

tenance of the bench, the city manager shall hear their protests, upon reasonable notice to the person maintaining the bench. If, after hearing, the city manager finds that the public would be, or has been, adversely affected by reason of maintenance of the bench, the city manager shall deny the application or if the application has been approved, the permit to maintain the bench shall be revoked and the permittee directed to remove the same within thirty (30) days. If the permittee does not remove the bench within such time, the city manager may cause the same to be removed as provided in section 19-68.

- (3) If the city manager determines, after hearing, that the space occupied by the bench is needed for other public purposes and that removal of the bench from the location if in the best interests of the city, the permit shall be revoked.
- (4) If the city manager determines, after hearing, that the permittee has violated any of the provisions of this article, the permit shall be suspended or revoked, if the application has been approved, and denied if the application is pending, provided that such action is determined by the city manager to be in the best interests of the public health, safety and welfare.

(Code 1969, §§ 16½-56, 16½-64; Ord. No. 785, § 3, 12-8-86)

Sec. 19-92. Transfer.

No permit issued pursuant to the provisions of this division shall be assigned by the permittee without the consent of the city manager.

(Code 1969, § 16½-67; Ord. No. 785, § 4, 12-8-86)

Sec. 19-93. Expiration.

Any permit authorized by this division shall expire on December 31 following the date of issuance.

(Code 1969, § 16½-65; Ord. No. 625, § 9, 3-8-82)

Sec. 19-94. Renewal.

An application for renewal of any permit granted pursuant to this division shall be submitted to the city manager or his designated representative at least forty-five (45) days prior to expiration of the permit. The application shall then be reviewed as provided in section 19-89. Each permit issued hereunder must be renewed annually as provided herein to avoid expiration.

(Code 1969, § 16½-65; Ord. No. 625, § 9, 3-8-82; Ord. No. 785, § 5, 12-8-86)

EXHIBIT F

CHAPTER 1
STREET EXCAVATIONS

SECTION:

- 8-1-1: Definitions
- 8-1-2: Excavation Permits
 - 8-1-2-1: Permits Required
 - 8-1-2-2: Application for Permit
 - 8-1-2-3: Bond, Liability Insurance Required
 - 8-1-2-4: Permit Fees
 - 8-1-2-5: Exemption From Fees
 - 8-1-2-6: Inspections
- 8-1-3: Protective Measures and Procedures
 - 8-1-3-1: Protective Measures and Routing of Traffic
 - 8-1-3-2: Relocation and Protection of Utilities
 - 8-1-3-3: Protection of Adjoining Property
 - 8-1-3-4: Care of Excavated Material and Clean Up
 - 8-1-3-5: Protection of Watercourses and Vital Structures
- 8-1-4: Excavation Requirements
 - 8-1-4-1: Required Procedures and Restrictions
 - 8-1-4-2: Depth of Structures
 - 8-1-4-3: Backfilling
 - 8-1-4-4: Restoration of Surface
 - 8-1-4-5: Prompt Completion of Work
 - 8-1-4-6: Preservation of Monuments
- 8-1-5: Hours, Annoyance to Public Restricted
- 8-1-6: Unlawful to Interfere with Excavation
- 8-1-7: Application to Utilities
- 8-1-8: Penalty

8-1-1: DEFINITIONS:

ADMINISTRATIVE AUTHORITY: The City Manager or his designated representative.

- EXCAVATION:** - Any digging, cutting or opening in the surface of a public place, made in any manner whatsoever, except an opening into a lawful substructure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.
- FACILITY:** Pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire tower, pole, poleline, anchor, cable, junction box, transformer or any other material.
- PERSON:** Any person, firm, partnership, association, corporation, company or organization of any kind, other than the City.
- PUBLIC PLACE:** Any public street, way, place, alley, sidewalk, park, square, plaza or any other similar public property owned or controlled by the City and dedicated to public use regardless of whether improved or unimproved.
- SUBSTRUCTURE:** Any pipe, conduit, duct, tunnel, manhole, vault, buried cable or wire, or any other similar structure located below the surface of any public place.
- UTILITY:** A person or any governmental unit engaged in providing a particular service to the general public.

