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No. 96360-6

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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KING COUNTY,

Appellant,

v.

KING COUNTY WATER DISTRICTS  
Nos. 20, 45, 49, 90, 111, 119, 125, et al.,

Respondents.

AMES LAKE WATER ASSOCIATION, DOCKTON WATER  
ASSOCIATION, FOOTHILLS WATER ASSOCIATION, SALLAL  
WATER ASSOCIATION, TANNER ELECTRIC COOPERATIVE,  
and UNION HILL WATER ASSOCIATION,

Intervenor-Defendants.

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**APPELLANT KING COUNTY'S OPENING BRIEF**

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**TABLE OF CONTENTS**

I. INTRODUCTION..... 1

II. ASSIGNMENTS OF ERROR ..... 3

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 3

IV. STATEMENT OF THE CASE..... 4

    A. DEVELOPMENT OF THE FRANCHISE IN WASHINGTON..... 4

    B. ADOPTION OF ORDINANCE 18403..... 10

        1. Private and Public Utilities Use King County Rights-of-Way. .... 10

        2. Ordinance 18403 Requires Utilities to Pay Franchise Rental Compensation for Their Use of the ROW..... 12

    C. THE TRIAL COURT SUBSTANTIALLY INVALIDATES ORDINANCE 18403..... 15

V. ARGUMENT ..... 20

    A. RCW 36.55.010 ALLOWS COUNTIES TO CONDITION THE GRANT OF A FRANCHISE ON THE ACCEPTANCE OF REASONABLE TERMS, INCLUDING FRANCHISE RENTAL COMPENSATION..... 21

    B. PROPERLY CONSTRUED, RCW 36.55.010 ALLOWS COUNTIES TO CHARGE FRANCHISE RENTAL COMPENSATION..... 27

        1. Cities and Counties Historically Had Broad Power to Impose Conditions, Including Compensation Requirements, on the Grant of Franchises. .... 28

        2. The Legislature Preserved Counties’ Authority to Require Compensation for Franchises Even After Partially Eliminating Cities’ Power to Charge Franchise Fees. .... 31

3.	Interpreting RCW 36.55.010 to Allow Counties to Condition Franchise Agreements with <i>Private</i> Utilities on the Payment of Franchise Rental Compensation is Consistent with Const. art. VIII § 7. ....	34
4.	For Public Districts, RCW 36.55.010 Should Be Interpreted Consistently with Other Related Statutes. ....	37
a.	RCW 57.08.005 Applied to the Public Districts Does Not Vitate the County’s Authority under RCW 36.55.010. ....	37
b.	Application of Ordinance 18403 to the Public Districts To Allow Franchise Rental Compensation Is Consistent With the Washington Constitution and With State Accountancy Laws.....	43
C.	KING COUNTY, AS A HOME RULE CHARTER COUNTY, HAS INDEPENDENT AUTHORITY TO LEGISLATE FRANCHISE RENTAL COMPENSATION.....	45
D.	NO OTHER ARGUMENT ADVANCED BELOW PRECLUDES CHARGING FRANCHISE RENTAL COMPENSATION FOR USE OF THE ROW. ....	48
VI.	CONCLUSION .....	50

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Federal Cases</b>	
<i>City of St. Louis v. W. Union Tel. Co.</i> , 148 U.S. 92 (1893).....	passim
<b>Washington Cases</b>	
<i>Am. Legion Post No. 149 v. Wash. State Dep't of Health</i> , 164 Wn.2d 570, 192 P.3d 306 (2008).....	39
<i>Amalgamated Transit Union Local 587 v. State</i> , 142 Wn.2d 183, 11 P.3d 762 (2000).....	20
<i>Baxter-Wyckoff Co. v. City of Seattle</i> , 67 Wn.2d 555, 408 P.2d 1012 (1965).....	34
<i>Bowles v. Wash. Dep't of Ret. Sys.</i> , 121 Wn.2d 52, 847 P.2d 440 (1993).....	28
<i>Burns v. City of Seattle</i> , 161 Wn.2d 129, 164 P.3d 475 (2007).....	passim
<i>Carlson v. San Juan Cty.</i> , 183 Wn. App. 354, 333 P.3d 511 (2014).....	46
<i>Cent. Puget Sound Reg'l Transit Auth. v. WR-SRI 120th N. LLC</i> , 191 Wn.2d 223, 422 P.3d 891 (2018).....	27, 28
<i>City of Everett v. Snohomish Cty.</i> , 112 Wn.2d 433, 772 P.2d 992 (1989).....	40
<i>City of Kent v. Mann</i> , 161 Wn. App. 126, 253 P.3d 409 (2011).....	22
<i>City of Lakewood v. Pierce Cty.</i> , 106 Wn. App. 63, 23 P.3d 1 (2001).....	18, 19, 49, 50
<i>City of Snoqualmie v. King Cty. Exec. Dow Constantine</i> , 187 Wn.2d 289, 386 P.3d 279 (2016).....	48, 49

<i>City of Spokane v. Spokane Gas &amp; Fuel Co.</i> , 175 Wash. 103, 26 P.2d 1034 (1933).....	passim
<i>City of Tacoma v. City of Bonney Lake</i> , 173 Wn.2d 584, 269 P.3d 1017 (2012).....	23, 31, 38, 44
<i>City of Tacoma v. Taxpayers of City of Tacoma</i> , 108 Wn.2d 679, 743 P.2d 793 (1987).....	35
<i>CLEAN v. State</i> , 130 Wn.2d 782, 928 P.2d 1054 (1996).....	35
<i>Covell v. City of Seattle</i> , 127 Wn.2d 874, 905 P.2d 324 (1995).....	48
<i>Crawford v. Seattle, R. &amp; S. Ry. Co.</i> , 97 Wash. 70, 165 P. 1070 (1917).....	23
<i>Cunningham v. Weedon</i> , 81 Wash. 96, 142 P. 453 (1914).....	44
<i>Davis v. King Cty.</i> , 77 Wn.2d 930, 468 P.2d 679 (1970).....	25, 26, 30
<i>G-P Gypsum Corp. v. Dep't of Revenue</i> , 169 Wn.2d 304, 237 P.3d 256 (2010).....	39
<i>Hadfield v. Lundin</i> , 98 Wash. 657, 168 P. 516 (1917).....	34
<i>In re Reed</i> , 136 Wn. App. 352, 149 P.3d 415 (2006).....	28
<i>King Cnty. Council v. Pub. Disclosure Comm'n</i> , 93 Wn.2d 559, 611 P.2d 1227 (1980).....	46
<i>Marysville v. State</i> , 101 Wn.2d 50, 676 P.2d 989 (1984).....	35
<i>Olympic View Water &amp; Sewer Dist. v. Snohomish Cnty.</i> , 112 Wn.2d 445, 772 P.2d 998 (1989).....	40, 41

<i>Pac. Tel. &amp; Tel. Co. v. City of Everett</i> , 97 Wash. 259, 166 P. 650 (1917).....	1, 24, 30
<i>Rauch v. Chapman</i> , 16 Wash. 568, 48 P. 253 (1897).....	7
<i>Sheehan v. Cent. Puget Sound Reg'l Transit Auth.</i> , 155 Wn.2d 790, 123 P.3d 88 (2005).....	20
<i>State ex rel. Carroll v. King Cty.</i> , 78 Wn.2d 452, 474 P.2d 877 (1970).....	46
<i>State ex rel. City of Tacoma v. Sunset Tel. &amp; Tel. Co.</i> , 86 Wash. 309, 150 P. 427 (1915).....	29
<i>State ex rel. Longview Fire Fighters Union, Local 828, I.A.F.F. v. City of Longview</i> , 65 Wn.2d 568, 399 P.2d 1 (1965).....	22, 25
<i>State ex rel. Pac. Tel. &amp; Tel. Co. v. Dep't of Pub. Serv.</i> , 19 Wn.2d 200, 142 P.2d 498 (1943).....	5, 8, 10, 30
<i>State ex rel. Schillberg v. Everett Dist. Justice Ct.</i> , 92 Wn.2d 106, 594 P.2d 448 (1979).....	47
<i>State ex rel. York v. Bd. of Comm'rs of Walla Walla Cty.</i> , 28 Wn.2d 891, 184 P.2d 577 (1947).....	10, 24, 27
<i>State v. Grays Harbor Cty.</i> , 98 Wn.2d 606, 656 P.2d 1084 (1983).....	44
<i>State v. Home Tel. &amp; Tel. Co. of Spokane</i> , 102 Wash. 196, 172 P. 899 (1918).....	23
<i>State v. Larson</i> , 184 Wn.2d 843, 365 P.3d 740 (2015).....	32
<i>State v. Roggenkamp</i> , 153 Wn.2d 614, 106 P.3d 196 (2005).....	23
<i>State v. Super. Ct. for Spokane Cty.</i> , 87 Wash. 582, 152 P. 11 (1915).....	29

<i>State v. Super. Ct. for Spokane Cty.</i> , 110 Wash. 396, 188 P. 404 (1920).....	23
<i>State v. Velasquez</i> , 176 Wn.2d 333, 292 P.3d 92 (2013).....	37
<i>Sw. Wash. Chapter, Nat’l Elec. Contractors Ass’n v. Pierce Cny.</i> , 100 Wn.2d 109, 667 P.2d 1092 (1983) .....	46
<i>Tacoma Ry. &amp; Power Co. v. City of Tacoma</i> , 79 Wash. 508, 140 P. 565 (1914).....	29
<i>Tulare Cty. v. City of Dinuba</i> , 188 Cal. 664, 206 P. 983(1922) .....	31
<i>Wash. State Highway Comm’n v. Pac. Nw. Bell Tel. Co.</i> , 59 Wn.2d 216, 367 P.2d 605 (1961).....	36
<i>ZDI Gaming, Inc. v. State ex rel. Wash. State Gambling Comm’n</i> , 173 Wn.2d 608, 268 P.3d 929 (2012).....	36

**Other Cases**

<i>City of Hartford v. Connecticut Co.</i> , 107 Conn. 312, 140 A. 734 (1928) .....	31
<i>City of Mitchell v. Dakota Cent. Tel. Co.</i> , 25 S.D. 409, 127 N.W. 582 (1910).....	31
<i>Lewis v. Nashville Gas &amp; Heating Co.</i> , 162 Tenn. 268, 40 S.W.2d 409 (1931).....	31
<i>Holt v. Sather</i> , 81 Mont. 442, 264 P. 108 (1928) .....	28
<i>City of Springfield v. Interstate Indep. Tel. &amp; Tel. Co.</i> , 279 Ill. 324, 116 N.E. 631 (1917).....	31
<i>City of Springfield v. Postal Tel.-Cable Co.</i> , 253 Ill. 346, 97 N.E. 672 (1912).....	31

### **Constitutional Provisions**

Const. art. I, § 8.....	43
Const. art. VIII § 5 .....	passim
Const. art. VIII § 7 .....	passim
Const. art. XI, § 4.....	46

### **Federal Statutes**

47 U.S.C. ch. 5 .....	9
-----------------------	---

### **Washington Statutes**

Laws of 1889-1890, ch. 7, § 5 .....	8
Laws of 1889-1890, ch. 7, § 116 .....	8
Laws of 1889-1890, ch. 7, § 117 .....	8, 32
Laws of 1889-1890, ch. 7, § 153 .....	8
Laws of 1889-1890, ch. 7, § 154 .....	8
Laws of 1891, ch. 156, § 3.....	29
Laws of 1903, ch. 113, § 9.....	29
Laws of 1905, ch. 106.....	40
Laws of 1905, ch. 106, § 1.....	7, 32
Laws of 1929, ch. 119, § 1.....	7
Laws of 1937, ch. 187, § 38.....	40
Laws of 1982, 1st Ex. Sess., ch. 49.....	33
Laws of 1996, ch. 230, § 101.....	41

