

1 APPROVED:
2 EFFECTIVE:

3
4 SNOHOMISH COUNTY COUNCIL
5 Snohomish County, Washington

6
7 ORDINANCE NO. 21-032

8
9 RELATING TO THE REQUIREMENTS FOR UTILITIES IN COUNTY RIGHT-OF-WAY
10 AND AMENDING CHAPTERS 2.02, 13.10, 13.50, 13.60, 13.80 AND 13.110 OF THE
11 SNOHOMISH COUNTY CODE
12

13 WHEREAS, section 36.55.010 of the Revised Code of Washington (RCW) and
14 the general grant of police power contained in the Washington State Constitution each
15 authorize Washington counties to grant non-exclusive franchises authorizing use of
16 public rights-of-way; and
17

18 WHEREAS, section 9.20 of the Snohomish County Charter and chapter 13.80 of
19 the Snohomish County Code (SCC or "County Code") each authorize Snohomish
20 County ("County") to grant non-exclusive franchises authorizing use of public rights-of-
21 way; and
22

23 WHEREAS, the federal Cable Communications Act of 1984, as amended by the
24 Television Consumer Protection and Competition Act of 1992 (as amended, the "Cable
25 Act"), codified at 47 U.S.C. § 521 *et seq.*, provides local governments with authority to
26 grant non-exclusive franchises authorizing cable operators to use public rights-of-way
27 for the installation and maintenance of their cable systems, including the authorization
28 of a cable television franchise fee to the local franchising authority; and
29

30 WHEREAS, the County has an interest in regulating the granting of County right-
31 of-way franchises and other permits for public and private utilities, and to ensure the
32 compatibility of such franchises and permits with the public interest, sound engineering
33 and design standards, and the County's regulation of County roads; and
34

35 WHEREAS, chapter 13.80 SCC previously contained a section SCC 13.80.130
36 addressing default and termination of franchises, and such section was repealed by
37 Ordinance No. 08-103, adopted on August 27, 2008; and
38

39 WHEREAS, the County now seeks to codify processes for the resolution of
40 disputes and revocation of franchises utilizing the County's hearing examiner process;
41 and
42

43 WHEREAS, the County finds that an administrative process for a franchisee to
44 resolve disputes in which the County alleges that the franchisee is out of compliance
45 with the terms of its franchise creates a predictable and cost-effective means of
46 resolving franchise disputes; and

1
2 WHEREAS, the County finds that in the event grounds for the revocation of a
3 franchise exist, the hearing examiner is the appropriate venue to conduct a revocation
4 hearing and provide a recommendation to the County Council for final action; and
5

6 WHEREAS, the County wishes to amend chapters 13.80 and 13.110 SCC
7 related to cable television franchise fees to conform with the scope authorized under the
8 Cable Act and require quarterly, rather than annual, payment of the cable television
9 franchise fees to the County; and
10

11 WHEREAS, the County wishes to clarify conditions for utilities operating under a
12 C10 permit by adding a new section to chapter 13.50 SCC and clarifying that Type C
13 permits may be issued for both the opened and unopened right-of-way; and
14

15 WHEREAS, the County wishes to clarify that the County Code requires utility
16 purveyors to have a franchise or a C10 permit prior to the County issuing right-of-way
17 use permits for work in County right-of-way, with exceptions for public health and safety
18 emergencies; and
19

20 WHEREAS, the County intends to codify right-of-way permitting practices with
21 respect to expired franchises as well as incentivize timely and efficient franchise
22 renewals; and
23

24 WHEREAS, the County finds that a delayed effective date for amendments in
25 Section 7 related to the D7 blanket utility permit requirements will provide affected
26 utilities sufficient time to complete their franchise renewals.
27

28 NOW, THEREFORE, BE IT ORDAINED:
29

30 Section 1. The county council hereby adopts the foregoing recitals as findings of
31 fact and conclusions as if set forth in full herein.
32

33 Section 2. A new section is added to Chapter 2.02 of the Snohomish County
34 Code to read:
35

36 **2.02.123 Procedures for Franchise Disputes and Revocation Authorized**
37 **under Title 13 SCC.**
38

39 Examiner adjudication of franchise disputes and hearings related to franchise
40 revocation shall be governed by the applicable procedures set forth in SCC 13.80.125
41 and 13.80.130. The provisions of this chapter shall supplement any procedures set forth
42 in chapter 13.80 SCC to the extent the provisions of this chapter do not conflict with
43 provisions of chapter 13.80 SCC.
44

45 Section 3. Snohomish County Code Section 13.10.010, adopted by Ordinance
46 No. 85-051 on July 3, 1985, is amended to read:

1
2 **13.10.010 Permit required.**
3

4 It is unlawful for anyone to make any use of any right-of-way for other than
5 transportation and uses incidental thereto or as otherwise provided by this chapter
6 without a right-of-way use permit ~~((and/or))~~ as provided in this title and a franchise, if
7 required by SCC 13.80.010~~((as provided in this title and complying with all the~~
8 ~~provisions thereof, and any code or statutory provisions applicable to said use)).~~
9

10 Section 4. Snohomish County Code Section 13.50.010, last amended by
11 Amended Ordinance No. 13-051 on July 31, 2013, is amended to read:
12

13 **13.50.010 General.**
14

15 Type C permits relate to constructing, placing, using or maintaining physical
16 objects or features, including tree cutting and removal, not associated with land
17 development construction or work, within the ~~((opened))~~ right-of-way, with minor or no
18 disturbing of improvements within the ~~((opened))~~ right-of-way. These types of activities
19 may involve the disruption of pedestrian and vehicular traffic or access to private
20 property. Sheriff assistance, inspection by county staff, approval for specific locations,
21 special provisions for safety and traffic control measures may also be required.
22

23 Section 5. A new section is added to Chapter 13.50 of the Snohomish County
24 Code to read:
25

26 **13.50.100 Conditions--Utilities (C10).**
27

28 Type C10 permits authorize non-exclusive use of the right-of-way for utilities as
29 described in SCC 13.50.020(10), subject to limitations in title 13 and conditions as
30 determined by the engineer to address items that include, but are not limited to, right-of-
31 way permitting, right-of-way restoration, utility relocation, emergencies, insurance, and
32 indemnification.
33

34 Section 6. Snohomish County Code Section 13.60.055, adopted by Amended
35 Ordinance No. 12-001 on February 15, 2012, is amended to read:
36

37 **13.60.055 Conditions - Major construction, minor construction, and major**
38 **utility construction (D5, D6 and D8).**
39

40 All major construction (Type D5), minor construction (Type D6), and major utility
41 construction (Type D8) permits are subject to the following additional conditions:
42

43 (1) Construction of road, frontage or access improvements shall comply with any
44 applicable conditions of any associated land development construction permits, the
45 EDDS, title 30 SCC and any other applicable standards, such as the MUTCD.
46

1 (2) Where required by the engineer, the permittee, at the permittee's own
2 expense, shall have the right-of-way surveyed by a licensed land surveyor and shall
3 record the survey. The recorded survey shall meet the requirements of the Survey
4 Recording Act, chapter 58.09 RCW.