8-1-2: EXCAVATION PERMITS:

8-1-2-1: PERMITS REQUIRED: No person shall make any excavation or fill any excavation in any public place without first obtaining a permit so to do from the Administrative Authority except as otherwise provided in this Chapter. No permit to make an excavation or fill an excavation in a public place shall be issued except as provided in this Chapter. Such permit shall be

kept at the excavation site and shall be exhibited to any officer or employee of the City on request. The permit shall be obtained seventy two (72) hours in advance for arterial streets and forty eight (48) hours in advance for other public places.

Nothing herein shall be construed to prevent the making of such emergency excavations as may be necessary for the preservation of life or property, provided that the person making such excavation shall apply to the Administrative Authority for such a permit at the earliest possible time. (Ord. 14, Series of 1968; amd. 1980 Code)

8-1-2-2: APPLICATION FOR PERMIT: No excavation permit shall be issued unless an application (on form provided by the Administrative Authority) for the issuance of an excavation permit is submitted to the said Administrative Authority. The application shall state:

- A. The name, and address, residential and business telephone numbers, and principal place of business of the applicant.
- B. The location and dimensions of the installation, or removal, and the approximate size of the excavation to be made.
- C. The purpose of the facility, and
- D. The approximate time which will be required to complete such work, including backfilling and paving, if the public place is paved, and including removing all obstructions, material and debris.

The application, when approved and signed by the Administrative Authority, shall constitute a permit. No permit shall be issued for more than one excavation project, and it shall be the duty of the Administrative Authority to keep a record of all permits issued for a period of one year in addition to the current year.

8-1-2-3: BOND, LIABILITY INSURANCE REQUIRED:

- A. **Bond as Cash Deposit:** Before an excavation permit, as herein provided, is issued, the applicant shall file with the City Clerk a bond in an approved form or a cash deposit as provided in subsection B hereof. Said bond shall insure that the permittee will properly backfill and pave,

- A) if applicable, and maintain any excavation made by him for a period of one year. The cash deposit is for the same purpose. The surety bond or cash deposit shall be forfeited to the extent of the City's damages in the event the backfill, paving or maintenance is not properly performed.
- B. Liability Insurance: The applicant shall also file with the City Clerk a certificate of insurance in the amount of twenty five thousand dollars (\$25,000.00) and fifty thousand dollars (\$50,000.00) for property damage and one hundred thousand dollars (\$100,000.00) and three hundred thousand dollars (\$300,000.00) for public liability. Said certificate of insurance shall hold the City and its employees harmless from any damages or claims whatsoever, arising out of the permittee's work at any public place within the City.
- C. Indemnify City: By receiving a permit to excavate, permittee agrees:
1. To indemnify and save the City harmless from all damages for which the City may become liable as a result of any excavation activity or non-activity of permittee, including attorney's fees and costs expended by the City,
 2. Promptly to restore any street or highway to its former state of usefulness as nearly as may be, and
 3. To properly backfill and pave (if applicable) and maintain any excavation made by him or it.

8-1-2-4: **PERMIT FEES:** Before any permit for excavation may be issued, the permittee shall pay to the City an excavation fee of twenty dollars (\$20.00) per cut up to twenty feet (20') in length, plus ten dollars (\$10.00) for each additional twenty feet (20') or fraction thereof, also, the permittee or his or its contractor shall provide a license and permit bond for each individual contract running to the City in an amount of two dollars (\$2.00) for each linear foot of cut or a total of one thousand dollars (\$1,000.00), whichever is greater. The bond shall be conditioned upon the requirement that the street cut will be thoroughly compacted to ninety percent (90%) or better of the original ground compaction and that asphalt or concrete resurfacing will be as good or better than any present asphalt or concrete paving at that location. The bond must be either a cash deposit or be written with a corporate surety company or association authorized by the law to execute such bond, to be approved by the City Manager or his designee.

8-1-2-5: EXEMPTION FROM FEES: The Federal, State and County governments, and any subdivision or agency thereof, and any water and sanitation district, public utility (exclusive of cable TV) or municipal corporation, are relieved of the obligations of paying any excavation fee, but in all other respects shall remain liable to the City as any other permittee.