RCW 35.21.860 .....	32, 33
RCW 36.27.020 .....	9
RCW 36.32.120 .....	10
RCW 36.55.010 .....	passim
RCW 36.55.060 .....	17, 21, 22, 26
RCW 36.75.020 .....	10, 45
RCW 43.09.210 .....	44, 45
RCW 43.10.030 .....	9
RCW 57 .....	41
RCW 57.04.060 .....	40
RCW 57.08.005 .....	passim

### **Ordinances**

K.C.C. 6.27.080 .....	13
Ordinance 18403.....	passim

### **Other Authorities**

1 Delos F. Wilcox, <i>Municipal Franchises</i> (1910) .....	6
2 Delos F. Wilcox, <i>Municipal Franchises</i> (1911) .....	8
4 Eugene McQuillin, <i>A Treatise on the Law of Municipal Corporations</i> (1st ed. 1911) .....	passim
12 Eugene McQuillin, <i>The Law of Municipal Corporations</i> (3d ed. updated July 2018).....	24
16 Eugene McQuillin, <i>The Law of Municipal Corporations</i> (3d ed.2017) .....	48
37 C.J.S., <i>Franchises</i> .....	5

Op. Att’y Gen. No. 5 (1997) .....	44
Op. Att’y Gen. No. 10 (1978) .....	36
Op. Att’y Gen. No. 19 (1977) .....	2, 25
Op. Att’y Gen. No. 32 (1968) .....	43
Op. Att’y Gen. No. 169 (1958) .....	passim
<i>Taxes vs. Fees: A Curious Confusion,</i> 38 GONZ. L. REV. 335 (2002-2003) .....	48, 49
<i>The Washington Constitution’s Prohibition on Special Privileges and Immunities: Real Bite for “Equal Protection” Review of Regulatory Legislation?,</i> 69 Temp. L. Rev. 1247 (1996) .....	37
<i>Washington State Constitutional Limitations on Gifting of Funds to Private Enterprise: A Need for Reform,</i> 20 Seattle U. L. Rev. 199 (1996) .....	35

## I. INTRODUCTION

For more than a century, Washington law has recognized the authority of general municipal governments to charge reasonable rental compensation for the use of public rights-of-way (“ROW”) by utilities along the jurisdiction’s roads. *See, e.g., City of Spokane v. Spokane Gas & Fuel Co.*, 175 Wash. 103, 107-08, 26 P.2d 1034 (1933) (“Such charges as these have been quite generally held to be in the nature of rental for the use and occupation of the streets.”); *Pac. Tel. & Tel. Co. v. City of Everett*, 97 Wash. 259, 267-69, 166 P. 650 (1917) (same). This Court long ago adopted the rule from *City of St. Louis v. W. Union Tel. Co.*, 148 U.S. 92, 99 (1893) that “the nature of a charge for the [utility’s] use of property belonging to the city . . . may properly be called rental.” *See City of Everett*, 97 Wash. at 267 (quoting *City of St. Louis*).

Since territorial days, Washington counties have possessed authority to grant franchises to utilities for the use of county roads in conducting their business activities, and to obtain reasonable compensation for this privileged use of the public ROW. *See* RCW 36.55.010 (current version of county franchise statute). Consistent with statute, case law and learned treatises, the practice of charging rental compensation for ROW use has long been “quite common” and well within a county’s authority. 1977 Op. Att’y Gen. No. 19, 1977 WL

25965, at \*1 (analyzing RCW 36.55.010).

Following this established law and seeking a fair rate of return for the use of public assets, King County adopted Ordinance 18403 (“the Ordinance”), which requires water, sewer, gas, and electric utilities to pay reasonable rental compensation through a negotiated franchise agreement for their use of the public ROW. Respondents Special Purpose Utility Districts (“District Utilities”) and Private Utility Corporations (“Private Utilities”) challenged this ordinance, claiming that King County lacked the authority to charge them rent. Although some of these utilities currently pay rent within cities where they operate, all of them are accustomed to using county ROW rent-free.

On cross-motions for summary judgment focusing on the County’s authority to enact the Ordinance, the trial court struck down the Ordinance’s compensation provisions and ruled that King County lacked authority to require franchise rental compensation for the use of county roads. CP 2282-84. It further ruled that both the Private and District Utilities could use the public ROW without compensation. CP 2283. The court also prohibited King County from requiring certain minimum franchise terms and conditions in return for granting a franchise. *Id.*

The trial court’s ruling is contrary to statutory and case law, the Washington Constitution, and King County’s charter authority. Because

King County has ample authority to require reasonable rental compensation from private or public utilities for their use of the public ROW, the trial court's order granting summary judgment for the utilities should be reversed and the matter remanded with instructions to enter summary judgment for King County upholding Ordinance 18403.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in granting respondent District Utilities' motion for summary judgment.
2. The trial court erred in granting respondent Private Utilities' motion for summary judgment.
3. The trial court erred in denying King County's motion for summary judgment.
4. The trial court erred in entering judgment in favor of respondents District and Private Utilities.
5. The trial court erred in invalidating portions of King County Ordinance 18403.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- A. Where the Legislature has granted King County broad authority to acquire and control county roads, including the power to grant franchises under RCW 36.55.010 for utility services, did the trial court err in ruling

that King County lacks the authority to obtain franchise rental compensation for utilities' use of its ROW?

B. Where King County holds legislative powers as broad as the State unless expressly restricted, did the trial court err in ruling that King County lacks the authority to obtain franchise rental compensation for utilities' use of public ROW, where no state law conflicts with the operative provisions of Ordinance 18403?

C. Where RCW 57.08.005 authorizes public utility districts to purchase or condemn property necessary to operate water and sewer facilities, did the trial court err by ruling that the statute authorizes—both public *and* private—to use King County ROW without payment of franchise rental compensation?

D. Where no provision of state law authorizes private utilities to operate in the public ROW, did the trial court err in ruling that private utilities may do so without payment of franchise rental compensation?

#### **IV. STATEMENT OF THE CASE**

##### **A. DEVELOPMENT OF THE FRANCHISE IN WASHINGTON**

A franchise is the grant by a municipality to a utility of the right “to do certain things which a corporation or individual otherwise cannot do[,] such as the right to use a street or alley for a commercial or street railroad track, or to erect thereon poles and string wires for telegraph,

telephone, or electric light purposes, or to use the street or alley underneath the surface for water pipes, gas pipes, or other conduits.” 4

EUGENE MCQUILLIN, A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 1615, at 3363-65 (1st ed. 1911) (footnotes omitted).

In *State ex rel. Pac. Tel. & Tel. Co. v. Dep’t of Pub. Serv.*, 19 Wn.2d 200, 278-79, 142 P.2d 498 (1943), this Court explained the general process for entering into a franchise agreement:

A franchise is ‘a special privilege conferred by the government on an individual or individuals and which does not belong to the citizens of the country generally, of common right.’ 37 C.J.S., Franchises, § 1, p. 142. Such a franchise as those with which we are here concerned is a contract between a municipal corporation and a person who has applied for leave to engage in certain business operations of a public nature within the limits of the municipality. Franchises granted to respondent include the right to place poles, wires and conduits within the public streets. Any person desiring such a franchise must apply therefor to the municipal corporation. ***If his application be favorably considered, a franchise is offered upon certain conditions. This offer the applicant may accept or refuse.*** If accepted, the franchise provisions become binding on all persons concerned, save as heretofore noted as to provisions fixing rates.

Franchises granted to public utilities vary greatly as to the obligations assumed by the grantee. Respondent is operating under some franchises which require payment of certain percentages of respondent's gross income received within the territorial limits of the grantor. Under other franchises, respondent is required to furnish to the municipality without charge certain telephone installations and service. ***On the other hand, respondent, under the franchises, enjoys the privilege of using the public streets,***

***subject to certain conditions, for installation of its apparatus. This latter right is, of course, valuable, and indeed necessary, and is a privilege for which a cash payment may reasonably be exacted. If respondent desired to use some available city property, it might well negotiate a lease and pay a rental therefor.***

(Emphasis added). This description of the franchise process generally remains true today. *See* CP 1231, 1234-36, 1245, 1247-50.

Although the concept of franchises governing the use of public property pre-dates the founding of the United States, franchises took on a renewed importance in the Nineteenth Century as American municipalities dealt with issues of expansion and development of infrastructure. *See* 4 MCQUILLIN, *supra*, § 1614, at 3359-60. As one noted commentator observed, “aside from the inherent necessity of public control for any particular utility, the demand upon the streets for general, varied and increasing uses makes it imperative for the public authorities to maintain a continuing control of the public highways, undiminished by any irrevocable or perpetual special franchise.” 1 DELOS F. WILCOX, MUNICIPAL FRANCHISES 130 (1910).

These principles applied with particular force in Washington, where several provisions of the Washington Constitution prohibited uncompensated use or disposition of public assets. For example, the framers forbade perpetual franchises pursuant to article I, section 8: “No

law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.” Similarly, article VIII, section 7 provides: “[n]o county . . . shall . . . give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation . . . .” In elaborating on the reasoning behind these clauses, this Court explained that “[a] recurrence to the history of the times will show that many counties and municipalities had become largely indebted beyond their capacity to pay, for public improvements of various kinds.” *Rauch v. Chapman*, 16 Wash. 568, 574, 48 P. 253 (1897).

Following prior statutes and territorial laws, in 1905, the Legislature authorized county commissioners to “grant franchises to persons or corporations to use the county roads and streets in their several counties outside of the incorporated towns and cities for the construction and maintenance of waterworks, gas pipes, telephone, telegraph and electric light lines . . . .” Laws of 1905, ch. 106, § 1.<sup>1</sup> The Act explicitly confirmed and validated county franchises that were granted prior to 1905. *Id.*, §§ 2-3; *see also* 1856 Wash. Terr. at 36 (granting county commissioners “sole and conclusive jurisdiction over county roads within

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<sup>1</sup> The 1905 enactment applies to public utility franchises. The Act is titled, “AN ACT giving to County Commissioners the power to grant certain public utility franchises on County roads and streets outside of incorporated towns and cities, and confirming certain such grants heretofore made.” Laws of 1905, ch. 106. A 1929 amendment added “sewers” to the franchise purposes. Laws of 1929, ch. 119, § 1.

their respective counties”). At the time of the 1905 enactment, counties’ statutory franchising authority mirrored that of cities. *See, e.g.*, Laws of 1889-1890, ch. 7, §§ 116, 117(4), 117(13), 153, 154(4), 154(13), 5.

When the 1905 Legislature enacted this statute, it was well understood that counties had discretion to condition the grant of a franchise on the utility’s acceptance of reasonable terms and conditions, including fair compensation for use of the public ROW. *See* 2 DELOS F. WILCOX, MUNICIPAL FRANCHISES 771 (1911) (“If the granting of franchises is to be defended at all, it must be defended on the assumption that they are granted as a convenient means of securing the performance of a necessary public function. In every case the obligations imposed should fully offset the value of the special privileges granted.”).

Thus, both cities and counties have regularly conditioned use of public ROW by utilities on rental payments or other exchanges of value, including quid pro quo or reduced utility rates. The common practice of conditioning a franchise on an exchange of value has been discussed frequently by this Court in its decisions. *See, e.g., City of Spokane*, 175 Wash. at 106-09 (collecting cases); *State ex rel. Pac. Tel. & Tel. Co.*, 19 Wn.2d at 278 (noting that utility was required under franchise “to furnish to the municipality without charge certain telephone installations and service” in return for “using the public streets, subject to certain

conditions, for installation of its apparatus.”).

Along these same lines, a 1935 opinion by then-King County Prosecutor Warren G. Magnuson concluded that “as to new franchises, the board of county commissioners, for revenue, may ‘fix a pole line permit fee’ through a franchise charge, in the nature of rental, for the use and occupation of county rights-of-way.” 1935 Op. King Cty. Pros. Att’y No. 59 at 9.<sup>2</sup> King County has further conditioned franchise grants in the area of cable television on payment of compensation for use of the ROW.<sup>3</sup> *See* The United Community Antenna System, Inc., Franchise Ordinance No. 546 (adopted December 19, 1966) (“As rental and compensation for the use of county roads and rights of way, and to assist in reimbursing King County for the occupancy of such roads and rights of way, franchise holder shall pay unto King County” four percent of gross income).