5
6 (3) Where required by the engineer, the permittee, at the permittee's own
7 expense, shall prepare road construction plans, including a stormwater site plan, in
8 accordance with the EDDS and chapter 30.63A SCC.

9
10 (4) The permittee shall provide street, lane and sidewalk closures and other
11 traffic diversions with traffic control signs and devices as specified by the engineer and
12 as required by law.

13
14 (5) Following completion of the permitted use, the right-of-way shall be restored
15 to the satisfaction of the engineer and is subject to inspection by the engineer.

16
17 (6) A Type D8 permit shall not be issued to a utility purveyor that does not have
18 a franchise or C10 permit, or fails to comply with the provisions and conditions of its
19 franchise or C10 permit, this title, and all applicable standards and regulations, except
20 when:

21 (a) A utility purveyor is operating under an expired franchise undergoing
22 the renewal process as described in SCC 13.80.140; or

23 (b) The engineer determines that the proposed work is necessary under
24 SCC 13.80.015(2).

25
26 Section 7. Snohomish County Code Section 13.60.060, last amended by
27 Ordinance No. 12-001 on February 15, 2012, is amended to read:

28
29 **13.60.060 Conditions--Blanket utility permit (D7).**

30
31 All blanket utility (Type D7) permits are subject to the following additional
32 conditions:

33
34 (1) A Type D7 permit may be granted for utility installations or relocations in the
35 right-of-way to utility purveyors whose installations or relocations are not in the opinion
36 of the engineer((;)) likely to cause major disruptions in the public use of the right-of-way
37 or create hazards which cannot be guarded against by moderate controls.

38
39 (2) Department procedures shall detail the types of construction activities that
40 may be performed by a utility purveyor under a Type D7 permit.

41
42 (3) Any necessary backfill of utility trenches and/or restoration of the pavement
43 surface shall be performed by the permittee in accordance with the EDDS and to the
44 satisfaction of the engineer.

1 (4) A Type D7 permit shall be valid for a term of one year from the date on which
2 the permit is issued, unless a different term is specified on the face of the permit. Type
3 D7 permits shall not be renewable.
4

5 (5) A permittee using the right-of-way under a Type D7 permit must provide
6 advance notice to the department of each installation, relocation or other construction
7 activity the permittee intends to perform under the Type D7 permit, as specified in
8 department procedures.
9

10 (6) A Type D7 permit shall not be issued to a utility purveyor ((who))that is
11 operating under an expired franchise undergoing the renewal process as described in
12 SCC 13.80.140, or fails to comply with the provisions and conditions of its franchise or
13 C10 permit, this title, and all applicable standards and regulations((will not be eligible
14 for a Type D7 permit)).
15

16 Section 8. A new section is added to Chapter 13.80 of the Snohomish County
17 Code to read:

18
19 **13.80.015 Right-of-way permit required.**
20

21 (1) In addition to a franchise, utility purveyors are required to obtain a right-of-
22 way use permit as specified in chapter 13.10 SCC to work in the right-of-way for the
23 construction or maintenance of facilities.
24

25 (2) Notwithstanding the requirement in SCC 13.80.015(1), work within the right-
26 of-way may be permitted if the engineer determines that the proposed work is
27 necessary to address a specifically-identified public health hazard, a specifically-
28 identified actual or imminent damage to county right-of-way, or specifically-identified
29 hazards to users of county right-of-way.
30

31 Section 9. Snohomish County Code Section 13.80.020, last amended by
32 Ordinance No. 96-028 on June 12, 1996, is amended to read:

33
34 **13.80.020 Application.**
35

36 An application is required for a new franchise or the renewal of an existing
37 franchise. An application, with requisite attachments, and an application fee in the
38 amount specified in chapter 13.110 SCC, shall be filed with the department. The
39 engineer shall review such application and submit a report and recommendations
40 thereon to the executive and the council((; such recommendations to be made within
41 thirty days of the filing of a complete application)).
42

43 Section 10: Snohomish County Code Section 13.80.070, last amended by
44 Ordinance No. 96-028 on June 12, 1996, is amended to read:

45
46 **13.80.070 Expense of proceeding.**

1
2 Regardless of the council's decision to grant or not to grant the franchise, the
3 applicant shall pay to the county road fund, upon request, the itemized costs and
4 expenses detailed in SCC 13.80.030(4), also identified as the permit fee under SCC
5 ~~((13.110.010(2)(b)))~~ 13.110.010(2). Payment shall be made prior to any franchise being
6 effective, and prior to recording of any franchise in accordance with SCC 13.80.100.
7

8 Section 11. Snohomish County Code Section 13.80.092, adopted by Ordinance
9 No. 96-028 on June 12, 1996, is amended to read:
10

11 **13.80.092 Cable television—~~((Annual))~~ Franchise fee.**
12

13 (1) Cable television (CATV) companies shall as a condition of operation, pay to
14 the county ~~((an annual))~~ a franchise fee consisting of five percent (5%) of the gross
15 revenue~~((, less bad debts))~~ received ~~((annually))~~ by the CATV company for services
16 rendered ~~((to customers))~~ within the areas ~~((of the county roads))~~ covered by their
17 franchise.
18

19 (2) The council shall retain the authority to modify, by ordinance, the ~~((five~~
20 ~~percent (5%) gross revenue))~~ franchise fee in any particular franchise at any time during
21 the life of the franchise. ~~((This annual))~~ The franchise fee shall be remitted ~~((by the forty-~~
22 ~~fifth (45th) day from))~~ on a quarterly basis and shall be due forty-five (45) days after the
23 ~~((first day of January))~~ close of each ~~((year))~~ calendar quarter the CATV company is in
24 operation in Snohomish County, and shall be accompanied by ~~((an annual))~~ a quarterly
25 report in a form approved by the department.
26

27 (3) The CATV company shall provide all necessary records so that the county
28 may determine this fee and the county, or its authorized agents, shall have the right to
29 inspect the books and records of the CATV company at reasonable times for the
30 purpose of ascertaining accurately the CATV company's actual gross ~~((receipts))~~
31 revenues per annum.
32