8-1-2-6: INSPECTIONS: The Administrative Authority shall make such inspections as are reasonably necessary to the enforcement of this Chapter. (Ord. 2, Series of 1971; amd. 1980 Code)

8-1-3: PROTECTIVE MEASURES AND PROCEDURES:

8-1-3-1: PROTECTIVE MEASURES AND ROUTING OF TRAFFIC:

- A. Each permittee shall protect such excavation from dusk until dawn by red, orange or yellow lights or flares, placed not more than fifty feet (50') apart, but there shall be at least three (3) such lights or flares for each excavation. Every permittee shall place and maintain such other barriers, warning devices and routing signs necessary for safety.
- B. The permittee shall cause as little inconvenience as possible to the general public by proper routing of traffic through or around the construction area. The Administrative Authority may permit the closing of streets and alleys to all traffic for a period of time prescribed by him, if in his opinion it is necessary.
- C. When determined by the Chief of Police or his designated representatives that conditions exist which require the manual direction and/or control of vehicular and/or pedestrian traffic, it shall be the responsibility of the contractor to provide such off-duty police officer(s) at permittee's expense as may be necessary to effect such control. The number of officers and the duration of their duty shall be determined by the Chief of Police or his designated representatives.
- D. Prior to making any street excavation, the excavator shall mark the curb with paint adjacent to the street excavation, indicating the reason for the excavation. Water cuts shall be marked with a "W", electric cuts with an "E", sewer cuts with an "S", gas cuts with a "G" and telephone cuts with a "T".

8-1-3-2: RELOCATION AND PROTECTION OF UTILITIES: The permittee shall not interfere with any existing facility without presentation of written consent from the owner of the facility to the Administrative Authority. If it becomes necessary to relocate an existing facility, this shall be done by its owner or under the owner's supervision. No facility owned by the City shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately-owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across said work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of said pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this Section that permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The City shall not be made a party to any action because of this Section, and permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage. Upon request by the Administrative Authority, every person shall furnish information regarding the location of any substructure or facility located at a public place.

8-1-3-3: PROTECTION OF ADJOINING PROPERTY: The permittee shall at all times and at his or its own expense, preserve and protect from injury, any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protecting measures, the permittee shall obtain written permission from the owner of such private property for such purpose. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. Whenever

it may be necessary for the permittee to trench through any lawn area, said area shall be re-seeded or the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required in this Chapter. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began.

8-1-3-4: CARE OF EXCAVATED MATERIAL AND CLEAN UP:

- A. All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the Administrative Authority shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.
- B. All material excavated shall be laid compactly along the side of the trench and kept trimmed so as to cause as little inconvenience as reasonably possible to vehicular and pedestrian traffic, or as specified by the Administrative Authority. Whenever necessary, in order to expedite the flow of traffic or to abate the dirt or dust nuisance, toe boards or bins may be required by the Administrative Authority to prevent the spreading of dirt into traffic lanes.
- C. To avoid the undue traffic congestion or other safety hazards or where otherwise deemed necessary in the interest of the public health, safety or general welfare, the Administrative Authority shall have authority to limit the size (length or otherwise), of excavations.

8-1-3-5: PROTECTION OF WATERCOURSES AND VITAL STRUCTURES:

- A. The permittee shall maintain all gutters free and unobstructed for the full depth of the adjacent curb and for at least one foot (1') in width from

- A) the face of such curb at the gutterline. Whenever a gutter crosses an intersecting street, an adequate waterway shall be provided and maintained.
- B. The permittee shall make provisions to take care of all surplus water, muck, silt, slickings or other run-off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.
- C. The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve-housing structures and all other vital equipment as designated by the Administrative Authority.

8-1-4: EXCAVATION REQUIREMENTS:

8-1-4-1: REQUIRED PROCEDURES AND RESTRICTIONS:

- A. Heavy duty pavement breakers may be prohibited by the Administrative Authority when the use endangers existing substructures or other property.
- B. Saw cutting of Portland cement concrete may be required by the Administrative Authority when the nature of the work or the condition of the street warrants. When required, the depth of the cut shall be not less than one inch (1"); however, depths greater than one inch (1") may be required by the Administrative Authority when circumstances warrant. Saw cutting may be required by the Administrative Authority outside of the limits of the excavation over cave-outs, overbreaks and small floating sections.
- C. Approved cutting of bituminous pavement surface ahead of excavations may be required by Administrative Authority to confine pavement damage to the limits of the trench.
- D. Sections of sidewalks, curb and gutter shall be removed to the nearest score line or joint.
- E. Unstable pavement shall be removed over cave-outs and overbreaks and the subgrade shall be treated as the main trench.