Currently, Washington cities regularly charge franchise fees for utilities including cable television, garbage, water, and sewer services. A 2016 report from the Washington Association of Cities summarizes some

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<sup>2</sup> Similar to the Attorney General, the King County Prosecutor has issued formal legal opinions. Like the Attorney General, a county prosecutor is required to act as the “legal adviser of the legislative authority, giving it his or her written opinion when required by the legislative authority or the chairperson thereof touching any subject which the legislative authority may be called or required to act upon relating to the management of county affairs.” RCW 36.27.020(1); *see also* RCW 43.10.030(7) (requiring the Attorney General to “[g]ive written opinions, when requested by either branch of the legislature, or any committee thereof, upon constitutional or legal questions”).

<sup>3</sup> Prior to the adoption of the Cable Communications Policy Act of 1984, 47 U.S.C. ch. 5, subch. V-A, King County’s cable television franchises were based on the authority in RCW 36.55.010.

of these franchise agreements, where charges are based on a percentage of revenue or through a calculation of lineal square footage of ROW available for use by the utility.<sup>4</sup>

## **B. ADOPTION OF ORDINANCE 18403**

### **1. Private and Public Utilities Use King County Rights-of-Way.**

King County operates and maintains more than 1,500 miles of roadways. Each county road is located within a ROW that generally varies in width between 30 and 60 feet. The County has acquired its ROW through various methods, including fee purchase, condemnation, adverse possession, donation, and dedication. CP 1244-45. Regardless of acquisition method, the County holds controlling property rights in these ROW and considers them a valuable public asset. *Id.*; *see also* CP 1231.<sup>5</sup> The roads are created by the County Engineer and catalogued in the King County Road Log, which is publicly available online. CP 1244.

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<sup>4</sup> *See* <https://wacities.org/news/2019/01/31/municipal-rates-and-fees> (last accessed Feb. 28, 2019).

<sup>5</sup> The Legislature has delegated control over local roads to the local government of general jurisdiction—here, the County. *State ex rel. York v. Bd. of Comm’rs of Walla Walla Cty.*, 28 Wn.2d 891, 898, 184 P.2d 577 (1947). The Legislature has enacted a comprehensive statutory scheme detailing county powers and duties with respect to the construction and maintenance of county roads. *See, e.g.*, RCW 36.75.020 (“All of the county roads in each of the several counties shall be established, laid out, constructed, altered, repaired, improved, and maintained by the legislative authority of the respective counties as agents of the state. . . .”); RCW 36.32.120(2) (authorizing county legislative authorities to “[l]ay out, discontinue, or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law . . . .”). The legislature has thus “made all matters relevant to the construction and maintenance of county roads the exclusive function of the boards of county commissioners.” 1957-58 Op. Att’y Gen. No. 169, 1958 WL 56416, at \*1.

In addition to transportation, ROW provide convenient, continuous corridors for the placement of utilities, including sewer, water, cable, telecommunications, power and gas. CP 1247-48. King County's ROW are used by various utilities, including the District and Private Utilities in this action, and other for-profit entities such as Puget Sound Energy ("PSE") and Comcast. CP 1245, 1247-48, 1250. All of these entities make extensive use of the King County ROW for their own operations and as applicable revenue-generating activities. Rather than establishing their own ROW through private purchase or condemnation, these utilities find it cost-efficient to utilize King County's ROW. CP 1247. Many of the expenses caused by this use of the ROW, like pavement degradation and enhanced liability, are borne by the County. *Id.*

Although utilities like Comcast pay substantial sums for the privilege of occupying the ROW and serving their King County customers, none of the private or public water, sewer, electric or gas utilities, including the Private and District Utilities, pay anything for their use of King County's ROW asset. CP 1247-48. But each of the District and Private Utilities uses King County's ROW to provide utility service for their customers. CP 1245, 1247-48, 1250.

Most, if not all, of the public and private utilities using the ROW have entered into prior franchise agreements with King County. CP 1249-

50, 1278-1649. In recent decades, King County has entered into approximately 170 franchise agreements that allow use of the ROW. CP 1248. Currently, 73 franchise agreements have expired or were set to expire during the 2017-2018 biennium. *Id.* Although these franchisees (which include PSE and Seattle City Light) presently operate within the County’s ROW at no cost, the County has generally reserved in its franchise agreements the right to charge rental compensation. *Id.*<sup>6</sup>

**2. Ordinance 18403 Requires Utilities to Pay Franchise Rental Compensation for Their Use of the ROW.**

On November 7, 2016, the King County Council passed Ordinance 18403. *See* CP 1253-55, 1270. The primary purpose of the Ordinance is to require King County franchise agreements to include compensation provisions for the privilege of using public road ROWs. CP 1253-55. As such, the Ordinance establishes methods to set “the reasonable compensation, fees and costs to be paid by a utility company applying for a franchise or using the right-of-way of county roads under a franchise...” CP 1253. Under the Ordinance, all franchises granted for electric, gas, water, and sewer utilities must include a requirement that the grantee provide the County with reasonable compensation (“Franchise Rental

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<sup>6</sup> Historically, the County has charged only an administrative franchise fee. CP 1248. Due to limitations in the County Code, the franchise fee does not fully recover even the administrative costs of negotiating and managing franchise agreements. *Id.*

Compensation”) in return for the right to use ROW in unincorporated King County to construct, operate, maintain, and repair utility franchises and related appurtenances. K.C.C. 6.27.080(A).

King County’s Facilities Management Division (“FMD”) is charged with implementing the Ordinance, including establishing policies and procedures to determine Franchise Rental Compensation. K.C.C. 6.27.080(D). The final Franchise Rental Compensation amount requires negotiations and agreement between FMD and the utility. *Id.*

The Ordinance directs FMD, when starting this negotiation process, to consider a number of factors in calculating an *estimated* amount of Franchise Rental Compensation for a particular franchise applicant that reflects the value of the ROW used by the utility. K.C.C. 6.27.080(C)-(D). These factors include “the land value of right-of-way within the applicant’s service area; the approximate amount of area within the right-of-way that will be needed to accommodate the applicant’s use; a reasonable rate of return to King County for the applicant’s use of the right-of-way; the business opportunity made available to the applicant; density of households served; a reasonable annual adjustment; and other factors that are reasonably related to the value of the franchise or the cost to King County of negotiating the franchise.” K.C.C. 6.27.080(C).

On January 29, 2018, consistent with the Ordinance, FMD adopted public Rule RPM 9-2 (the “Rule”) to establish the methodology for determining an estimate of Franchise Rental Compensation for an initial “ask” in the negotiation process and to establish procedures for negotiating a final amount with utilities that desire to continue their use of the ROW. CP 1272-76. The methodology was prepared in consultation with certified real estate appraiser Anthony Gibbons. CP 1231. Mr. Gibbons worked with the County over the course of several years to develop a methodology to accurately estimate the market value of the use of the County’s ROW by utilities. CP 1231, 1234-35. The formula codified in the Rule takes into account the value of the land adjacent to the ROW, the size and location of the area used by the franchisee, and a reasonable rate of return for the County. CP 1231-33. The formula then applies a Financial Impact Limiting Factor to ensure that the final Franchise Rental Compensation estimate is reasonable (consistent with legal requirements discussed *infra*). CP 1233-34. The methodology is consistent with recognized appraisal practices and standards, as well as with published literature regarding compensation owed for the use of public ROW. *See, e.g.*, CP 1234-36.

Under the Rule, after FMD calculates the estimate of Franchise Rental Compensation utilizing the formula described above and provides it to the applicant, the applicant then may suggest amendments to the

estimate in order to negotiate an agreement with King County as to the amount and type of Franchise Rental Compensation. *See* K.C.C.

6.27.080(D). At the same time, the County and the utility negotiate other terms of the franchise agreement, if an existing franchise agreement is not already in place. CP 1273. Under the rule, a franchise will not be issued to a utility that fails to reach an agreement on Franchise Rental Compensation and the other terms of a franchise agreement with the County. *Id.*; *see* K.C.C. 6.27.060(B).

**C. THE TRIAL COURT SUBSTANTIALLY INVALIDATES ORDINANCE 18403**

After the District Utilities publicly declared their opposition to paying for their use of the ROW and vowed to sue King County to invalidate the Ordinance and Rule, King County initiated this declaratory judgment action against them. CP 1248-49. The County sought a ruling in King County Superior Court confirming its authority to enact the Ordinance and Rule. CP 1-9. Specifically, the County requested a declaratory judgment that the Ordinance and Rule were within the scope of the County's authority, that the Ordinance's Franchise Rental Compensation was lawful, and that the County could legally require a utility granted a franchise allowing use of County ROW to provide reasonable compensation to the County. CP 8.

The Private Utilities subsequently intervened in the lawsuit. CP 82-83. After brief discovery, the parties filed cross-motions for summary judgment, with the District and Private Utilities primarily arguing (1) the County lacked authority to impose Franchise Rental Compensation and (2) Franchise Rental Compensation constituted an illegal tax. *See* CP 88-117, 1029-40. King County argued that its authority to charge rental compensation was established under RCW 36.55.010 and a long line of case law dating back to the United States Supreme Court’s decision in *City of St. Louis*, 148 U.S. 92. CP 1206-09. In any event, to the extent that the statutes were silent on the ability to charge rental compensation, King County’s broad authority as a home rule charter county under the Washington Constitution permitted it to adopt the policy of franchise rental compensation reflected in Ordinance 18403. CP 1204-06.

Following argument, neither the District Utilities nor the Private Utilities could identify any statute that expressly prohibited King County from adopting an ordinance authorizing Franchise Rental Compensation. *See* RP (Jul. 27, Aug. 1, & Aug. 30, 2018) (“RP”) at 55-60, 65-67. Nevertheless, the trial court ruled orally that the Ordinance’s requirements for negotiated Franchise Rental Compensation were invalid. *Id.* at 55-60.

Although the court purported to recognize the County’s “authority over the right-of-ways,” it ruled that this authority must be “read in

harmony with other statutes in play in this case,” namely, RCW 57.08.005, RCW 36.55.010, and RCW 36.55.060. RP at 58-59. The first one, RCW 57.08.005, establishes the general powers of special utility districts, including the District Utilities. The second statute, RCW 36.55.010, is a successor to the 1905 statute granting counties broad franchising authority, while the final statute, RCW 36.55.060, establishes limits on county franchising authority that have no application to this case. The trial court did not explain how these statutes were in conflict, nor did it identify any statute granting the Private Utilities the right to use the ROW without payment of compensation.

Although the trial court correctly determined that a county was allowed under these statutes “to recover its restoration cost and other related [franchise] expenses,” it did not find any basis in these statutes for rental compensation related to use of the ROW. RP at 59. The trial court surmised that these statutes were “*silent as to any rents based on usage.*” *Id.* (emphasis added). The court seemingly did not analyze the statute in conjunction with its history and case law, or in the context of an ordinance adopted by a charter county.