33 (4) All financial books and records of the CATV company shall be retained in
34 their original form ~~((for this purpose,))~~ for a minimum of six (6) years from the date of
35 such records for each year the franchise is in effect, in accordance with the provisions
36 of Chapter 40.14 RCW as they apply to any agency of the state of Washington.
37

38 Section 12. A new section is added to Chapter 13.80 of the Snohomish County
39 Code to read:
40

41 **13.80.125 Franchise dispute resolution process.**
42

43 (1) Unless otherwise provided in the franchise, the following franchise dispute
44 resolution process applies when the county alleges the franchisee is out of compliance
45 with the terms of its franchise. The process described in this section is intended to
46 provide opportunity for the franchisee to be heard and authorization for the hearing

1 examiner to adjudicate disputes. The process described in this section is not exclusive,
2 and does not limit or restrict the authority of the county or the franchisee from resolving
3 franchise disputes in any manner authorized by law.
4

5 (2) The engineer may issue a written order to a franchisee to comply with the
6 terms of the franchise. An order to comply with the franchise must include:

7 (a) Reference to the terms of the franchise that the engineer determines
8 have been violated, a description of actions the franchisee must take to comply with the
9 franchise, and a deadline for compliance; and

10 (b) A statement that the order to comply with the franchise may be
11 appealed to the hearing examiner by filing an appeal with the department in accordance
12 with the procedural requirements in SCC 2.02.125 and SCC 13.80.125.
13

14 (3) The order to comply with the franchise must be served on the franchisee by
15 one of the following two methods:

16 (a) Personal service; or

17 (b) Service by mailing two copies, postage prepaid, one by ordinary first
18 class mail and the other by certified mail, return receipt requested. Service by mail shall
19 be presumed effective upon the third business day following the day upon which the
20 notice was placed in the mail.
21

22 (4) The hearing examiner is authorized to hear appeals of orders to comply with
23 the terms of a franchise, including the assessment of liquidated damages. An order to
24 comply with the franchise may be appealed by the franchisee to the hearing examiner
25 and the process in chapter 2.02 SCC shall apply to the appeal.
26

27 (5) An appeal shall follow the procedural requirements in SCC 2.02.125, with the
28 following additional requirements:

29 (a) The appeal submittal and a filing fee in the amount of \$500 must be
30 delivered by U.S. mail or by hand to the office of the Snohomish County Department of
31 Public Works, attention County Engineer. If mailed, the date of the postmark shall serve
32 as the date received.

33 (b) The appeal submittal and filing fee must be received by the department
34 within 30 calendar days of the date of service of the order to comply with the franchise.
35 The date of service of the order to comply with the franchise is the date the order was
36 personally served or, if served by mail, the third business day following the day upon
37 which the notice was placed in the mail.
38

39 (6) At the hearing, the engineer shall have the burden of proof to support an
40 order to comply with the terms of a franchise, which burden shall be met by a
41 preponderance of the evidence.
42

43 (7) The decision of the hearing examiner shall be final and conclusive with an
44 optional right of reconsideration as provided in SCC 2.02.170 and may then be
45 reviewable in any court of competent jurisdiction.
46

1 Section 13. A new section is added to Chapter 13.80 of the Snohomish County
2 Code to read:

3
4 **13.80.130 Franchise revocation.**
5

6 (1) Unless otherwise provided in the franchise, the following process applies to
7 franchise revocation. The process described in this section is intended to provide
8 opportunity for the franchisee to be heard, and authorization for the hearing examiner to
9 hold a hearing and make a recommendation on revocation to the county council. The
10 final decision to revoke a franchise shall be made by the county council through
11 adoption of an ordinance.
12

13 (2) Any failure by a franchisee to comply with any material term or condition of
14 its franchise following an opportunity to correct or remedy the default or breach shall be
15 grounds for the revocation of any franchise by the county as described in SCC
16 13.80.130(3) through (5).
17

18 (3) Revocation notice.

19 (a) In the event grounds for revocation exist, the engineer may issue a
20 written notice notifying the franchisee that the county intends to revoke the franchise
21 and setting forth the specific basis for revocation. The revocation notice shall be in
22 writing and served on the franchisee by personal service, or by mailing two copies,
23 postage prepaid, one by ordinary first-class mail and the other by certified mail.
24 Personal service shall be effective immediately and service by mail shall be presumed
25 effective upon the third business day following the day upon which the revocation notice
26 was placed in the mail.

27 (b) The revocation notice shall state that the franchisee is entitled to
28 appeal the engineer's findings to the hearing examiner in accordance with SCC
29 13.80.130(4) within 30 days of service of the revocation notice. If the franchisee does
30 not timely appeal the revocation notice to the hearing examiner, then the county council
31 may revoke the franchise by ordinance under SCC 13.80.130(5).
32

33 (c) The department shall prepare an ordinance for county council action
34 under SCC 13.80.130(5).
35

36 (4) Hearing on the revocation notice.

37 (a) An appeal of the revocation notice shall follow the provisions in
38 chapter 2.02 SCC for administrative appeals within the hearing examiner's jurisdiction,
39 with the following differences described in this section SCC 13.80.130. In the event of a
40 conflict between this section SCC 13.80.130 and chapter 2.02 SCC, the provisions of
41 this section SCC 13.80.130 shall govern and the hearing examiner shall have the
42 authority to resolve any discrepancies.

43 (b) For appeals to be considered, they must be received by the
44 department within 30 calendar days of the date service of the revocation notice. The
45 date of service of the revocation notice is the date the notice was personally served or,
46 if served by mail, the third business day following the day upon which the notice was
placed in the mail as described in SCC 13.80.130(3)(a).

1 (c) The hearing shall be conducted on the record and the hearing
2 examiner shall have such powers for the hearing as specified by chapter 2.02 SCC and
3 this section SCC 13.80.130. The franchisee and the county shall each have the right to
4 be represented by legal counsel; introduce relevant evidence; compel the testimony of
5 persons as permitted by law; and to question or cross-examine witnesses on any matter
6 relevant to the issues of the hearing.

7 (d) Rather than make a final decision as set forth in SCC 2.02.155, the
8 hearing examiner shall make a recommendation to the county council, and such
9 recommendation will include a determination of (i) whether an event that is grounds for
10 revocation has occurred; (ii) whether such event is excusable; and (iii) whether such
11 event has been cured or will be cured by franchisee. The recommendation shall be
12 supported by findings of fact and conclusions of law based upon the record.

13 (e) Within 30 days of the conclusion of the hearing, the hearing examiner
14 shall submit their recommendation to the county council, unless the franchisee agrees
15 in writing to extend the time period, or the time period has been extended by a request
16 for reconsideration.