- F. Pavement edges shall be trimmed to a vertical face and neatly aligned with the centerline of the trench.
- G. Cutouts outside of the trench lines must be normal or parallel to the trench line.
- H. Boring or other methods to prevent cutting of new pavement may be required by the Administrative Authority.
- I. Permittee shall not be required to repair pavement damage existing prior to excavation unless his cut results in small floating sections that may be unstable, in which case permittee shall remove and pave the area.

8-1-4-2: DEPTH OF STRUCTURES: No person shall, without written permission of the Administrative Authority, install any substructure, except manholes, vaults, valve casings, culverts and catch basins at a vertical distance less than:

- A. **Streets:** Twenty four inches (24") below the established flow line of the nearest gutter. If said flow line is not established, then the depth shall be at a minimum of twenty four inches (24") below the surface of the nearest outermost edge of the traveled portion of the street.
- B. **Other Public Places:** The minimum depth of any substructure in any other public place shall be twelve inches (12") below the surface; provided, however, that the Administrative Authority may permit a lesser depth or require a greater depth in special cases where the public health or safety warrants such variation.

8-1-4-3: BACKFILLING: Fine material, free from lumps, stone, frozen and deleterious material, selected from the spoil shall be thoroughly compacted around and under the substructure to the upper level of such substructure. Above the upper level of the substructure, backfill material shall be placed to the subgrade of the pavement in lifts consistent with the type of soil involved. Broken pavement, large stones, roots and other debris shall not be used in the backfill. The number and size of each lift shall be dependent upon the type of soil involved. Such backfill shall be done in a manner that will permit the restoration of the trench to a density condition not less than ninety five percent (95%) of standard proctor. The Administrative Authority may require soil tests at his discretion to be furnished by a recognized soil testing

laboratory or registered professional engineer specializing in soil mechanics. In order for the resurfacing to be permitted, such tests must show that backfill material meets the minimum requirements as prescribed by the Administrative Authority. All expense of such test shall be borne by the permittee. In any event, the applicant shall be responsible for any trench failure for a one year period.

8-1-4.4: RESTORATION OF SURFACE: Restoration of the surface shall be completed by permittee as soon as possible and in no event more than thirty (30) days after excavation was initiated. The Administrative Authority may extend the period for good cause shown. Restoration of the surface shall be accomplished by permittee at the expense of permittee. If the public place is paved, the top surface of the compacted backfill must be covered with four inches (4") of bituminous temporary resurfacing material before the trench is opened to traffic. Such temporary paving material may be cold mix. All temporary paving material shall conform closely enough to the level of the adjoining paving surface and shall be compacted so that it is hard enough and smooth enough to be safe for pedestrian travel over it as well as for vehicular traffic to pass safely over it. If it is not possible to maintain the surface of the temporary paving in a safe condition for pedestrian travel or vehicular traffic, the permittee shall maintain barriers and lights where required herein. The permittee shall accomplish permanent paving within three (3) months after the excavation is completed. In the event that permanent paving material is not available within this three (3) month period, then the permanent paving shall be completed within one month after such material becomes available. After permanent paving is completed, when applicable, or after the surface has been otherwise restored, the permittee shall notify the Administrative Authority of completion of resurfacing by returning one copy of the permit form.

In case of failure or settlement of any repaired or new excavation made by a permittee which in the opinion of the Administrative Authority endangers the safety of the pedestrian or motoring public, the permittee shall cause emergency repairs or barricading to be made within five (5) hours after notification. Should the permittee fail to cause the emergency repairs or barricading to be accomplished within the specified time, or in the event immediate action is necessary to protect the public health or safety, the City may cause the emergency repairs or barricading to be accomplished and may assess as a charge against the surety bond, cash deposit, or against the permittee if the funds held by City are insufficient, the cost thereof with a minimum charge per trip to be twenty five dollars (\$25.00).

8-1-4-5: PROMPT COMPLETION OF WORK: After excavation is commenced, permittee shall proceed with diligence and expedite all excavation work covered by the excavation permit and shall promptly complete such work and restore the public place to its original condition, or as near as may be, so as not to obstruct the public place or travel more than is reasonably necessary.

When traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the Administrative Authority may include the stipulation, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee twenty four (24) hours a day to the end that such excavation work be completed as soon as possible.