The trial court did not discuss the impact of over a century of decisions that consistently upheld municipalities’ ability to charge for ROW use. *Id.* To the contrary, the court concluded that “this is a new

area of law” and determined that the closest case on point was *City of Lakewood v. Pierce Cty.*, 106 Wn. App. 63, 23 P.3d 1 (2001). Relying on dicta from *Lakewood*—a case with facts wholly unrelated to the current matter—the court concluded that King County “cannot compel its terms unilaterally on the utilities,” which effectively granted the Private and District Utilities the right to unilaterally compel their terms on the County. RP at 60. The court ruled orally that the County lacked authority to require negotiated Franchise Rental Compensation as a minimum term for any franchise agreement. *Id.*<sup>7</sup>

At a subsequent hearing on the utilities’ proposed order, the District Utilities argued that the trial court’s interpretation of RCW 57.08.005 enabled them to use the ROW without entering into any franchise agreement. RP at 65-66. Because this statute has no application to the Private Utilities, they could not articulate a basis for their continued free occupation of the ROW. Both the District and Private Utilities nonetheless argued that the implication of the court’s ruling was to preclude the County from requiring a franchise, and urged the trial court to expressly invalidate all parts of the Ordinance necessitating franchise agreements. *Id.* at 65-67. The trial court apologized “for not making [its] rulings more clear.” *Id.* at 81. Rather than entering an order, the trial

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<sup>7</sup> Given its ruling on the County’s authority, the trial court did not decide the issue whether such a charge constituted a tax.

court demurred. *Id.* (“I’m going to think about this a little bit more, and then have a ruling in the next couple of days.”).

Several days later, the trial court adopted a version of the Private and District Utilities’ proposed order, supplementing its earlier oral ruling with their theories. In pertinent part, the court ruled that public water and sewer districts have their own authority to operate in the ROW under RCW 57.08.005. Given this authority, King County can charge the reasonable administrative costs of regulating the ROW, but it “lacks authority to impose ‘franchise compensation’ or ‘rent’ as provided in Ordinance 18403.” CP 2283. Although RCW 57.08.005 has no application to private utility companies, the trial court nonetheless lumped the Private Utilities in with the public ones. CP 2283-84. The court struck multiple sections of the Ordinance that reference compensation (including sections 1.F, 1.G, 7.B, 8, and 10.B and the reference to Franchise Rental Compensation in section 10.A) and invalidated Rule RPM 9-2. *Id.* The court also ruled that “Franchises are contracts which must be negotiated and agreed upon by the parties thereto, and King County may not require the utility defendants to enter into a franchise agreement by accepting King County’s franchise terms.” CP 2283.

The County timely appealed and sought direct review. CP 2301.

## V. ARGUMENT

This Court reviews summary judgment orders de novo, engaging in the same inquiry as the trial court. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2000). Here, with regard to the overarching question of King County's statutory and constitutional authority to adopt Ordinance 18403, the material facts are not in dispute. Issues related to constitutional limitations and statutory interpretation are questions of law reviewed de novo. *Sheehan v. Cent. Puget Sound Reg'l Transit Auth.*, 155 Wn.2d 790, 797, 123 P.3d 88 (2005).

There are multiple independent grounds on which this Court can uphold Ordinance 18403 and reverse the trial court. First, for more than 100 years, King County has possessed statutory authority via RCW 36.55.010 and its predecessor statutes to charge franchise rental compensation to utilities that use the public ROW for the provision of service. Second, this interpretation of the County's statutory authority is supported by more than a century of case law and the history of the county franchise power, particularly as contrasted to the franchising power of cities as amended in the 1980s. Third, even apart from the county franchise statute, Ordinance 18403 is an independently valid exercise of the County's authority under its home rule charter powers. It is consistent with the County's constitutional authority and obligation to charge

compensation for the use of public assets. No provision of law cited by the trial court or the District or Private Utilities conflicts with or undermines the validity of the Ordinance under any of the above independent grounds. On each of these alternative grounds, the trial court should be reversed.

**A. RCW 36.55.010 ALLOWS COUNTIES TO CONDITION THE GRANT OF A FRANCHISE ON THE ACCEPTANCE OF REASONABLE TERMS, INCLUDING FRANCHISE RENTAL COMPENSATION.**

Dating back to and consistent with the statute originally enacted in 1905, the Legislature has specifically given counties broad, discretionary authority to grant franchises to utilities for the use of the public ROW:

*Any board of county commissioners may grant franchises to persons or private or municipal corporations to use the right-of-way of county roads in their respective counties for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities.*

RCW 36.55.010 (emphasis added). The Legislature has limited this authority only as specified in RCW 36.55.060, which in accord with the Washington Constitution restricts franchises to no more than 50 years and bars exclusive franchises. RCW 36.55.060 further requires that franchisees be wholly liable for road restoration costs and relocation costs following road upgrades, but requires counties to engage in a pre-design consultation process when upgrading roads.

On the face of RCW 36.55.010, the County has the discretion to determine if, when and how it will grant a franchise. The use of “may” in the statute signifies the broad scope of the County’s discretionary power. *See, e.g., State ex rel. Longview Fire Fighters Union, Local 828, I.A.F.F. v. City of Longview*, 65 Wn.2d 568, 570-71, 399 P.2d 1 (1965). Indeed, when the Legislature uses “may,” a municipality may freely operate anywhere within the boundaries set by the statute. *See, e.g., City of Kent v. Mann*, 161 Wn. App. 126, 132, 253 P.3d 409 (2011). It is certainly within the bounds of the discretion afforded by the statute for the County to condition the grant of a franchise upon acceptance of certain reasonable terms, including the payment of rental compensation from utilities who seek to use the public ROW for their own operations. Based upon the common understanding of the franchise authority dating back to statehood, the discretionary power to grant franchises under RCW 36.55.010 has always encompassed the power to deny or to condition such grant on payment of consideration—whether that consideration takes the form of rent, in-kind services, or other things of value.

This conclusion flows from the premise noted above that “franchise agreements are treated like contracts....[t]he franchise agreement grants a valuable property right to the grantee to use the public streets.” *City of Tacoma v. City of Bonney Lake*, 173 Wn.2d 584, 590, 269

P.3d 1017 (2012); *see also State v. Home Tel. & Tel. Co. of Spokane*, 102 Wash. 196, 199, 172 P. 899 (1918); *State v. Super. Ct. for Spokane Cty.*, 110 Wash. 396, 400, 188 P. 404 (1920). As such, it is reasonable for the grant of a franchise to be supported by an exchange of value. *See* 4 MCQUILLIN, *supra*, § 1613, at 3356 (“[I]nstead of giving away franchises without consideration, the tendency is to protect fully the interests of the municipality, both for the present and the future”). Payment of rent for the use of county ROW is an obvious form of consideration. *See, e.g., Crawford v. Seattle, R. & S. Ry. Co.*, 97 Wash. 70, 74-76, 165 P. 1070 (1917) (treating franchise payment as consideration).

This Court, when interpreting Washington statutes granting franchise authority to municipalities, has recognized the municipalities’ broad discretion to condition franchise grants on the utilities’ acceptance of reasonable terms. This Court’s recognition of such discretion is part of the statutory scheme. *State v. Roggenkamp*, 153 Wn.2d 614, 629, 106 P.3d 196 (2005) (it “is a fundamental rule of statutory construction that once a statute has been construed by the highest court of the state, that construction operates as if it were originally written into it.” (internal quotations omitted)).

Importantly, there is “no *right* to a franchise, unless the [County Commissioners’] board determines that its operation will benefit the

public.” *York*, 28 Wn.2d at 909; *City of Spokane*, 175 Wash. at 107 (“The municipality may refuse to grant a franchise at all.”)

Because the grant of a franchise is discretionary, a municipality has broad latitude to establish the conditions for making such a grant. Under the county franchise statute, this Court has already determined that a county is “vested with discretion to grant or withhold franchises as the public interest may determine” and courts “have no jurisdiction to interfere with the honest exercise of that discretion.” *York*, 28 Wn.2d at 901. If a municipality “grants a franchise, it may do so on its own terms, conditions, and limitations,” and the utilities’ “alternative is to accept the franchise as offered, or reject it as a whole.” *City of Spokane*, 175 Wash. at 107; *see also City of Everett*, 97 Wash. at 268-69 (“A municipality can, as a condition precedent to the use of its property, exact of the user such terms and conditions as it may deem necessary to impose . . . .”) (quoting *City of St. Louis*, 148 U.S. 92); 12 MCQUILLIN, *The Law of Municipal Corporations*, § 34:57 (3d ed. updated July 2018) (a municipality has “entire control of its streets and the power to impose conditions on granting a franchise to use the streets,” including “compensation for their use by public service companies.”).

In interpreting RCW 36.55.010—the very statute at issue in this case—the Washington Attorney General found that the practice of

charging rent for the use of public ROW was “quite common” and that a county, “having entire control of its streets and the power to impose conditions on granting a franchise to use the streets, may require compensation for their use as a condition of the grant of the right to use them, unless forbidden by statute, or contrary to public policy.” 1977 Op. Att’y Gen. No. 19, 1977 WL 25965, at \*1 (quoting 12 MCQUILLIN, *supra*, § 34:37).<sup>8</sup> Although RCW 36.55.010 does not explicitly call out the right to condition the grant of a franchise on compensation, the Attorney General concluded: “a county may similarly impose reasonable fees for the various other kinds of franchises which are authorized to be granted by RCW 36.55.010.” *Id.* at \*3.

As noted above, King County Prosecutor Magnuson reached similar conclusions in 1935 when opining on the language of the county franchise statute. 1935 Op. King Cty. Pros. Att’y No. 59 at 9 (authorizing county commissioners, “for revenue,... [to] fix a pole line permit fee through a franchise charge, in the nature of rental, for the use and occupation of county rights-of-way” (internal quotations omitted)). Specifically, the “power to grant a franchise includes the power to name the terms and conditions of the grant, where the legislature has not prescribed the same.” *Id.* at 7. Where the Legislature does not establish

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<sup>8</sup> See also *Davis v. King Cty.*, 77 Wn.2d 930, 933, 468 P.2d 679 (1970) (recognizing “considerable weight” afforded to formal Attorney General opinions).

franchise conditions, but leaves them within the discretion of the county, then “the power, to so fix, vests in the county commissioners.” *Id.* at 8.

Prosecutor Charles O. Carroll opined similarly decades later:

The delegated authority as set forth in RCW 36.55.010 granted to the county discretionary franchise power by use of the words “may grant franchises,” and the only limitations in this power are set forth in RCW 36.55.060. There is no express or implied prohibition which would limit the power of the county to charge reasonable rates for franchises.

1970 Op. King Cty. Pros. Att’y No. 29 at 2. This opinion found authority under RCW 36.55.010 to charge for cable television franchises. *Id.* “The amount of the rate charged is a policy question to be determined by the County Council and is subject to the limitation that the rate must be reasonable under the circumstances.” *Id.* at 3 (citing *City of Spokane*, 175 Wash. at 107).

Echoing the above reasoning, this Court reaffirmed in *Burns v. City of Seattle*, 161 Wn.2d 129, 142, 164 P.3d 475 (2007), that “generally, a franchise fee is a bargained-for exchange by the franchisee for *a privilege that could otherwise be denied to it.*” (Emphasis added).

The trial court failed to take notice of these authorities. Its interpretation of RCW 36.55.010 incorrectly focused on what franchise terms the statute allowed *to the exclusion of* the foundational statutory discretion afforded counties to set franchise terms and conditions,

including reasonable rental compensation. *York*, 28 Wn.2d at 901. Essentially, the trial court improperly read “may” out of the statute. A statute should not be interpreted in a manner that renders any portion (including the word “may”) “meaningless or superfluous.” *Cent. Puget Sound Reg’l Transit Auth. v. WR-SRI 120th N. LLC*, 191 Wn.2d 223, 234, 422 P.3d 891 (2018) (internal quotations omitted). Because King County has broad statutory discretion to grant or deny franchises, the adoption of Ordinance 18403 as a manifestation of that discretion fell squarely within the County’s lawful authority under RCW 36.55.010.

**B. PROPERLY CONSTRUED, RCW 36.55.010 ALLOWS COUNTIES TO CHARGE FRANCHISE RENTAL COMPENSATION.**

Apart from the broad discretion afforded to counties in the language of RCW 36.55.010, all other applicable rules of statutory construction support King County’s ability to condition the grant of a franchise on the acceptance of reasonable terms per the Ordinance, including compensation for the use of public ROW by public and private utilities. This Court’s “first priority in statutory interpretation is to ascertain and carry out the Legislature’s intent.” *Cent. Puget Sound Reg’l Transit Auth.*, 191 Wn.2d at 233 (internal quotations omitted).