17
18 (5) Action by county council.

19 (a) The county council shall, at a public hearing, consider and take final
20 action on the revocation notice, presented either directly by the department or upon the
21 recommendation of the hearing examiner. The franchisee shall be provided 30 days
22 advance notice of the date of the public hearing and an opportunity to be heard prior to
23 final action by county council.

24 (b) In acting on the recommendation of the hearing examiner, the county
25 council shall either:

- 26 (i) Accept the recommendation of the hearing examiner;
27 (ii) Reject the recommendation of the hearing examiner; or
28 (iii) Remand the recommendation to the hearing examiner for an
29 additional hearing limited to specific issues identified by the council.

30 (c) The county council shall act through adoption of an ordinance. The
31 ordinance may declare that the franchise shall be revoked as of a date to be specified in
32 the ordinance. The ordinance may also specify that the franchise will only be revoked if
33 the franchisee does not comply with the county's requirements within such period as the
34 county may also fix in such ordinance. The ordinance shall include findings of fact and
35 conclusions derived from those facts which support the decision of the council. The
36 council may by reference adopt some or all of the findings and conclusions of the
37 engineer or hearing examiner.

38 (d) If the action by the county council will result in the revocation of the
39 franchise, then the ordinance shall declare that the franchise is revoked and terminated
40 and any security funds or bonds are forfeited.

41 (e) If the action by the county council will result in the revocation of the
42 franchise, then the ordinance shall address the transfer of ownership, acquisition, or
43 removal of any facilities from the county right-of-way, as applicable, unless otherwise
44 specified in the franchise.

45 (f) The revocation of any franchise shall in no way affect any rights of the
46 county that survive termination under the franchise or any provision of law.

1
2 Section 14. A new section is added to Chapter 13.80 of the Snohomish County
3 Code to read:

4
5 **13.80.140 Expired franchises undergoing renewal process.**
6

7 (1) In the event a franchise expires without a mutually agreed upon renewed
8 franchise agreement and the franchisee intends to continue to operate and maintain
9 facilities in the right-of-way, the franchisee may continue to operate under the terms of
10 the expired franchise on a month-to-month basis if the following conditions have been
11 satisfied:

12 (a) The franchisee submitted an application under SCC 13.80.020 and is
13 engaged and responsive to the county in the renewal process; and

14 (b) The engineer or designee agrees in a letter transmitted to the franchisee that
15 the franchisee may continue to operate under the terms of the expired franchise except
16 as otherwise provided in this section SCC 13.80.140.
17

18 (2) Upon satisfaction of the conditions in SCC 13.80.140(1), the franchisee and
19 the county shall continue to comply with all obligations and duties under the terms of the
20 expired franchise until final county action is taken on the application to renew the
21 franchise. Eligibility for Type D7 and D8 permits for a franchisee operating under an
22 expired franchise consistent with this section is determined by SCC 13.60.060 and
23 13.60.055, respectively.
24

25 (3) At the request of the department, the county council may terminate an
26 expired franchise operating under SCC 13.80.140 through the adoption of a motion
27 prepared by the department. The department shall inform the franchisee in writing at
28 least 30 days before anticipated council action that the department intends to
29 recommend termination to the county council.
30

31 (4) The term of any franchise, including an expired franchise operating under
32 SCC 13.80.140, shall not be in effect for a period longer than specified in SCC
33 13.80.080(2)(a).
34

35 Section 15. Snohomish County Code Section 13.110.010, last amended by
36 Amended Ordinance No. 12-001 on February 15, 2012, is amended to read:

37
38 **13.110.010 Fees to be charged.**
39

40 The following fees shall be charged by the county:

41
42 (1) *Application Fee.* Where applicable, this fee shall be charged to compensate
43 the department for preliminary application screening, the establishment or
44 administration of the permit application file, and verification that any required plans
45 comply with the applicable county requirements and conditions. Application fees shall
46 be collected at the time of permit application, and are not eligible for refund.

1
2 (2) *Permit Fee.* A permit fee shall be charged to compensate the department
3 and other county departments for the costs and expenses incurred in performing field
4 investigations, inspections, additional plan review, hearings, and all other tasks and
5 proceedings pertaining to the right-of-way use permit at issue. Permit fees are eligible
6 for refund to the extent they exceed costs and expenses incurred by the county.

7 (a) Permit fees shall be collected at the time of application submittal
8 unless the permit at issue is of a Type described below.

9 (b) Permit fees for Type B2, B3, B4, D3, D4 permits shall be collected at
10 the time of permit issuance.

11 (c) Permit fees for Type E (~~permits~~) transactions, which includes
12 application for renewal of franchises, shall be paid in accordance with SCC 13.80.070,
13 SCC 13.90.070, SCC 13.95.060, SCC 13.100.070 or SCC 13.140.030 as applicable.
14

15 (3) *Overweight/Oversize Load Fee.* Where application is for a building or other
16 overweight or oversized move pursuant to SCC 13.40.040, the department may charge
17 the applicant an additional fee to compensate for costs incidental to the move involved,
18 including road maintenance crews, signal crews, and sheriff's personnel.
19

20 (4) *Franchise Fee--Cable TV.* Cable television companies doing business within
21 the county shall be charged (~~five percent of their gross revenue~~) a franchise fee in
22 accordance with SCC 13.80.092(~~, as an annual franchise fee. This fee can be modified~~
23 ~~by the county council at any time to reflect changes in applicable federal, state or local~~
24 ~~law or regulation. This fee is in addition to the other fees within this section~~)).
25

26 Section 16. If any section, sentence, clause or phrase of this ordinance is held to
27 be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or
28 unconstitutionality shall not affect the validity or constitutionality of any other section,
29 sentence, clause, or phrase of this ordinance, provided, however, that if any section,
30 sentence, clause, or phrase of this ordinance is held to be invalid by a court of
31 competent jurisdiction, then the section, sentence, clause, or phrase in effect prior to the
32 effective date of this ordinance shall be in full force and effect for that individual section,
33 sentence, clause, or phrase as if this ordinance had never been adopted.
34

35 Section 17. *Effective Date.* Section 7 of this ordinance takes effect one year after
36 the effective date of this ordinance. All other sections take effect as described in SCC
37 2.48.126.
38
39
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46

1 PASSED this ____ day of _____, 2021.

2

3

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

4

5

6

7 ATTEST:

Chairperson

8

9

Clerk of the Council

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11

12 () APPROVED

13 () EMERGENCY

14 () VETOED

County Executive

Date: _____, 2021

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18

19 ATTEST:

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25 Approved as to form only:

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29

Deputy Prosecuting Attorney



Snohomish County Council

Committee: Public Works
ECAF: 2021- 0293
Proposal: Ord. 21-032

Analyst: Deb Evison Bell
Date: 06/07/21

Consideration:

The proposal relates to the requirements for utilities in County right-of-way and amends Chapters 2.02, 13.10, 13.50, 13.60, 13.80 and 13.110 of the Snohomish County Code.