8-1-4-6: PRESERVATION OF MONUMENTS: Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point, or a permanent survey bench mark within the City, shall not be removed or disturbed without first obtaining permission in writing from the Administrative Authority so to do. Permission to remove or disturb such monuments, reference points or bench marks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper replacement of this monument by the Administrative Authority.

8-1-5: HOURS, ANNOYANCE TO PUBLIC RESTRICTED: Each permittee shall conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris, and between the hours of eight o'clock (8:00) P.M. and seven o'clock (7:00) A.M. shall not use, except with the express written permission of the Administrative Authority or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.¹

8-1-6: UNLAWFUL TO INTERFERE WITH EXCAVATION: It shall be unlawful for any person to hinder, obstruct or interfere with

1. See also Section 8-1-4-5 of this Chapter.

any excavation operation conducted pursuant to this Chapter or to remove, displace, damage or interfere with any barricade, warning light or other safety appliance placed around or about any excavation work.

8-1-7: **APPLICATION TO UTILITIES:** This Chapter shall apply to utilities which now have or may hereafter have either a franchise or similar contract with the City providing for the right to excavate to the extent that this Chapter does not contradict or conflict with rights and duties set forth in said franchise or contract.

8-1-8: **PENALTY:** Any person convicted of violating any provision of this Chapter shall be punished as set forth in Section 1-4-1 of this Code. (Ord. 14, Series of 1968; amd. 1980 Code)

ORDINANCE NO. 8

SERIES 1996

May 21, 1996: Introduced as Council Bill No. 8, Series of 1996, by Deborah Julander, seconded by Jeff Welborn, and considered by title only on first reading. Passed unanimously.

June 4, 1996: Considered in full text on final reading. Passed unanimously. Designated as Ordinance No. 8, Series 1996.

AN ORDINANCE AMENDING TITLE 3-2 OF THE CITY CODE RELATING TO AN OCCUPATION TAX ON LOCAL EXCHANGE TELEPHONE SUPPLIERS.

WHEREAS, the City has assessed a Mountain Bell occupation and business tax since 1972, and

WHEREAS, certain Federal and State regulations have changed recently which require that terminology and references in this tax be modified in order to ensure its proper and continued assessment, and

WHEREAS, in light of these new regulations, the City Council desires to make modifications to Title 3, Chapter 2, of the Cherry Hills Village City Code.

NOW, THEREFORE, the Council of the City of Cherry Hills Village, Colorado ordains:

Section 1 That Title 3, Chapter 2, of the Cherry Hills Village City Code is hereby deleted in its entirety and replaced with the following title and chapter:

OCCUPATION TAX ON LOCAL EXCHANGE TELEPHONE SERVICE SUPPLIERS

3-2-1 Levy of Tax

There is hereby levied upon each person engaged in the business of local exchange telephone service to the inhabitants of the City a quarterly occupation tax in the amount of one dollar and eighty cents (\$1.80) per account.

3-2-2 Time of Payment of Tax

The tax levied by this article shall accrue as of the first day of each calendar quarter (January 1, April 1, July 1, and October 1). Payment of such tax shall be made to the Finance Director no later than February 15th, May 15th, August 15th, and November 15th of each year. Such tax shall be computed by multiplying the total number of telephone accounts of the person supplying local exchange telephone service, which are in existence within the corporate limits of the City, on the first day of each quarter by the amount of one dollar and eighty cents (\$1.80).

3-2-3 Filing Statement

Each person required to pay the tax levied by this article shall file with the Finance Director, in such form as the Director may require, a quarterly statement showing the total number of telephone accounts to which local exchange telephone service was supplied within the corporate limits of the City during such quarter. In addition to the information provided in the quarterly statement, the Finance Director may request any other information needed to determine the amount of the quarterly tax levy. The quarterly statement and any other information requested by the Finance Director shall be submitted no later than forty-five (45) days after January 1st, April 1st, July 1st, and October 1st of each year in which the tax is levied.

MNB050

3-2-4 Failure to Pay Tax

If any person required to pay the tax levied by this article shall fail to pay such tax as herein provided, the full amount thereof shall become immediately due from and payable by such person, together with any interest thereon at the rate of one (1) percent per month, or fraction thereof, from the date when due and payable and a penalty equal to ten (10) percent of the amount of taxes due and payable. The total amount of such tax, penalty, and interest is further declared to be a debt due and owing from such person to the City. The City Attorney, upon direction of the City Council, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect such debt in the name of the City.

