE, BUT ARE NOT LIMITED TO, ATTACHMENT OF FLAGS, BANNERS, OR SIMILAR SIGNS ANNOUNCING PUBLIC EVENTS, HOLIDAY LIGHTS AND OTHER DECORATIVE ATTACHMENTS, PEDESTRIAN OR OTHER TRAFFIC RELATED SAFETY SIGNS, FLASHING CROSSWALK LIGHTS, FLOWER POTS AND BASKETS, AND OTHER SIMILAR ATTACHMENTS. SUCH USE OF SAID FACILITIES BY THE CITY SHALL NOT CREATE A MATERIAL NEGATIVE IMPACT ON A PRIVATE ENTITY'S FACILITIES OR OPERATIONS, AND SUCH USE MAY ONLY BE CONSIDERED WHEN IT CAN BE ACCOMPLISHED, AT THE CITY'S DISCRETION, IN A MANNER THAT IS PROTECTIVE OF PUBLIC HEALTH AND SAFETY. NOTHING CONTAINED HEREIN SHALL LIMIT THE CITY'S ABILITY TO ENTER INTO ANY OTHER TYPE OF JOINT USE AGREEMENT WITH UTILITY AND OTHER SERVICE PROVIDERS OWNING FACILITIES LOCATED IN CITY STREETS, ALLEYS, OR OTHER PUBLIC PLACES.

(c) THE CITY MAY ADOPT STANDARDS FOR USE BY THE CITY OF A PRIVATE ENTITY'S FACILITIES IN CITY STREETS, ALLEYS AND OTHER PUBLIC PLACES AND SHALL APPLY SUCH STANDARDS TO ALL SIMILARLY SITUATED FACILITIES; PROVIDED, HOWEVER, THAT SUCH STANDARDS MAY BE MODIFIED WHERE UNUSUAL CONDITIONS INDICATE SUCH A MODIFICATION WILL ALLOW FOR AN ADEQUATE AND SAFE UTILIZATION OF SUCH FACILITIES.

(d) IF THE UTILITY OR OTHER SERVICE PROVIDER THAT IS THE OWNER OF THE FACILITIES IN THE STREETS, ALLEYS OR OTHER PUBLIC PLACES OBJECTS TO ANY PROPOSED CITY USE OF SUCH FACILITIES, THE CITY SHALL BE PERMITTED TO UNDERTAKE A STUDY TO ADDRESS THE CONCERNS RAISED BY THE FACILITIES' OWNER.

(1) THE OWNER OF THE FACILITIES SHALL COOPERATE IN PROVIDING THE CITY ANY INFORMATION REASONABLY NEEDED TO STUDY AND RESPOND TO THE FACILITIES' OWNER'S OBJECTIONS. FOR PURPOSES OF THIS SECTION 16-2-20, AN OWNER SHALL BE DEEMED TO HAVE FAILED TO COOPERATE IF IT DOES NOT PROVIDE THE CITY WITH ANY INFORMATION REASONABLY REQUESTED WITHIN SEVEN (7) CALENDAR DAYS OF A WRITTEN REQUEST.

(2) IF THE CITY PROVIDES INFORMATION TO THE UTILITY OR OTHER SERVICE PROVIDER WHICH REASONABLY DEMONSTRATES THAT ITS PROPOSED USE OF THE FACILITY WILL NOT CAUSE A MATERIAL

NEGATIVE IMPACT ON THE UTILITY OR OTHER SERVICE PROVIDER'S FACILITIES OR OPERATIONS AND WILL NOT NEGATIVELY IMPACT PUBLIC HEALTH AND SAFETY, THE FACILITY OWNER SHALL ALLOW THE CITY'S PROPOSED USE, SUBJECT TO ANY CONDITIONS REASONABLY NECESSARY TO INSURE THAT THE USE WILL NOT CAUSE THE NEGATIVE IMPACTS DESCRIBED HEREIN. FAILURE TO MAKE SUCH FACILITIES AVAILABLE FOR CITY USE AS PROVIDED HEREIN SHALL BE A VIOLATION OF THIS CHAPTER AND SUBJECT TO THE PENALTIES SET FORTH IN SECTION 16-2-29 OF THIS CHAPTER.

(e) IT SHALL BE UNLAWFUL FOR ANY PERSON, INCLUDING ANY REPRESENTATIVE OR CONTRACTOR OF A UTILITY OR OTHER SERVICE PROVIDER, TO REMOVE FLAGS, BANNERS, OR SIMILAR SIGNS ANNOUNCING PUBLIC EVENTS, HOLIDAY LIGHTS AND OTHER DECORATIVE ATTACHMENTS, PEDESTRIAN OR OTHER TRAFFIC RELATED SAFETY SIGNS, FLASHING CROSSWALK LIGHTS, FLOWER POTS AND BASKETS, AND OTHER SIMILAR ATTACHMENTS FROM FACILITIES LOCATED IN THE STREETS, ALLEYS, OR OTHER PUBLIC PLACES IN THE CITY WITHOUT RECEIVING ADVANCE WRITTEN PERMISSION FROM THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE.

(f) IN ADDITION TO ADDRESSING VIOLATIONS OF THIS SECTION UNDER SECTION 16-2-29 OF THE NORTHGLENN MUNICIPAL CODE, IF A FACILITY OWNER FAILS TO MAKE ITS FACILITIES AVAILABLE AFTER THE CITY HAS PROVIDED THE INFORMATION DESCRIBED IN THIS SECTION 16-2-20, THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE IS AUTHORIZED TO WITHHOLD ISSUANCE OF A BUILDING PERMIT OR ANY OTHER REQUIRED PERMIT SOUGHT BY THE FACILITY'S OWNER UNTIL ARRANGEMENTS HAVE BEEN MADE TO THE CITY'S SATISFACTION THAT THE REQUESTED CITY USE OF THE FACILITIES IN THE STREETS, ALLEYS, OR OTHER PUBLIC PLACES IS BEING PROVIDED.

INTRODUCED, READ AND ORDERED POSTED this 10th day of December, 2012.

/s/
JOYCE DOWNING
Mayor

ATTEST:

/s/
JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____,
2012.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

/s/
COREY Y. HOFFMANN
City Attorney