Background:

Snohomish County has an interest in regulating the granting of County right-of-way use to franchises and other permits for public and private utilities, and to ensure the compatibility of such franchises and permits with the public interest, sound engineering, design standards, and the County’s regulation of County roads.

The proposed amendments seek to clarify existing requirements and conditions for the following utility permits: C10 (utility)¹, D7 (blanket utility permit)², and D8 (major utility permit)³.

This includes establishing a process for expired franchises undergoing renewal, allowing utility work to continue during the renewal process, an update to the definition for cable television franchise fee that is consistent with the Federal Cable Communications Act, and require quarterly payments rather than an annual payment, to assist with budget forecasting.

This will also provide processes for franchise dispute resolution and franchise revocation, which includes the right for a utility appeal to the Hearing Examiner and a final determination on revocation by the County Council. Stakeholder comment was sought and incorporated into the proposed code changes.

Current Proposal:

Proposed Ordinance 21-032 would amend Chapters 2.02, 13.10, 13.50, 13.60, 13.80 and 13.110 of the Snohomish County Code, relating to the requirements for utilities in County Right-of-Way and to clarify conditions and requirements for utilities in County Right-of-Way and provide administrative processes for dispute resolution, revocation, and expired franchises undergoing renewal.

2021 Budget: NA

Future Budget Impacts: NA

Handling: NORMAL

Approved-as-to-form: YES

Risk Management: APPROVE.

¹ [ch. 13.50 Type C Transactions | Snohomish County Code](#)

² [ch. 13.60 Type D Transactions | Snohomish County Code](#)

³ [ch. 13.60 Type D Transactions | Snohomish County Code](#)

Executive Recommendation: APPROVE.

Analysis

The proposed ordinance would allow for a clarification of language and clarification of process within the Snohomish County Code for utilities that seek to appeal administrative functions.

Attachments: NONE.

Amendments: NONE.

Request:

Move to GLS on June 23, 2021 to consider scheduling a public hearing. Following receipt of public testimony, consider taking action on proposed Ordinance 21-032 or provide other direction to staff.



Snohomish County Council

SNOHOMISH COUNTY COUNCIL

EXHIBIT # 2

FILE ORD. 21-032

Legislation Text

File #: 2021-0293, Version: 1

Executive/Council Action Form (ECAF)

ITEM TITLE:

Ordinance No. 21-032, RELATING TO THE REQUIREMENTS FOR UTILITIES IN COUNTY RIGHT-OF-WAY AND AMENDING CHAPTERS 2.02, 13.10, 13.50, 13.60, 13.80 AND 13.110 OF THE SNOHOMISH COUNTY CODE.

DEPARTMENT: Public Works

ORIGINATOR: Brook Chesterfield

EXECUTIVE RECOMMENDATION: Approve

PURPOSE: Amending Title 2 SCC & Title 13 SCC to clarify conditions and requirements for utilities in the right of way and provide administrative processes for dispute resolution, revocation, and expired franchises undergoing renewal.

BACKGROUND: County has an interest in regulating the granting of County right-of-way franchises and other permits for public and private utilities, and to ensure the compatibility of such franchises and permits with the public interest, sound engineering, design standards, and the County’s regulation of County roads. These amendments seek to: Clarify requirements and conditions for C10, D7, and D8 utility permits; Establish a process for expired franchises undergoing renewal, allowing utility work to continue during the renewal process; Update the definition for cable television franchise fee, consistent with the federal Cable Communications Act, and require quarterly payments rather than an annual payment, to assist with budget forecasting; and Provide processes for franchise dispute resolution and franchise revocation, which include the right for utility appeal to the Hearing Examiner and a final determination on revocation by the County Council.

FISCAL IMPLICATIONS:

EXPEND: FUND, AGY, ORG, ACTY, OBJ, AU	CURRENT YR	2ND YR	1ST 6 YRS
TOTAL			

REVENUE: FUND, AGY, ORG, REV, SOURCE	CURRENT YR	2ND YR	1ST 6 YRS

TOTAL			

DEPARTMENT FISCAL IMPACT NOTES: n/a

CONTRACT INFORMATION:

ORIGINAL _____ CONTRACT# _____ AMOUNT _____
AMENDMENT _____ CONTRACT# _____ AMOUNT _____

Contract Period

ORIGINAL START _____ END _____
AMENDMENT START _____ END _____

OTHER DEPARTMENTAL REVIEW/COMMENTS: Approved as to form by PA (J.Kraft-Klehm)
Approved/Reviewed by Finance & Risk

ECAF NO.:
ECAF RECEIVED:

**ORDINANCE
INTRODUCTION SLIP**

SNOHOMISH COUNTY COUNCIL

EXHIBIT # 3

TO: Clerk of the Council

FILE ORD.21-032

TITLE OF PROPOSED ORDINANCE:

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Councilmember Date

~~~~~

Clerk's Action: Proposed Ordinance No. _____

Assigned to: _____ Date: _____

~~~~~  
**STANDING COMMITTEE RECOMMENDATION FORM**

On \_\_\_\_\_, the Committee considered the item and by \_\_\_\_ Consensus /  
\_\_\_\_ Yeas and \_\_\_\_ Nays, made the following recommendation:

\_\_\_\_\_ Move to Council to schedule public hearing \_\_\_\_\_

**Public Hearing Date** \_\_\_\_\_ **at** \_\_\_\_\_

\_\_\_\_\_ Move to Council as amended to schedule public hearing


\_\_\_\_\_ Move to Council with no recommendation

**This item \_\_\_\_ should/ \_\_\_\_ should not be placed on the Consent Agenda.**

(Consent agenda may be used for routine items that do not require public hearing and do not need discussion at General Legislative Session)

**This item \_\_\_\_ should/ \_\_\_\_ should not be placed on the Administrative Matters Agenda**

(Administrative Matters agenda may be used for routine action to set time and date for public hearings)