3-2-5 Inspection of Records

The Finance Director shall have the right at all reasonable hours and times to examine the books and records of any person required to pay the tax levied by this ordinance and to make copies of the contents thereof.

3-2-6 Tax Applicable to Local Functions Only

The tax levied by this ordinance is upon the occupation of supplying local exchange telephone service within the City and, as such, is not a tax upon any functions of the service supplier which relate to interstate commerce. It is expressly understood that none of the provisions of this article shall be construed as the grant of franchise by the City to any person supplying local exchange service within its corporate limits.

3-2-7 Tax in Lieu of Other Business and Occupation Taxes

The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the City on any person engaged in the business of local exchange telephone service subject to the provisions of this chapter, and in addition shall be in lieu of any free service furnished the City by any said person.

3-2-8 Unlawful Acts

It shall be unlawful for any officer, agent, or manager of a local exchange telephone service supplier to fail, neglect, or refuse to file the quarterly statement of accounts or provide any other information requested by the Finance Director as provided in Section 3-2-3.

3-2-9 Certain Offenses and Liabilities to Continue

All offenses committed and all liabilities incurred prior to the effective date hereof shall be treated as though all prior applicable ordinances and agreements were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities. All taxes, the liability for which has been accrued under the terms of a gross receipts agreement between Mountain Bell and the City, dated June 9, 1972, on or before the effective date hereof, or under the terms of the Mountain Bell (US West) Occupation and Business Tax, shall be and remain unconditionally due and payable, and shall constitute a debt to the City, payable in conformity with the terms and provisions of said agreement prior to the effective date hereof; and all of said terms and provisions of said agreement shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes due and payable thereunder, notwithstanding the provisions of the chapter.

Section 2

Should any section, clause, sentence or part of this ordinance be adjudged by any court to be unconstitutional or invalid, the same shall not affect, impair or invalidate the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 3 The City Council declares that this ordinance is necessary for the immediate preservation of the public peace, health, and safety.

Adopted as Ordinance No. 8, Series of 1996 by the City Council of the City of Cherry Hills Village, Colorado, and signed by its Mayor and Presiding Officer this 4th day of June, 1996.

Joan R. Duncan
Joan R. Duncan
Mayor

ATTEST:

Pat Fremon
Pat Fremon
City Clerk

MNB050

Ordinance No. 6

Series of 1979

(August 7, 1979. Introduced as Council Bill No. 6, Series of 1979 by Theodore B. Washburne, Seconded by Burton C. Dunn. Considered in full text on first reading. Passed unanimously. August 17, 1979: Considered in full text on second reading. Passed unanimously and designated as Ordinance No. 6, Series of 1979.)

AN ORDINANCE CONCERNING REVENUE AND IMPOSING A BUSINESS AND OCCUPATION TAX ON TELEPHONE UTILITY COMPANIES OPERATING WITHIN THE CITY OF CHERRY HILLS VILLAGE, COLORADO, PROVIDING FOR THE COLLECTION OF SAID TAXES AND FOR PENALTIES WITH RESPECT THERETO.

WHEREAS, the operations of telephone utility companies involve substantial use of the public streets and rights-of-way, frequent excavations in the public streets and rights-of-way, and the regular installation, maintenance and repair of many poles, lines and cables in, under, and above the public streets and,

WHEREAS, the operations of telephone utility companies place a substantial burden on the City in its efforts to provide for the public safety, and efficiently maintain and administer the public streets and rights-of-way; and,

WHEREAS, considering the nature of telephone utility companies and the burdens placed by such telephone utility companies on the City, the classification of such utilities, separately from other businesses and occupations is reasonable and nondiscriminatory; and,

WHEREAS, the City Council of the City of Cherry Hills Village is authorized to impose taxes on the privilege of engaging in occupations or businesses solely for the purpose of raising revenue.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. Levy of tax. There is hereby levied on and against each telephone utility company operating within the City of Cherry Hills Village, (hereinafter called the "City") a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the City of Cherry Hills Village and of supplying local exchange telephone service to the inhabitants of the City. The amount of tax levied hereby shall be \$1.80 for each calendar quarter per telephone account for which local exchange telephone service is provided within the corporate limits of the City of Cherry Hills Village.

Section 2. Time payment of tax. The tax levied by this ordinance shall begin to accrue on the first day of January, 1980, and shall be due and payable each month, each payment to be paid on the last business day of each calendar month commencing with the month of January, 1980.

