

**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
1	Code Recitals, 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 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.

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4	13.60.055 Conditions - Major construction, minor construction, and major utility construction (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 Conditions-- Blanket utility 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>

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				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 Right-of-way 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.  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 Application	Clarifies an application is required for a new or renewal of an existing utility franchise; 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.  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

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			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 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 Cable television— <del>((Annual))</del> Franchise fee	Revising definition of franchise fee to include other gross revenues not currently allowed under this definition, i.e. advertising & home shopping. 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 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.

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			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>

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12	13.80.130 Franchise 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>

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13	13.80.140 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>

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			<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>