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Committee Chair

| <b>UTILITY CODE AMENDMENTS –<br/>REVISIONS MADE TO DRAFT ORDINANCE AFTER STAKEHOLDER REVIEW COMMENTS;<br/>SUMMARY OF STAKEHOLDER COMMENTS AND COUNTY RESPONSES (5/14/21)</b> |                              |                                                                                                                                                                             |                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>No.</b>                                                                                                                                                                   | <b>Code Provision</b>        | <b>County Proposed Changes</b>                                                                                                                                              | <b>Stakeholder Comments</b>                                                                                                                                                                                       | <b>County Response</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 1                                                                                                                                                                            | Code Recitals,<br>Misc.      | N/A                                                                                                                                                                         | The City of Everett suggests including a recital to recognize the unique nature of large water transmission lines, and adding a new section in code (placeholder) specific to Everett's Water Transmission Lines. | The County recognizes the regional importance of Everett's large water transmission lines and appreciates Everett's concerns about protecting them from relocation or removal, however these concerns are best addressed in a franchise agreement and not in code.                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 2                                                                                                                                                                            | 2.02.123                     | Adds a new section to chapter on the Hearing Examiner regarding the Examiner's role in the adjudication of franchise disputes and hearings related to franchise revocation. |                                                                                                                                                                                                                   | Note: County added this section after receiving stakeholder comments.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 3                                                                                                                                                                            | 13.10.010<br>Permit Required | Clarifies a franchise agreement is required in order to obtain an applicable permit (D7/D8).                                                                                | PSE expressed concern that this clarification creates confusion because a franchise is a type of right-of-way use permit according to SCC 13.10.040.                                                              | This comment is appreciated, however amending the permit structure in title 13 SCC is beyond the scope of this code project. Title 13 SCC permitting structure allows permits for type A-D activities to be issued administratively by the responsible County department. Type E activities, including Type E3C (cable franchise) and Type E3U (utility franchise) require council approval before issuance. Amendments to SCC 13.10.010 are intended to clarify that a utility must have a franchise, if required by SCC 13.80.010, in addition to any other applicable R/W use permits, regardless of the nomenclature used to describe Type E activities throughout title 13 SCC. |

**UTILITY CODE AMENDMENTS –  
REVISIONS MADE TO DRAFT ORDINANCE AFTER STAKEHOLDER REVIEW COMMENTS;  
SUMMARY OF STAKEHOLDER COMMENTS AND COUNTY RESPONSES (5/14/21)**

| No. | Code Provision                                                                                                                        | County Proposed Changes                                                                                                                                                                                                                                                                                                        | Stakeholder Comments                                                                                                                                                                                                                                                                                                                                                                                                   | County Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----|---------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4   | 13.60.055<br>Conditions -<br>Major<br>construction,<br>minor<br>construction,<br>and major utility<br>construction<br>(D5, D6 and D8) | Added (6) to clarify a D8 permit will not be issued without a utility franchise, C10 permit, or if the utility fails to comply with the terms of its franchise, C10 Permit, Title 13, or applicable standards/regulations. Also clarifies a D8 Permit may be issued to a utility that is operating under an expired franchise. | The City of Everett expressed concern that the proposed amendments do not provide permitting exceptions for work performed in the event of an emergency. (Everett)                                                                                                                                                                                                                                                     | Added a provision allowing D8 permits for other work as determined by the engineer in SCC 13.80.015(2).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 5   | 13.60.060<br>Conditions--<br>Blanket utility<br>permit (D7)                                                                           | Modified to clarify a D7 permit will not be issued to a utility operating under an expired franchise. This is a similar benefit used in other jurisdictions where a utility qualifies for streamlined permitting if the utility is in “good standing”.                                                                         | <p>The City of Everett recommends clarifying when a franchisee operating under an expired franchise is eligible for a D7 permit. The relationship between SCC 13.60.060 and SCC 13.80.140 is unclear.</p> <p>PSE expressed concern that preventing a franchisee operating under an expired franchise from obtaining a D7 blanket permit will result in administrative burdens for both the utility and the County.</p> | <p>The County offers the D7 “blanket” permit to utilities as a benefit of being a franchise holder in compliance with the terms of their franchise, title 13 SCC and all other applicable standards and regulations. Amendments to SCC 13.60.060(6), clarify that a utility with an expired franchise, even if undergoing franchise renewal negotiation and operating under the terms of its expired franchise as allowed under the new SCC 13.80.140, is <u>not</u> eligible to obtain the D7 “blanket” permit. A utility operating under an expired franchise can still obtain all permits required to perform necessary work in the R/W.</p> <p>The effective date of the amendments to SCC 13.60.060 is being delayed one year after the effective date of the ordinance, to allow additional time for any utilities currently negotiating franchise renewals to finalize those franchises and once again be eligible for the D7 “blanket” permit.</p> |

**UTILITY CODE AMENDMENTS –  
REVISIONS MADE TO DRAFT ORDINANCE AFTER STAKEHOLDER REVIEW COMMENTS;  
SUMMARY OF STAKEHOLDER COMMENTS AND COUNTY RESPONSES (5/14/21)**

| No. | Code Provision                               | County Proposed Changes                                                                                                                                                                                                                     | Stakeholder Comments                                                                                                                                                                                       | County Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                              |                                                                                                                                                                                                                                             |                                                                                                                                                                                                            | The County appreciates these comments and has proposed additional changes to SCC 13.80.140 to make the relationship between SCC 13.60.060 and SCC 13.80.140 clearer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 6   | 13.80.015<br>Right-of-way<br>permit required | New section clarifies a R/W Use Permit is required in addition to a utility franchise agreement for utility's work in the right of way.                                                                                                     | PSE recommends edits clarifying R/W use permits specified chapter 13.10 SCC "if needed" consistent with comments on SCC 13.10.010.                                                                         | Added a provision (SCC 13.80.015(2)) clarifying that utility work in the county right-of-way may be allowed by the engineer in specific cases of public health hazard, imminent damage, or identified hazards to users.<br><br>Note that chapter 13.10 SCC identifies the types of activities where R/W use permits are required and includes references to the specific chapter which provides additional requirements for that activity. For example, SCC 13.10.040(4) describes Type D activities and directs the user to chapter 13.60 SCC governing Type D Transactions. Exemptions to permit requirements can be found in chapter 13.10 SCC and in the chapter governing the specific use type. |
| 7   | 13.80.020<br>Application                     | Clarifies an application is required for a new or renewal of an existing utility franchise;<br>Since franchise processing is a negotiation with each utility for a varying duration of time, this eliminates the timeline for the activity. | The City of Everett requests keeping the existing language to help avoid long delays in negotiating franchise renewals.<br><br>Comcast requests CATV renewals be excluded from the application requirement | No changes made. The existing requirement for the County Engineer to submit a report and recommendation to council on the franchise within 30 days of receiving a franchise application does not reflect current practice, nor is it realistic or achievable. A typical franchise approval process takes between 4 and 12 months, however this timeframe is heavily dependent on the level of negotiation required. The County requires an                                                                                                                                                                                                                                                            |