**1. Cities and Counties Historically Had Broad Power to Impose Conditions, Including Compensation Requirements, on the Grant of Franchises.**

For cities and counties, statutes granting franchise powers have existed for well over 100 years, and as noted above, this Court has routinely interpreted those statutes to allow franchise rental compensation. Under these circumstances, the scope of the County's franchise authority should continue to be interpreted in light of the strong historical practices that have permitted franchise rental compensation for over 100 years. *See In re Reed*, 136 Wn. App. 352, 361, 149 P.3d 415 (2006) ("The law is well settled that the Legislature is deemed to acquiesce in the court's interpretation of a statute if no change is made for a substantial time after the decision"); *Bowles v. Wash. Dep't of Ret. Sys.*, 121 Wn.2d 52, 63-64, 847 P.2d 440 (1993) (greater weight attaches to an Attorney General opinion when the Legislature has not acted to overturn that interpretation); *Holt v. Sather*, 81 Mont. 442, 264 P. 108, 114 (1928) ("common usage and practice under the statute or a course of conduct indicating a particular understanding of it will frequently be of great value in determining its real meaning" (quotations omitted)).

This Court's franchise decisions date back to the first municipal statute post-statehood. The Washington Legislature granted broad city and town control over public roads, including the grant of franchises for

railroads, pipes, and other facilities in the public streets.<sup>9</sup> This Court interpreted that 1890 act as an extensive grant of franchise authority empowering such cities to “hedge any such [franchise] privileges with all the conditions that the state itself could impose.” *Tacoma Ry. & Power Co. v. City of Tacoma*, 79 Wash. 508, 510, 515, 140 P. 565 (1914).<sup>10</sup>

Consistent with this broad power, this Court has repeatedly interpreted municipal franchise authority as empowering the franchisor to require reasonable monetary compensation from utilities for the privilege of occupying and using the public ROW. *See City of Everett*, 97 Wash. at 268-69; *City of Spokane*, 175 Wash. at 107-08; *State ex rel. Pac. Tel. & Tel. Co.*, 19 Wn.2d at 278.

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<sup>9</sup> *See, e.g.*, Laws of 1889-1890, ch. 7, § 117 (authorizing third class cities to “establish, lay out, alter, keep open, open, improve and repair streets, sidewalks, alleys, squares and other public highways and places within the city...and generally to manage and control all such highways and places” and “[t]o permit, under such restrictions as they may deem proper, the laying of railroad tracks, and the running of cars drawn by horses, steam or other power thereon, and the laying of gas and water pipes in the public streets, and to construct and maintain, and to permit the construction and maintenance of, telegraph, telephone and electric light lines therein”); § 154 (containing similar authority for town councils); § 5 (similarly authorizing first class cities to improve streets and control their use, “and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof”). The Legislature amended these provisions after 1890 but maintained the authority of cities and towns to grant franchises. *See, e.g.*, Laws of 1891, ch. 156, § 3; Laws of 1903, ch. 113, § 9.

<sup>10</sup> In *Tacoma Ry. & Power Co.*, this Court upheld the City of Tacoma’s ability to grant a franchise to an electricity provider with a condition that the provider not furnish electricity for lighting purposes within the City. 79 Wash. at 515; *see also State ex rel. City of Tacoma v. Sunset Tel. & Tel. Co.*, 86 Wash. 309, 319-21, 150 P. 427 (1915) (upholding city’s condition requiring that a telephone franchise not be assigned or transferred without the city’s consent); *State v. Super. Ct. for Spokane Cty.*, 87 Wash. 582, 587, 152 P. 11 (1915) (first class cities have the power to impose conditions when franchises are granted).

This interpretation is consistent with the above-mentioned article VIII, section 7 of the Washington Constitution (prohibiting the gift of municipal property), and the well-settled principle that franchises are valuable property rights. 2 WILCOX, *supra*, at 773 (“Compensation is supposed to represent payment by the company either in a lump sum or by annual instal[1]ments for the capital value, so to speak, of the franchise.”); 4 MCQUILLIN, *supra*, § 1645, at 3452-55 (“A municipal corporation, having entire control of its streets and power to impose conditions on granting a franchise to use the streets, may require compensation for their use by public service companies, as a condition of the grant of the right to use them, unless forbidden by statute . . . .” (footnotes omitted)).

In reaching its conclusions regarding compensation, this Court followed the reasoning of the United States Supreme Court in *City of St. Louis*, 148 U.S. at 97-99, which approved St. Louis’s practice of charging utilities for the placement of poles along city streets. *See City of Everett*, 97 Wash. at 267-68; *City of Spokane*, 175 Wash. at 107-08. Observing that the utility’s infrastructure occupied a fixed portion of the ROW, the United States Supreme Court noted that “it is the giving of the exclusive

use of real estate, for which the giver has a right to exact compensation, which is in the nature of rental.” 148 U.S. at 99.<sup>11</sup>

To this day, this Court continues to follow the same principles, namely that franchises grant “valuable property right[s]” for which consideration may be required. *Bonney Lake*, 173 Wn.2d at 592 (internal quotations omitted); *Burns*, 161 Wn.2d at 144 (“Because a franchise is a valuable property right, it is a privilege for which cities, historically, have exacted compensation in the form of free services or a cash payment.”).

In sum, consistent with the history of franchises and their increased importance in regulating and maintaining control of public ROW, this Court has for more than a century upheld the right to impose conditions, including reasonable compensation requirements, in conjunction with granting a franchise. This is the purpose of Ordinance 18403.

## **2. The Legislature Preserved Counties’ Authority to Require Compensation for Franchises Even After Partially Eliminating Cities’ Power to Charge Franchise Fees.**

King County’s statutory franchising authority must also be considered in the context of related statutory provisions and the statutory

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<sup>11</sup> In addition to the *City of St. Louis* case, this Court relied on decisions from other states indicating such charges were in the nature of rental for use and occupation of public streets. See *City of Spokane*, 175 Wash. at 108-09 (citing *City of Springfield v. Postal Tel.-Cable Co.*, 253 Ill. 346, 97 N.E. 672 (1912); *City of Springfield v. Interstate Indep. Tel. & Tel. Co.*, 279 Ill. 324, 116 N.E. 631 (1917); *Lewis v. Nashville Gas & Heating Co.*, 162 Tenn. 268, 40 S.W.2d 409 (1931); *City of Hartford v. Connecticut Co.*, 107 Conn. 312, 140 A. 734 (1928); *City of Mitchell v. Dakota Cent. Tel. Co.*, 25 S.D. 409, 127 N.W. 582 (1910); *Tulare Cty. v. City of Dinuba*, 188 Cal. 664, 206 P. 983(1922)).

scheme as a whole. *See State v. Larson*, 184 Wn.2d 843, 848, 365 P.3d 740 (2015). Here, that analysis demonstrates an additional and compelling reason to reverse the trial court’s decision.

Washington cities and counties enjoyed nearly identical franchising powers from 1905 until 1982, when the Legislature specifically eliminated the authority of Washington cities to charge franchise rental compensation for certain utilities, ***but maintained this capacity for Washington counties***. *See* RCW 35.21.860(1); *Burns*, 161 Wn.2d at 145-46. The Legislature’s decision in 1982 to leave the broad, discretionary franchise authority of counties untouched while it simultaneously limited the authority of cities is dispositive evidence of legislative intent and further undermines the trial court’s ruling.

Cities and counties had nearly identical franchise authority when this Court decided the *City of Spokane*, *City of Everett*, and *Dep’t of Pub. Serv.* cases, *supra*. *Compare* Laws of 1889-1890, ch. 7, § 117 (authorizing cities “[t]o permit, ***under such restrictions as they may deem proper***, the laying of railroad tracks, and the running of cars drawn by horses, steam or other power thereon, and the laying of gas and water pipes in the public streets, and to construct and maintain, and to permit the construction and maintenance of, telegraph, telephone and electric light lines therein”) *with* Laws of 1905, ch. 106, § 1 (providing that counties are

“authorized and empowered to grant franchises to persons or corporations to use the county roads and streets in their several counties outside of the incorporated towns and cities for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines . . . .”); *see also* 1935 Op. King Cty. Pros. Att’y No. 59 at 7 (noting that counties and cities were on equal footing in the matter of granting franchises).

This equivalence between cities and counties over franchise authority only changed in 1982 when the Legislature significantly limited the franchise compensation authority for cities and towns. *See* Laws of 1982, 1st Ex. Sess., ch. 49 (“Act”). The 1982 Act expressly prohibited cities and towns from imposing “a franchise fee or any other fee or charge of whatever nature or description upon the light and power, telephone, or gas distribution businesses.” *Id.*, § 2(1) (codified as amended at RCW 35.21.860(1)). Importantly, the Act’s plain language barred only *cities and towns* from imposing franchise fees and is limited only to franchises for electricity, telephone and gas.<sup>12</sup>

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<sup>12</sup> Several of the districts in this case have entered into post-1982 franchise agreements with cities involving a variety of fees and charges arising from the provision of utility service in the public ROW. *See* CP 1850-51 (Highline Water District pays annual “Franchise Payment” to City of Normandy Park in the form of a percentage of its annual revenue); CP 1878-80 (similar for King County Water District No. 111 and City of Kent); CP 1913-15 (same between Southwest Suburban Sewer District and City of Des Moines); CP 1940 (Woodinville Water District pays City of Kirkland a set charge per foot of ROW used).

In contrast, the Legislature made absolutely no changes to counties' broad discretionary authority to grant franchises or to condition those grants upon payment of rental compensation. Ordinance 18403 is consistent with this retained authority and powerful evidence that the Legislature acted with purpose. The Legislature knows how to limit municipal franchising authority, but it did not take this action with counties. As such, there can be little doubt that the trial court erred in limiting county franchise authority and overturning the provisions of Ordinance 18403.

**3. Interpreting RCW 36.55.010 to Allow Counties to Condition Franchise Agreements with *Private Utilities* on the Payment of Franchise Rental Compensation is Consistent with Const. art. VIII § 7.**

The Private Utilities have never articulated any basis for locating their facilities in the public ROW without a franchise or payment of consideration. *See* CP 1029-40, 1783-1803. To the contrary, this Court has long held that there is no inherent right to conduct private business in the public streets. *See, e.g., Hadfield v. Lundin*, 98 Wash. 657, 660, 168 P. 516 (1917); *Baxter-Wyckoff Co. v. City of Seattle*, 67 Wn.2d 555, 560-61, 408 P.2d 1012 (1965).

Interpreting RCW 36.55.010 to permit uncompensated private use of public ROW for revenue generation contravenes article VIII, section 7

of the Washington Constitution: “No county...shall...give any . . . *property* . . . to or in aid of *any* individual, association, company or corporation, except for the necessary support of the poor and infirm.”<sup>13</sup> (Emphasis added). In adopting this provision and its counterpart, article VIII, section 5, “the framers intended to prevent the harmful ‘effects on the public purse of granting public subsidies to private commercial enterprises, primarily railroads.’” *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 701-02, 743 P.2d 793 (1987) (quoting *Marysville v. State*, 101 Wn.2d 50, 55, 676 P.2d 989 (1984)); *see also* David D. Martin, *Washington State Constitutional Limitations on Gifting of Funds to Private Enterprise: A Need for Reform*, 20 SEATTLE U. L. REV. 199, 203 (1996) (in adopting sections 5 and 7, the framers were “primarily concerned with...the protection of taxpayers and the public purse from the consequence of corporate political clout”).