Section 3. Filing statement. Within thirty (30) days after the date on which the tax begins to accrue as provided in Section 2, each telephone utility company subject to this ordinance shall file with the City Clerk, in such form as the Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the City on said date. Additional such statements shall be filed periodically every three month period thereafter.

Section 4. Failure to pay. If any telephone utility company subject to the provisions of this ordinance shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten (10) percent of the amount of

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taxes due shall be and hereby is declared to be a debt due and owing from such company to the City. The City Attorney upon direction of the City Council shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt.

Section 5. Penalty Clause. If any officer, agent or manager of the telephone utility company which is subject to the provisions of this ordinance shall fail, neglect, refuse to make or file the annual statement of accounts provided in Section 3, the said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided, that each day after said statement shall become delinquent during which the said officer, agent, manager or person shall so fail, neglect, or refuse to make and file such statement shall be considered a separate and distinct offense.

Section 6. Inspection of records. The City, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this ordinance and to make copies of the entries or contents thereof.

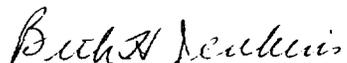
Section 7. Local purpose. The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this ordinance be construed to mean that any telephone utility company is issued a franchise by the City.

Section 8. Tax in lieu of other business and occupation taxes, etc. The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the City on any telephone utility company subject to the provisions of this ordinance and in addition shall be in lieu of any free service furnished the City by any said telephone utility.

Section 9. Certain offenses and liabilities to continue. All offenses committed and all liabilities incurred prior to the effective date of this ordinance shall be treated as though all prior applicable ordinances and agreements were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities. All taxes, the liability for which has been accrued under the terms of a gross receipts agreement between Mountain Bell and the City dated June 9, 1972 on or before the effective date of this ordinance, shall be and remain unconditionally due and payable, and shall constitute a debt to the City, payable in conformity with the terms and provisions of said agreement prior to the adoption of this ordinance; and all of said terms and provisions of said agreement shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes due and payable thereunder, notwithstanding the provisions of this ordinance.

Section 10. Effective date. This ordinance shall take effect on January 1, 1980 at 12:00 a.m.

Adopted as Ordinance No. 6, Series of 1979,
by the City Council of the City of Cherry
Hills Village, Colorado, and signed, approved
and ordered published by its Mayor and Pre-
siding Officer this 21st day of August, 1979.


Beth H. Jenkins
Mayor

ATTEST:

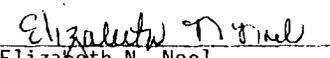

Elizabeth N. Noel
City Clerk

EXHIBIT G

CHAPTER 4

FIBER OPTIC CABLE REGULATIONS

SECTION:

- 12-4-1: Authority to Issue Licenses
- 12-4-2: Licenses Issued, Conditions
- 12-4-3: Annual License and Term of License
- 12-4-4: Standard Adopted

12-4-1: **AUTHORITY TO ISSUE LICENSES:** The City Director of Public Works and/or Utilities is hereby authorized to issue licenses and permits for the installation of fiber optic cables within the City. All such installations shall be governed by the provisions of this Chapter and shall require a license or permit pursuant hereto. (Ord. 15 Series 1987)

12-4-2: **LICENSES ISSUED, CONDITIONS:** The City Director of Public Works and/or Utilities may issue such licenses to any person, firm or corporation, private or public, upon such terms and conditions as he or she shall reasonably determine and such license agreement shall provide for the following:

- A. All construction shall comply with and conform to the standards formulated by the Director of Public Works and/or Utilities.
- B. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, dismantling or other activity related to fiber optic cable provided for herein shall be in accordance with all applicable FCC and other Federal, State and local laws and regulations, including but not limited to the Electrical Code and the specific modifications to that Code set forth in Title 8, Chapter 2D, of the Englewood Municipal Code and the standard for physical location and protection of below ground fiber optic cable plant and the specific modifications to that standard set forth in subsection 12-4-4B of this Chapter.