**UTILITY CODE AMENDMENTS –  
REVISIONS MADE TO DRAFT ORDINANCE AFTER STAKEHOLDER REVIEW COMMENTS;  
SUMMARY OF STAKEHOLDER COMMENTS AND COUNTY RESPONSES (5/14/21)**

| No. | Code Provision                                                           | County Proposed Changes                                                                                                                                                                                                         | Stakeholder Comments                                                                                                                                                                                                                                                                                 | County Response                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----|--------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                                          |                                                                                                                                                                                                                                 | because application for cable franchise renewal is achieved by the submittal of a 626 renewal letter.                                                                                                                                                                                                | application for a new franchise or a renewal of an existing franchise for all utilities.                                                                                                                                                                                                                                                                                                                                            |
| 8   | 13.80.070<br>Expense of proceeding                                       | Correction to cross reference for permit fees in SCC 13.110.010(2).                                                                                                                                                             | Comcast suggests application fee should not apply to Cable Television (CATV) franchises or is subject to the cap on CATV franchise fees.                                                                                                                                                             | No change. This requirement is generally applicable to all utilities.                                                                                                                                                                                                                                                                                                                                                               |
| 9   | 13.80.092<br>Cable television—<br><del>((Annual))</del><br>Franchise fee | Revising definition of franchise fee to include other gross revenues not currently allowed under this definition, i.e. advertising & home shopping.<br>Modified to quarterly payments of franchise fee as requested by Finance. | Comcast recommends edits to limit gross revenues to those revenues generated from cable services; delete “all” from requirement that CATV company provide the County with “all necessary records” for auditing purposes to allow the County to confirm the accuracy of the franchise fees collected. | No change. The proposed revisions are consistent with language of the Cable Act.                                                                                                                                                                                                                                                                                                                                                    |
| 10  | 13.80.120<br>Violations                                                  | Adds violation to this section for a utility purveyor not operating under a franchise agreement.                                                                                                                                | The City of Everett and PSE request amendments to clarify that it is not a violation for a utility to operate under an expired franchise undergoing renewal negotiations as described in new section SCC 13.80.140.                                                                                  | After further consideration, the County has decided not to move forward with the proposed amendments to this section. The County’s objective to ensure that all utility purveyors have a franchise as required by SCC 13.80.010, or are otherwise working toward obtaining a renewal of an expired franchise, is adequately addressed elsewhere in existing code or through other amendments proposed as part of this code project. |

**UTILITY CODE AMENDMENTS –  
REVISIONS MADE TO DRAFT ORDINANCE AFTER STAKEHOLDER REVIEW COMMENTS;  
SUMMARY OF STAKEHOLDER COMMENTS AND COUNTY RESPONSES (5/14/21)**

| No. | Code Provision                                 | County Proposed Changes                                                               | Stakeholder Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | County Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----|------------------------------------------------|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                |                                                                                       | The City of Everett requests Everett’s water transmission lines be exempt from this provision.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 11  | 13.80.125 Franchise dispute resolution process | Intended to allow Franchisee to appeal disputes about franchises to Hearing Examiner. | <p>Comcast notes that there is no allowance for informal opportunities to cure violation before the County Engineer issues a formal notice to comply and requests the code specify franchisee has at least 30 days to comply with an order to comply and 30 days to appeal the order to the HE.</p> <p>PSE expressed concern that enforcement procedures in SCC 13.80.125 are terms unilaterally imposed on the franchisee; recommends including additional subsection that clarifies the specific terms and conditions of a franchise that provide measures for dispute resolution, enforcement and remedies for noncompliance will control.</p> | <p>The name of this section has been revised to “Franchise dispute resolution process” and additional guidance has been provided on the process.</p> <p>The proposed code amendments are intended to be a framework for resolution of disputes when the <u>County</u> alleges the franchisee is out of compliance with the terms of its franchise. The County intends for this framework to be incorporated into new utility franchises, where additional timeframes and processes for dispute resolution can be specified within the franchise. These amendments do not control how a <u>utility</u> seeks to enforce the terms of its franchise. The amendments state that the process described in this section applies unless otherwise provided in the franchise.</p> <p>The time period for a utility to appeal a formal notice to comply with the terms of the franchise to the hearing examiner has been changed from 14 days to 30 days.</p> <p>Code amendments are not needed to address informal resolutions to franchise disputes.</p> |

**UTILITY CODE AMENDMENTS –  
REVISIONS MADE TO DRAFT ORDINANCE AFTER STAKEHOLDER REVIEW COMMENTS;  
SUMMARY OF STAKEHOLDER COMMENTS AND COUNTY RESPONSES (5/14/21)**

| No. | Code Provision                       | County Proposed Changes                                                                                                                                                                                                                                          | Stakeholder Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | County Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12  | 13.80.130<br>Franchise<br>revocation | Outlines process for utility franchise revocation, which includes a Revocation Notice with appeal to the Hearing Examiner (at utility request). The Hearing Examiner would provide a recommendation to the Council, who would make the final decision on action. | <p>Comcast notes there is no allowance for informal opportunities to cure violation before the County Engineer issues a revocation notice; recommends removing reference to violations of chapter 13.80 SCC as grounds for revocation.</p> <p>PSE expressed concern that revocation procedures in SCC 13.80.130 are terms unilaterally imposed on the franchisee; recommends including additional subsection that clarifies the specific terms and conditions of a franchise that provide measures for dispute resolution, enforcement and remedies for noncompliance will control.</p> <p>The City of Everett requests Everett water transmission lines be exempt from franchise revocation.</p> | <p>The proposed code amendments are intended to be a framework for the County to use in the event the County seeks to revoke a franchise. This framework ensures utilities receive due process prior to the revocation of a franchise but does not prevent a utility and the County from agreeing to include additional processes in the franchise. The County intends for the proposed revocation process to apply to all new utility franchises as well as those existing franchises with non-conflicting terms, unless otherwise provided in a franchise. Additional guidance on the franchise revocation processes has been added.</p> <p>The proposed procedures do not require the County Council to take a specific action with respect to a utility’s facilities in the ROW in the event of franchise revocation.</p> |