Article VIII, section 7 precludes any arrangement where the Private Utilities are allowed to freely use the ROW for their own revenue generating purposes. The simple fact that private utilities benefit the

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<sup>13</sup> The state analog to this clause, article VIII, section 5, provides that “[t]he credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.” Article VIII, section 5 applies to the state while article VIII, section 7 applies to counties, cities, towns, and other municipal corporations. Article VIII, sections 5 and 7 are similar, *see CLEAN v. State*, 130 Wn.2d 782, 797, 928 P.2d 1054 (1996) (interpreting article VIII, sections 5 and 7 to have the same prohibitions and exceptions), except that article VIII, section 7 (applicable to counties like King County) explicitly restricts gifting of public “property.”

public (for a charge) is not “a public purpose” that would avoid a constitutional violation, nor are such utilities “poor and infirm.” *See Wash. State Highway Comm’n v. Pac. Nw. Bell Tel. Co.*, 59 Wn.2d 216, 224, 367 P.2d 605 (1961) (state payment of utility relocation costs would violate article VIII, section 5 of the Constitution; although utility companies in question performed a public service, “[t]he performance of such service does not constitute a state purpose for the reason that the facilities are owned and operated by entities other than the sovereign state of Washington”). Rather, “what is required is that the public lessor receive a rental amount which represents a fair return, under all the surrounding factual circumstances, for the use and occupancy, by the private person or organization involved, of the particular property.” 1978 Op. Att’y Gen. No. 10, 1978 WL 23890, at \*4. Consistent with the Washington Constitution, Ordinance 18403 does nothing more than ensure compensation at a market value based on the value of the land actually used by the private utilities.

This Court interprets statutes to be constitutional to the extent possible. *ZDI Gaming, Inc. v. State ex rel. Wash. State Gambling Comm’n*, 173 Wn.2d 608, 619, 268 P.3d 929 (2012). If RCW 36.55.010 is properly interpreted to allow King County to receive rental compensation for the private use of public ROW, it avoids a gift of public property and a

violation of article VIII, section 7.<sup>14</sup> The Ordinance should be affirmed on this additional basis.

**4. For Public Districts, RCW 36.55.010 Should Be Interpreted Consistently with Other Related Statutes.**

King County’s interpretation of its franchising authority under RCW 36.55.010 is also consistent with other related statutes – including the statute governing the Public Districts (RCW 57.08.005) and state accountancy laws. “[R]elated statutory provisions must be harmonized to effectuate a consistent statutory scheme that maintains the integrity of the respective statutes.” *State v. Velasquez*, 176 Wn.2d 333, 336, 292 P.3d 92 (2013). The trial court erred in failing to do so.

**a. RCW 57.08.005 Applied to the Public Districts Does Not Vitiating the County’s Authority under RCW 36.55.010.**

The District Utilities argued below that RCW 57.08.005 grants them an unqualified right—a so-called “statutory franchise”<sup>15</sup>—to use the public ROW and precludes King County from exercising its franchise authority under RCW 36.55.010. But as the District Utilities conceded,

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<sup>14</sup> At the time this provision was drafted, the framers of the Washington Constitution were grappling with the need for and impact of utility and transportation franchises. Article I, section 8, the franchise clause, is another variation on a “dominant theme” in the Washington Constitution “that laws should be general in application and special interests should not be permitted to obtain privileges or carve out unjustified immunities.” Jonathan Thompson, *The Washington Constitution’s Prohibition on Special Privileges and Immunities: Real Bite for “Equal Protection” Review of Regulatory Legislation?*, 69 Temp. L. Rev. 1247, 1255 (1996). Use of the ROW for free in perpetuity would also violate the franchise clause. *See also infra*, section V.B.4.b.

<sup>15</sup> The term “statutory franchise” does not exist in Washington case or statutory law.

*see* CP 1708-11, RP at 46, there is no conflict between Ordinance 18403’s Franchise Rental Compensation provisions and RCW 57.08.005. The District Utilities’ claim that RCW 57.08.005 overrides RCW 36.55.010 is incorrect, and the trial court incorrectly relied on RCW 57.08.005 to invalidate the Ordinance.

First, RCW 57.08.005’s plain text refutes any claim that the District Utilities have a statutory right to occupy the ROW without a franchise or payment of compensation. Nothing in the statute grants franchises or any other property rights to the District Utilities. To the contrary, the statute empowers these districts, “*by purchase or condemnation,*” to “*acquire*” property rights necessary for their purposes. RCW 57.08.005(1) (emphasis added). With respect to locating utilities in the public ROW, that necessary property right is a franchise. *See, e.g., Burns*, 161 Wn.2d at 144; *Bonney Lake*, 173 Wn.2d at 590. As discussed *supra*, Section V.A, RCW 36.55.010 provides the County with explicit authority to grant such franchises.

Nor do RCW 57.08.005’s provisions authorizing the laying of water and sewer pipes along public streets amount to a “statutory franchise.” Far from granting a “valuable property right”<sup>16</sup> in the form of a franchise, these provisions simply grant water-sewer districts the

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<sup>16</sup> *Burns*, 161 Wn.2d at 144.

municipal corporate power to locate their facilities within public ROW and authorize them to *acquire* the necessary property rights or permissions to do so. See RCW 57.08.005(1), (3), (5). Such acquisition envisions, or at the least does not preclude, compensation.

Interpreting RCW 57.08.005 to allow perpetual and unrestricted use of the ROW would render the statute's purchase and acquisition language meaningless. A district would have no need to purchase or acquire lands, property and property rights, or rights of way necessary for its purposes as authorized under RCW 57.08.005(1), (3), and (5) if it already had those rights under a so-called "statutory franchise" to limitless use of county road ROWs. This Court should interpret the statute "so that all the language used is given effect, with no portion rendered meaningless or superfluous." *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (internal quotations omitted).

Second, even if the Court proceeds beyond the plain text of RCW 57.08.005, the statute must be harmonized with the County's established franchise authority under RCW 36.55.010. *Am. Legion Post No. 149 v. Wash. State Dep't of Health*, 164 Wn.2d 570, 588, 192 P.3d 306 (2008) ("Statutes are to be read together, whenever possible, to achieve a harmonious total statutory scheme...." (internal quotations omitted)).

When correctly interpreted, RCW 57.08.005 merely allows water-sewer districts to locate their facilities within the public ROW whenever they have obtained a legal franchise from a county under RCW 36.55.010. The key to harmonizing these statutes is the language in RCW 36.55.010, which specifically extends county franchise authority to “persons or private *or municipal corporations*.” (Emphasis added).<sup>17</sup> Title 57 water-sewer districts (such as the District Utilities at issue here) are “municipal corporations” by statute, *see* RCW 57.04.060, meaning that application of RCW 36.55.010 to the District Utilities is irrefutable.

Cases addressing alleged intersections of authority between different units of government (i.e., “sibling rivalries”) further support the above harmonization. In such cases, this Court analyzes the legislative intent behind the enabling legislation at issue. *See Olympic View Water & Sewer Dist. v. Snohomish Cnty.*, 112 Wn.2d 445, 448, 772 P.2d 998 (1989); *City of Everett v. Snohomish Cty.*, 112 Wn.2d 433, 440-41, 772 P.2d 992 (1989).

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<sup>17</sup> The “municipal corporations” language was added to the county franchise statute in 1937. *See* Laws of 1937, ch. 187, § 38. However, the language in prior statutes authorizing the grant of franchises to “persons or corporations” was intended to cover the grant of franchises to public utilities. *See* Laws of 1905, ch. 106 (“AN ACT giving to County Commissioners the power to grant certain *public utility franchises* on County roads and streets...” (emphasis added)); *see also* 1936 Op. King Cty. Pros. Att’y No. 17 at 4 (concluding that it was “legally necessary” for a public district to obtain a franchise from the county).

Relevant here, in *Olympic View*, this Court addressed a zoning dispute between a water and sewer district and a county. The district argued it had authority under chapters 56.08 and 57.08 RCW<sup>18</sup> to establish a shop and storage facility on property in the county without complying with the county zoning code, while the county claimed its zoning authority under chapter 36.70 RCW was paramount. 112 Wn.2d at 446-47. This Court examined the statutory authority granted by the legislature to both the district and the county and concluded the legislature intended that the district comply with the county's zoning code:

Here, the Legislature in empowering water and sewer districts to maintain and supply waterworks, maintain and operate systems of sewers, and to acquire property necessary for such purposes, provided no detailed standards to guide such districts in selecting sites for facilities such as the shop and storage facility at issue herein. Further, the Legislature did not purport to preempt the field of zoning regulations or otherwise oust counties of their zoning authority in such cases.

*Id.* at 448-49. The Court indicated, however, that the county could not “erect impenetrable barriers against the projects of other subunits of government merely because it possesses zoning authority.” *Id.* at 449.

Similar to the case in *Olympic View*, here the legislature, in empowering Title 57 water-sewer districts to use the public ROW and

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<sup>18</sup> Water districts and sewer districts were previously addressed separately in Titles 56 and 57 RCW. Several years after *Olympic View* was decided, such districts were combined and reclassified as “water-sewer districts” governed by Title 57 RCW. *See* Laws of 1996, ch. 230, § 101.

acquire the property rights necessary to do so, did not purport to supersede longstanding county franchise authority, which includes the authority to set terms and conditions and receive reasonable compensation for the use of public ROW as discussed above. As one commentator observed, such a deviation from the longtime understanding of franchise authority should not be inferred:

It is sometimes difficult, however, to determine whether...a statute actually confers authority to use the streets without the consent of the municipality; but statutes granting a franchise to a public utility company and including therein a general right to use the streets and alleys of a municipality or municipalities, *should not be construed as an express grant of the right to use such streets or alleys without the consent of the municipality, unless it is clearly apparent that such was the intention of the legislature.*

4 MCQUILLIN, *supra*, § 1620, at 3379 (footnotes omitted) (emphasis added).

Finally, as discussed *supra*, section V.B.2, the legislature could have (but did not) limit county franchise authority in 1982 when it limited city franchise power. And given the long history of utilities and governmental units entering franchise agreements in this state, there can be no argument that a franchise requirement imposes an “impenetrable barrier” against public water-sewer districts’ use of the ROW for their facilities. Accordingly, this Court should interpret chapter 57.08 RCW and RCW 36.55.010 harmoniously as the legislature intended—i.e., that

where the county ROW is at issue, water-sewer districts may use the ROW subject to county authority to require a franchise.

**b. Application of Ordinance 18403 to the Public Districts To Allow Franchise Rental Compensation Is Consistent With the Washington Constitution and With State Accountancy Laws.**

Not only do the plain language and the statutory scheme with respect to RCW 57.08.005 fail to support the District Utilities' claim of a free "statutory franchise," but interpreting the statute to establish such a property right would run afoul of (1) the franchise clause of the Washington Constitution and (2) the state accountancy statute. The franchise clause prohibits "granting irrevocably any privilege, franchise or immunity...." Const. art. I, § 8. This provision prohibits "a franchise which is granted irrevocably, in perpetuity." 1968 Op. Att'y Gen. No. 32, 1968 WL 90987, at \*1 n.1. To the extent the trial court interpreted RCW 57.08.005 to permit utilities to operate in county ROW in perpetuity without payment of compensation, the result is an unconstitutional perpetual franchise. *See id.* at \*3-4 (declining to interpret the third-class city franchise statute as implying legislative intent to authorize third-class cities to grant perpetual, irrevocable franchises).

The District Utilities' claim of a "statutory franchise" granting them the right to use county ROW without compensation also runs afoul of Washington's accountancy statute. Under RCW 43.09.210,

All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, ***shall be paid for at its true and full value*** by the department, public improvement, undertaking, institution, or public service industry receiving the same . . . .

RCW 43.09.210(3) (emphasis added). This statute applies to both state and local government activities and prohibits one government entity from receiving services or property from another government entity for free or at reduced cost absent a specific statutory exemption. *State v. Grays Harbor Cty.*, 98 Wn.2d 606, 610, 656 P.2d 1084 (1983); *see also Bonney Lake*, 173 Wn.2d at 592.

