

1 APPROVED: 7/21/2021
2 EFFECTIVE: 8/02/2021

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36 addressing default and termination of franchises, and such section was repealed by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) 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 **13.80.015 Right-of-way permit required.**
19
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 **13.80.020 Application.**
34
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 **13.80.070 Expense of proceeding.**
46

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

34
35 (4) Hearing on the revocation notice.

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

42 (b) For appeals to be considered, they must be received by the
43 department within 30 calendar days of the date service of the revocation notice. The
44 date of service of the revocation notice is the date the notice was personally served or,
45 if served by mail, the third business day following the day upon which the notice was
46 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
15 franchisee that the franchisee may continue to operate under the terms of the expired
16 franchise except 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

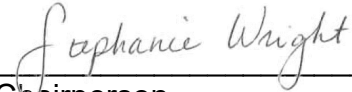
26 Section 16. If any section, sentence, clause or phrase of this ordinance is held to
27 be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or
28 unconstitutionality shall not affect the validity or constitutionality of any other section,
29 sentence, clause, or phrase 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.
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1 PASSED this 21st day of July, 2021.


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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington




Chairperson

ATTEST:



Asst. Clerk of the Council

(X) APPROVED
() EMERGENCY
() VETOED



County Executive
Date: July 23, 2021

ATTEST:



Approved as to form only:



Deputy Prosecuting Attorney