**UTILITY CODE AMENDMENTS –  
REVISIONS MADE TO DRAFT ORDINANCE AFTER STAKEHOLDER REVIEW COMMENTS;  
SUMMARY OF STAKEHOLDER COMMENTS AND COUNTY RESPONSES (5/14/21)**

| No. | Code Provision                                             | County Proposed Changes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Stakeholder Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | County Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13  | 13.80.140<br>Expired franchises undergoing renewal process | <p>Formalizes current practice of allowing a utility to operate on a month-to-month basis under the terms of their expired franchise, when the utility is engaged and responsive to the County during the franchise renewal process, but also imposes a cap of 25 years as required by SCC and County Charter.</p> <p>Clarifies a utility with an expired franchise may be allowed D8 permits, but does not allow issuance of a D7 permit. The limitation on D7 permits will not become effective until one year after the effective date of the ordinance.</p> | <p>Comcast recommends including an option to formally extend the franchise agreement. Comcast also expressed concerns that utilities operating on a month-to-month extension of their expired franchise should be eligible for any and all permits necessary to operate in the ROW. Recommends the County be required to follow the revocation process described in SCC 13.80.130 in order to terminate an expired franchise.</p> <p>PSE recommends changing the requirement that the utility is engaged and responsive to the County in the renewal process to one where both parties, franchisee and County, “are engaged in good faith negotiations of the terms and conditions of a renewal franchise.”</p> | <p>The intent of this new section is to provide clear expectations for franchisees and the County undergoing renewal negotiations when a franchise has expired. The County is not aware of legal authority requiring it to extend the terms of an expired franchise, but appreciates the complications faced by a utility in the event an expired franchise was not allowed to continue during a period of good faith negotiation of its renewal. A process to revise or extend the terms of a franchise by mutual agreement can be included as a negotiated term of a specific franchise and does not need to be addressed in code. The County believes that a formal communication by letter from the County Engineer or his designee notifying the utility that it may continue to operate under the terms of the expired franchise on a month-to-month basis provides clarity. In the event renewal negotiations break down, the County may terminate the expired franchise without the use of the revocation process in SCC 13.80.130, which is intended for unexpired franchises. The termination of an expired franchise would require 30-day written notice and council action by motion, which provides an opportunity for public comment.</p> <p>Utilities that meet the requirements of proposed SCC 13.80.140(1) and are operating under the</p> |

**UTILITY CODE AMENDMENTS –  
REVISIONS MADE TO DRAFT ORDINANCE AFTER STAKEHOLDER REVIEW COMMENTS;  
SUMMARY OF STAKEHOLDER COMMENTS AND COUNTY RESPONSES (5/14/21)**

| No. | Code Provision | County Proposed Changes | Stakeholder Comments                                                                                                                                                                                                                                                                                                               | County Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----|----------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                |                         | <p>The City of Everett recommends removing the requirement that the County Engineer agree by letter that the franchisee may continue to operate under the terms of the expired franchise; less formal communications should be sufficient. Requests Everett’s large water transmission lines be exempt from franchise renewal.</p> | <p>terms of an expired franchise are eligible to obtain permits to perform all necessary work in the R/W (i.e. D8 permits) but are not eligible for the D7 “blanket” permit. The D7 permit is a convenience for utilities with current franchises in good standing; a D7 permit is not essential for a utility to perform work in the R/W.</p> <p>The County appreciates these comments and has proposed additional changes to make the relationship between SCC 13.60.060 and SCC 13.80.140 more clear.</p> |

SNOHOMISH COUNTY COUNCIL

EXHIBIT # 5

FILE ORD. 21-032

# Code Amendments Related to Regulation of Utilities in the Right of Way



Snohomish County

# Project Objectives

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- Clarify need and benefit of having an active utility franchise
- Outline franchise dispute resolution and revocation processes
- Update the definition of cable franchise fee
- Misc. clarification and housekeeping amendments



# Utility Franchise - Background

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- A Franchise is the County's authorization for public or private utility purveyors to use of the public right-of-way (ROW) for their facilities
- Provides a framework for future coordination
- Addresses a number of issues, including:
  - Emergency situations
  - Utility relocation
  - Permitting for installation, maintenance, & repair
  - Restoration of ROW
- Types of Franchises:
  - Water, Sewer, Electric, Natural Gas, Telecommunications, Cable TV



# Utility Code Amendments

## Permit Requirements for Utilities

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- 13.10.010 – Permit Required
  - Clarifies franchise is required to obtain permit
- 13.80.015 – Right-of-way permit required
  - Clarifies ROW Use Permit required in addition to franchise.
  - Allows D8 permits in cases of emergencies as determined by the Engineer



# Utility Code Amendments

## Permit Requirements for Utilities

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- 13.80.140 – Expired Franchises
  - Formalizes current practice of month-to-month operation if utility applies for franchise renewal and is engaged in good faith negotiations
- 13.60.055 – D8 (Major Utility Construction) permit conditions
  - No D8 permit unless utility has a franchise, C10 Permit, or is engaged in the utility franchise renewal process (if expired).
  - D8 permits may also be issued by the County Engineer in case of emergencies, regardless of a utility's franchise status
- 13.60.060 D7 (“Blanket” Minor Utility Construction) permit conditions
  - No D7 permit unless utility has a franchise or C10 Permit. Utilities operating on an expired month-to-month franchise will not be eligible.
  - One year delayed effective date for this provision to allow outstanding expired franchises to be renewed.



# Utility Code Amendments

## Dispute Resolution and Revocation

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- Authority for the Hearing Examiner to hold hearings on franchise disputes and revocation, described in chapter 13.80 SCC (new section 2.02.123)
- 13.80.125 Franchise Dispute Resolution Process
  - Outlines general process for utility franchise dispute resolution.
  - Authorizes the Hearing Examiner to hear appeals of orders by the County Engineer to comply with the terms of a franchise, including assessment of liquidated damages.
- 13.80.130 – Franchise Revocation Process
  - Outlines general process for revocation of a utility franchise.
  - Provides utility the option for appeal to the Hearing Examiner.
  - Hearing Examiner provides recommendation to Council for final action



# Utility Code Amendments

## Cable Franchise Fees

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- 13.80.092 – Cable television Franchise Fee
  - Revised definition to align the Cable Act
  - Requires quarterly payments, improving County budget forecasting
- 13.110.010 Fees to be charged
  - Eliminates reference to annual franchise fee for consistency with revised Franchise Fee definition in 13.80.092.



# Utility Code Amendments

## Misc. Clarification and Housekeeping

---

- 13.50.010 – General
  - Clarifies Type C-10 Permit applies to both opened and unopened right-of-way
- 13.50.100 – Conditions—Utilities (C10)
  - Establishes general conditions for a C10 permit (previously not described)
- 13.80.020 – Application
  - Clarifies applications are required for a new franchise or renewals.
  - Eliminates thirty-day timeline for County Engineer report and recommendations.
- 13.80.070 – Expense of Proceeding
  - Provides correct reference to permit section.