Here, King County is trustee for the interests of the public in county ROW (a public asset). *See Cunningham v. Weedin*, 81 Wash. 96, 98, 142 P. 453 (1914) ("A county holds an easement in its highways in trust for the public."). King County must protect those interests in dealing with "another government entity" (such as a public utility) that seeks to use the public ROW to advance the interests of its own constituents. *Bonney Lake*, 173 Wn.2d at 592; *see also* 1997 Op. Att'y Gen. No. 5, 1997 WL 674591 at \*3 n.3. Accordingly, public utilities must pay for

their continuing use of that public asset. The trial court's invalidation of franchise rental compensation allows uncompensated use of the ROW in violation of RCW 43.09.210(3).

In sum, RCW 36.55.010 is properly interpreted to support a county's authority to condition the grant of a franchise on the payment of franchise rental compensation. Because Ordinance 18403 is well within the county's authority, the trial court erred in relying on the District Utilities' enabling legislation to invalidate key portions of the ordinance.

**C. KING COUNTY, AS A HOME RULE CHARTER COUNTY, HAS INDEPENDENT AUTHORITY TO LEGISLATE FRANCHISE RENTAL COMPENSATION.**

Even if the Court disagrees that the County's discretionary power to grant franchises under RCW 36.55.010 includes the power to require consideration, reversal is still required. At the very least, the Legislature has not explicitly barred King County from obtaining franchise rental compensation like it did with Washington cities. As a result, Ordinance 18403 is properly sustained under King County's broad home rule powers.

A substantial portion of the Utilities' briefing below rested on the faulty assertion that the County has only "limited agency powers to act on behalf of the State" or is limited to powers expressly granted under RCW 36.75.020 as a "mere agent of the State." *See* CP 104-06, 1034. The trial court erroneously adopted a version of this argument in its oral ruling,

concluding that the “statutes are silent as to any rents based on usage” and that the County “lacked the authority to impose a franchise compensation, rent.” RP at 59-60; *see also* CP 2283-84. The proper question for a home rule charter county is not whether state statutes explicitly authorize the County’s adoption of Ordinance 18403, but rather whether the Ordinance is expressly prohibited under state law. The answer here is no, which further sustains King County’s authority to pass Ordinance 18403.

Under constitutional “home rule,”<sup>19</sup> the legislative body of a charter county has as broad legislative powers as the State, unless expressly restricted by state law. *King Cnty. Council v. Pub. Disclosure Comm’n*, 93 Wn.2d 559, 562-63, 611 P.2d 1227 (1980).<sup>20</sup> In adopting the county home rule provision by constitutional amendment, the people of Washington sought “the right to conduct their purely local affairs without supervision by the state, so long as they abided by the provisions of the constitution and did not run counter to considerations of public policy of broad concern, expressed in general laws.” *State ex rel. Carroll v. King Cty.*, 78 Wn.2d 452, 457-58, 474 P.2d 877 (1970).

King County’s home rule charter as authorized by article XI,

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<sup>19</sup> *See* Const. art. XI, § 4 (“Any county may frame a ‘Home Rule’ charter for its own government subject to the Constitution and laws of this state . . .”).

<sup>20</sup> *See also, e.g., Sw. Wash. Chapter, Nat’l Elec. Contractors Ass’n v. Pierce Cty.*, 100 Wn.2d 109, 123, 667 P.2d 1092 (1983); *Carlson v. San Juan Cty.*, 183 Wn. App. 354, 368, 333 P.3d 511 (2014).

section 4 contains two relevant provisions. Section 110 provides, “The county shall have all of the powers which it is possible for a home rule county to have under the state constitution.” And Section 220.20 reads:

The county council shall be the policy determining body of the county and shall have all legislative powers of the county under this charter. The county council shall exercise its legislative power by the adoption and enactment of ordinances.... The specific statement of particular legislative powers shall not be construed as limiting the legislative powers of the county council.

These charter provisions allow King County to exercise broad home rule powers so long as it acts within the bounds of the state constitution and the general laws, which it has in adopting Ordinance 18403.

Neither the utilities nor the trial court identified any statute or constitutional provision expressly prohibiting or limiting King County’s regulation of the ROW or imposition of Franchise Rental Compensation under the Ordinance. *See, e.g., State ex rel. Schillberg v. Everett Dist. J. Ct.*, 92 Wn.2d 106, 108, 594 P.2d 448 (1979) (“A statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated.”). Rather, the trial court adopted the utilities’ position that no statute specifically authorizes such action. This ruling erroneously transposes the County’s authority as a charter county. Because no statute or constitutional provision prohibits the County’s action in enacting Ordinance 18403, the County had authority to

do so on this additional and alternative ground.

**D. NO OTHER ARGUMENT ADVANCED BELOW  
PRECLUDES CHARGING FRANCHISE RENTAL  
COMPENSATION FOR USE OF THE ROW.**

King County expects that the Private and District Utilities will again argue that Franchise Rental Compensation under the Ordinance is (1) an unlawful tax under *Covell v. City of Seattle*, 127 Wn.2d 874, 905 P.2d 324 (1995), or (2) precluded by *Lakewood*. These arguments fail.

First, when a municipality is charging rent for the use of property, the traditional *Covell* test for determining a tax or regulatory fee, has little or no applicability. In *City of Snoqualmie v. King Cty. Exec. Dow Constantine*, 187 Wn.2d 289, 386 P.3d 279 (2016), this Court clarified “that in some instances, the [*Covell*] test is too limited because it was not designed to account for the full spectrum of other government charges—some of which will be neither taxes nor regulatory fees.” *Id.* at 300 (citing Hugh D. Spitzer, *Taxes vs. Fees: A Curious Confusion*, 38 GONZ. L. REV. 335, 352 (2002-2003)); *see also Burns*, 161 Wn.2d at 145, 161; Spitzer, *supra*, at 352 (noting that “[r]egulatory fees are only one variety, a rather narrow variety, of user fees”); 16 EUGENE MCQUILLIN, *The Law of Municipal Corporations*, § 44:24 (3d ed. updated July 2018) (acknowledging existence of different types of municipal fees).

As in *Snoqualmie*, Franchise Rental Compensation is neither a tax nor a regulatory fee. Franchise Rental Compensation is not a tax because it compensates King County for use of its ROW property and is paid in exchange for the valuable property right received. *See Burns*, 161 Wn.2d at 144. Nor is Franchise Rental Compensation a regulatory fee. *See Snoqualmie*, 187 Wn.2d at 300. “The character of a charge is determined by the nature of the right for which it was to be paid.” *Burns*, 161 Wn.2d at 144. “Because a franchise is a valuable property right,” any compensation in exchange for a franchise is “in the nature of rental for the use and occupation of the streets.” *Id.* at 143-44 (quotations omitted).

Moreover, that the compensation here is in the nature of rent is evident from the fact that it is based on the real property value of the ROW and the utility’s use of that asset. *See CP 1231, 1273*. Accordingly, the Franchise Rental Compensation is neither a tax, nor a regulatory fee, but “[s]uch charges as these have been quite generally held to be in the nature of rental for the use and occupation of the streets.” *Spokane Gas*, 175 Wash. at 108. The dichotomy articulated in *Covell* “fails to recognize the existence of alternative charges,” such as Franchise Rental Compensation, and is therefore inapplicable. *Spitzer, supra*, at 336.

Second, the trial court seemingly adopted the District and Private Utilities’ erroneous contention that *Lakewood*, 106 Wn. App. 63,

prohibited the County from requiring a franchise for use of the ROW.<sup>21</sup> However, any reliance on *Lakewood* to invalidate Ordinance 18403 is error because the opinion does not address the County's statutory and constitutional home rule authority, historical practice, this Court's cases interpreting the franchise power, and other constitutional and statutory prohibitions. These factors, which are discussed above, conclusively support King County's authority to adopt Ordinance 18403, including the determination to condition the grant of a franchise on reasonable compensation for the use of public ROW. King County is permitted to establish its minimum and reasonable terms for entering into franchise agreements.<sup>22</sup> In choosing to locate their facilities within the public ROW, utilities fall within the extensive authority of counties to grant, deny, or condition franchises.

## VI. CONCLUSION

For the foregoing reasons, King County respectfully requests that this Court reverse the grant of summary judgment for the Private and District Utilities and direct entry of summary judgment for King County.

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<sup>21</sup> See RP at 60; CP 2283.

<sup>22</sup> As Washington case law recognizes, a utility also can challenge the reasonableness of a proposed franchise condition. *See supra*, sections IV.A, V.A. King County's opening ask in negotiations for the rental amount is based on an "across-the-fence" appraised value of the ROW. CP 1231-33, 1235. A limiting factor, adopted pursuant to Rule RPM 9-2, further ensures that the final negotiated amount is reasonable and fair in relation to the fair market value of the ROW. CP 1233-34, 1275.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2019.

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I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, and not a party to this action. On the 1<sup>st</sup> day of March, 2019, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the foregoing document upon the parties listed below:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 1st day of March, 2019.



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Sydney Henderson

## APPENDIX

### A. Ordinances

Ordinance 18403.....	APP. 1
Rule RPM 9-2.....	APP. 19
The United Community Antenna System, Inc., Franchise Ordinance No. 546 (adopted December 19, 1966).....	APP. 24

### B. Statutes

Laws of 1890, ch. VII (excerpts).....	APP. 82
Laws of 1905, ch. 106.....	APP. 97
Laws of 1937, ch. 187, §§ 38-41.....	APP. 101
RCW 36.55.010.....	APP. 106

### C. King County Prosecuting Attorney Opinions

1935 PAO Opinion No. 59.....	APP. 107
1936 PAO Opinion No. 17.....	APP. 116
1970 PAO Opinion No. 17.....	APP. 120

### D. Attorney General Opinions

1977 Op. Att’y Gen. No. 19, 1977 WL 25965.....	APP. 126
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### E. Treatises

McQuillin Vol. IV (1912) excerpts.....	APP. 129
Wilcox Vol. I (1910) excerpts.....	APP. 150
Wilcox Vol. II (1911) excerpts.....	APP. 153



# KING COUNTY

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

## Signature Report

November 8, 2016

Ordinance 18403

Proposed No. 2016-0521.3

Sponsors Balducci, Upthegrove, Lambert and  
Dembowski

1 AN ORDINANCE setting the reasonable compensation,  
2 fees and costs to be paid by a utility company applying for  
3 a franchise or using the right-of-way of county roads under  
4 a franchise, and authorizing a utility company to make a  
5 forbearance payment to King County; amending Ordinance  
6 17515, Section 4, as amended, and K.C.C. 4A.675.020,  
7 Ordinance 17515, Section 8, as amended, and K.C.C.  
8 4A.675.030, Ordinance 1710, Section 2, as amended, and  
9 K.C.C. 6.27.020, Ordinance 1710, Section 3, and K.C.C.  
10 6.27.030, Ordinance 10171, Section 1, as amended, and  
11 K.C.C. 6.27.054, Ordinance 1710, Section 6, as amended,  
12 and K.C.C. 6.27.060, Ordinance 1711, Section 4, as  
13 amended, and K.C.C. 14.44.040 and Ordinance 11790,  
14 Section 1, as amended, and K.C.C. 14.44.055 and adding  
15 new sections to K.C.C. chapter 6.27.

16 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

17 SECTION 1. Findings:

18 A. RCW 36.75.020 grants King County broad authority to establish and regulate  
19 the use of county roads.

20 B. RCW 36.55.010 authorizes King County "to grant franchises . . . to use the  
21 right-of-way of county roads . . . for the construction and maintenance of waterworks, gas  
22 pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities."

23 C. RCW 80.32.010 authorizes the legislative authority of King County to grant  
24 authority and prescribe the terms and conditions for the construction, maintenance and  
25 operation of electrical lines for the transmission of electrical power upon, over, along or  
26 across the county streets and roads.

27 D. King County grants franchises to public and private utility companies that  
28 authorize the utility companies to use the right-of-way of county roads to provide utility  
29 service within King County and elsewhere. Franchises grant a valuable property right to  
30 utility companies to use the right-of-way, which allows the utility companies to profit and  
31 benefit from the use of the right-of-way in a manner not generally available to the public.