- C. The licensee shall be responsible for complying with the permit, bond and liability portions of Title 11, Chapter 3C of the Englewood Municipal Code.
- D. The City shall have the right at all times to maintain, install, repair, remove or relocate the facilities or installations within the City's right-of-way. The City reserves the exclusive right to control all easements and installations.
- E. In the event that any use by the licensee should interfere with any future use of the right-of-way by the City, the licensee shall, upon request and at his sole expense, relocate, rearrange or remove its installation so as not to interfere with such use.
- F. Any repair or replacement of any City installation made necessary in the opinion of the City's Director of Public Works and/or Utilities for any reason shall be made at the sole expense of the licensee.
- G. All rights and privileges granted in any license issued hereby shall be subject to prior agreements, licenses and/or grants, recorded and unrecorded, and it shall be the licensee's sole responsibility to determine the existence of said documents or conflicting uses or installations. Nothing in this Chapter shall in any way limit the City's right to enforce ordinances and provisions relative to franchising or contracting.
- H. The licensee shall contact and fully cooperate with the City Director of Public Works and/or Utilities to eliminate or minimize interference with any lawful, usual or ordinary use of the public right-of-way.
- I. The licensee shall not place, nor allow to be placed, any equipment without the approval as to location and means of installation, including means of construction, of the Director of Public Works and/or Utilities.
- J. The licensee shall assume all risks incident to the installation.
- K. All licensees, by acceptance of their license, expressly assume full and strict liability for any and all damage of any nature to persons or property caused by their installation.
- L. The licensee shall indemnify and save harmless the City, its officers and employees, against any and all claims, damages, actions or causes of actions and expenses to which it or they may be subject by reason of said installation being within and across the premises of

the City or by reason of any work done or omission made by the licensee, its agents or employees in connection with the construction, replacement, maintenance or repair of said installation.

- M. The licensee expressly agrees that in the case of licensee's breach of any of the provisions set out in this Chapter, the City may, at its option, have specific performance therefor or sue for damages resulting from said breach.
- N. The licensee shall keep accurate, complete and current maps and records of its system and facilities which occupy the streets, public ways and public places within the City and shall furnish, as soon as they are available, two (2) complete copies of such maps and records to the Department of Public Works. (Ord. 36 Series 1994)

12-4-3: ANNUAL LICENSE AND TERM OF LICENSE: Each licensee shall pay a license fee of one hundred dollars (\$100.00). Said fee shall be for each calendar year for which a license is held or during which any business activity relating to said cable or other installation, or planning therefor, shall be conducted within the City.

Said license fee shall be in addition to any and all other fees or taxes provided for under this Code. The license issued hereunder shall be for a period of one year or fraction thereof and shall expire on the last day of December of each calendar year. (Ord. 36 Series 1994)

12-4-4: STANDARD ADOPTED:

- A. There is hereby adopted by reference thereto, the Electronic Industries Association/Telecommunications Industry Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, 1991 Edition, published by the Electronic Industries Association Engineering Department, 2001 Pennsylvania Avenue, N.W., Washington, D.C. 20006, with the same force and effect as if the same were fully set forth herein, subject to the exceptions, modifications and amendments set forth in subsection B of this Section. The Clerk shall maintain at all times copies of the Code available for purchase by the public at a reasonable price.
- B. Specific Modifications to Adopted Code. The following modifications are hereby made in the provisions of the Electronic Industries Association Engineering Department, 2001 Pennsylvania Avenue, N.W., Washington, D.C. 20006, herein above adopted.

1. An encased metallic tracer shall be required with the underground warning tape and shall be mandatory in all instances.

2. a. A distance of ten feet of horizontal separation between a fiber optic line and a water, sewer, stormwater or gas line shall be required. Horizontal separations of less than ten feet must be approved in writing by the Director of Utilities.

b. Where fiber optic cables are placed closer than ten horizontal feet from a water, sewer, or stormwater main, the fiber optic cable shall be subservient to the water, sewer, or stormwater main.

c. Should the City find it necessary to excavate to repair, replace, maintain, remove, or extend any of its facilities, and the fiber optic cable has been placed, with the Director's approval, horizontally within ten feet of said facility and is in the way of said repairs, replacements, maintenance, removal or extension, the City shall notify the fiber optic cable owners that their fiber optic line must be moved or removed. Notification shall be pursuant to that prescribed in C.R.S. 9-1.5-101 et seq. Should the owners of the fiber optic cable, after notification, fail to move or remove the cable, the City shall move or remove the cable and bill the owner for this expense but shall not accept liability for this action. (Ord. 36 Series 1994)

EXHIBIT H