32 E. Utility companies must apply for a franchise to use the right-of-way under  
33 K.C.C. chapter 6.27. Franchises are memorialized in a franchise agreement that is  
34 negotiated by the parties and approved by the King County council. King County  
35 currently recovers from utility companies some but not all of the cost of reviewing and  
36 processing the application for a franchise and in some cases has reserved the right in  
37 franchise agreements to be compensated for the use of the right-of-way that is authorized  
38 by a franchise.

39 F. In exchange for the valuable property right to use the right-of-way, King  
40 County has authority to require utility companies to provide reasonable compensation.

41 G. Under these authorities and in light of the valuable property right granted by a  
42 franchise, it is in the best interests of the public to require a utility to provide reasonable

43 compensation in return for its use of the right-of-way of county roads. In pursuing the  
44 best interests of the public, King County intends to evaluate the use of the right-of-way  
45 by utilities not subject to the requirement for reasonable compensation in this ordinance,  
46 and as appropriate to extend the requirement for reasonable compensation to such  
47 utilities.

48 H. RCW 35.58.050 authorizes King County to perform water supply and water  
49 pollution abatement and RCW 58.08.010 authorizes the County to establish a public  
50 utility district to form an electric utility, which authorities provide the opportunity for  
51 King County to establish its own municipal utilities for the benefit of the public.

52 I. To assure access to the right-of-way of county roads, to increase long term  
53 certainty as to the compensation due for use of the right-of-way, and to ease the  
54 administrative burden of determining such compensation, some utility companies may  
55 desire to enter into an agreement to pay a negotiated amount in exchange for a  
56 commitment from King County to grant a franchise and to forbear from competing with  
57 the utility company or from requiring the utility company to pay reasonable  
58 compensation for use of the right-of-way. Subject to approval by the King County  
59 council, such an agreement would be in the best interests of the public.

60 SECTION 2. Ordinance 17515, Section 4, as amended, and K.C.C. 4A.675.020  
61 are each hereby amended to read as follows:

62 A. The franchise application fee for a party requesting a new franchise, an  
63 amended franchise, a renewal((;)) or extension of an existing franchise or a transfer of its  
64 franchise rights under K.C.C. 6.27.054 is two thousand five hundred dollars.

65 B. The advertising fee under K.C.C. 6.27.054 is the full advertising costs  
66 associated with the application.

67 C. The real estate services section of the facilities management division may  
68 assess a surcharge to recover the actual costs (~~((and all expenses))~~) as specified in K.C.C.  
69 6.27.054.B.

70 SECTION 3. Ordinance 17515, Section 8, as amended, and K.C.C. 4A.675.030  
71 are each hereby amended to read as follows:

72 A. The right-of-way construction permit application fee for a party requesting a  
73 permit under K.C.C. chapter 14.44, is two hundred dollars, as specified in K.C.C.  
74 14.44.040.A.

75 B. The real estate services section of the facilities management division may  
76 assess a surcharge to recover the actual costs (~~((and all expenses))~~) as specified in K.C.C.  
77 14.44.040.B.

78 ~~((C. The total of the permit application fee under subsection A. of this section  
79 and the surcharge assessed under Subsection B. of this section shall not exceed two  
80 thousand dollars.))~~

81 SECTION 4. Ordinance 1710, Section 2, as amended, and K.C.C. 6.27.020 are  
82 each hereby amended to read as follows:

83 ~~((Persons or private or municipal corporations are required, in accordance with  
84 RCW 36.55.010, to obtain a right-of-way))~~ In accordance with RCW 36.55.010, the  
85 county requires persons or private or municipal corporations to obtain a franchise  
86 approved by the King County council in order to use the right-of-way of county roads for  
87 the construction and maintenance of waterworks, gas pipes, telephone, telegraph and

88 electric lines, sewers, cable TV and petroleum products and any other such public and  
89 private utilities. This requirement may be waived for the purpose of issuing  
90 ~~((emergency))~~ right-of-way construction permits as provided in K.C.C. 14.44.055.

91 SECTION 5. Ordinance 1710, Section 3, and K.C.C. 6.27.030 are each hereby  
92 amended to read as follows:

93 Applications for ~~((right-of-way))~~ franchises shall be submitted, in a form  
94 approved by the ~~((property and purchasing))~~ facilities management division, to the clerk  
95 of the King County council.

96 SECTION 6. Ordinance 10171, Section 1, as amended, and K.C.C. 6.27.054 is  
97 hereby further amended to read as follows:

98 A. A party requesting a new franchise, an amended franchise, a renewal~~((;))~~ or  
99 extension of an existing franchise or a transfer of its franchise rights shall pay a franchise  
100 application fee as set forth in K.C.C. 4A.675.020. The fee is for ~~((reimbursement to the~~  
101 ~~real estate services section of the facilities management division for))~~ the administrative  
102 costs ~~((and expenses))~~ incurred by the county in the reviewing and processing of the  
103 franchise application. The franchise application fee is payable at the time ~~((the~~  
104 ~~application is filed with the clerk of the council))~~ of franchise issuance. In addition, each  
105 applicant shall pay an advertising fee as set forth in K.C.C. 4A.675.020.B. ~~((Franchise~~  
106 ~~application and a))~~ Advertising fees are not refundable, even if the application is  
107 disapproved.

108 B. The real estate services section may require applicants to reimburse the ~~((real~~  
109 ~~estate services section))~~ county for the actual costs ~~((and all expenses))~~ incurred by the  
110 ~~((real estate services section as a result of))~~ county in the reviewing and processing of an

111 application for the issuance, renewal or extension, amendment(~~(,-extension)~~) or transfer  
112 of ((a)) franchise rights, to the extent the costs exceed the costs of reviewing and  
113 processing the application recovered by the application fee. The payment of actual cost  
114 balances shall be made at the time of the franchise issuance.

115 C. If a franchise is granted to an applicant, the real estate services section may  
116 require the grantee of the franchise to reimburse the county for the actual costs incurred  
117 by the county in administering a grantee's activities under the franchise, including but not  
118 limited to costs incurred for inspections, relocations, abatements and enforcement.

119 D. The facilities management division is authorized to establish rules or policies  
120 that define actual costs that may be charged to an applicant for a franchise or to a grantee  
121 of a franchise under subsections B. and C. of this section. Costs related to reviewing and  
122 processing applications for franchises and administering franchises may include, but are  
123 not limited to costs for:

- 124 1. Personnel, including payroll and management;
- 125 2. Overhead, including office rent, maintenance and utilities;
- 126 3. Program planning and development;
- 127 4. Data processing and computer;
- 128 5. Legal and accounting services; and
- 129 6. Consulting services such as engineering and environmental assessment.

130 E. The facilities management division is authorized to establish rules or policies  
131 to assess annual administration charges to grantees of franchises under subsection C. of  
132 this section to reasonably cover the costs incurred by the county in administering  
133 franchises. If the facilities management division institutes such an administration charge,

134 the real estate services section may require applicants to reimburse the county for the  
135 actual costs incurred by the county in administering a franchise, to the extent the costs  
136 exceed the costs recovered by the administration charge.

137 F. All ~~((franchise application))~~ payments received under this section shall be  
138 credited to the county current expense fund. The franchise application fee received under  
139 K.C.C. 4A.675.020.A. and K.C.C. 6.27.054.A. and any reimbursement of actual costs  
140 under K.C.C. 6.27.054.B. shall be credited against any franchise compensation required  
141 by K.C.C. 6.27.060.B.

142 ~~((D-))~~ G. This section shall not apply to franchise applications, amended  
143 franchises, renewal ((-amendments)) or extension of existing franchises or transfers  
144 ~~((made))~~ or franchise rights or franchise administration under the county's cable  
145 television regulations, K.C.C. chapter 6.27A.

146 SECTION 7. Ordinance 1710, Section 6, as amended, and K.C.C. 6.27.060 are  
147 each hereby amended to read as follows:

148 A. All franchises ~~((granted for county rights-of-way))~~ shall be consistent with the  
149 following criteria:

150 1. A previously approved comprehensive plan for the applicant; if required to  
151 have such a plan by K.C.C. 13.24.010;

152 2. The county ~~((e))~~Comprehensive ~~((p))~~Plan;

153 3. The standards of good practice regarding accommodation of utilities on  
154 county road right-of-way as stated in the King County Road Standards, ~~((pursuant to~~  
155 ~~Washington Administrative Code.))~~ under ((C))chapter 136-40 WAC;

156           4. The franchise shall include provisions requiring the grantee of a franchise to  
157 carry out a program acceptable to the county for the grantee to remove or relocate at its  
158 cost its facilities in the right-of-way that pose a hazard to the general public; and

159           5. The franchise shall include provisions acceptable to the county requiring the  
160 grantee of the franchise to indemnify, defend and hold harmless the county against  
161 damages, including environmental damages, caused by, arising out of, or incidental to the  
162 grantee's exercise of rights and obligations set forth in the franchise agreement.

163           B. All franchises granted for electric, gas, water and sewer utilities shall include a  
164 requirement that the grantee provide the county with franchise compensation under  
165 section 8 of this ordinance in return for the right to use the right-of-way.

166           C. In addition, all franchises granted for water and sewer utilities shall be  
167 consistent with the following criteria:

168           1. Health and sanitation regulations of the Seattle-King County department of  
169 public health ((department)) and the state;

170           2. County standards for water mains and fire hydrants and other fire suppression  
171 water facilities and services as defined in chapter 70.315 RCW. Consistent with the  
172 authority in chapter 70.315 RCW, except when the county is acting as a customer or as a  
173 purveyor, the grantee of a water utility franchise shall, at no expense to the county,  
174 provide fire suppression water facilities and services required by applicable law and shall  
175 indemnify, defend and hold harmless the county against damages arising from fire  
176 suppression activities during fire events. The costs incurred by the grantee for such fire  
177 suppression water facilities and services shall be credited against any franchise  
178 compensation required by K.C.C. 6.27.060.B;

179           3. The grantee of the franchise shall, at no expense to the county, repair all  
180 existing facilities that it owns within county road rights-of-way, including all appurtenant  
181 facilities and service lines connecting its system to users, if ~~((such))~~ the repair is required  
182 by the county for any reasonable purpose;

183           4. The grantee of the franchise shall, at no expense to the county, adjust, remove  
184 or relocate existing facilities with county road rights-of-way, including all appurtenant  
185 facilities and service lines connecting its system to users, if the county determines  
186 ~~((such))~~ the adjustment, removal or relocation is reasonably necessary to allow for an  
187 improvement or alteration planned by the county in ~~((such))~~ the road right-of-way. The  
188 county shall give the grantee written notice of ~~((such))~~ the requirement as soon as  
189 practicable, with the goal to provide the notice at the beginning of the ~~((pre-design))~~  
190 predesign stage for projects that are part of the county's capital improvement program,  
191 including such available information as is reasonably necessary for the grantee to plan for  
192 ~~((such))~~ the adjustment, removal or relocation;

193           5. For projects that are a part of the county's capital improvement program, in  
194 addition to any other notice given to the grantee of the franchise, the county shall provide  
195 a vertical and horizontal profile of the roadway and drainage facilities within it, both  
196 existing and as proposed by the county, and the proposed construction schedule;  
197 notwithstanding any permit conditions that may later be applied to the county project, this  
198 initial design information shall be given at least ~~((180))~~ one hundred eighty days before  
199 construction is scheduled to begin, except in cases of urgent construction or emergencies.  
200 The grantee shall respond to this notice, and to any later notices of revised designs based  
201 on permit conditions, within no more than ~~((30))~~ thirty days by providing to the county

202 the best available information as to the location of all of the grantee's facilities, including  
203 all appurtenant facilities and service lines connecting its system to users and all facilities  
204 that it has abandoned, within the area proposed for the public works project. The county  
205 shall offer the grantee the opportunity to participate in the preparation of bid documents  
206 for the selection of a contractor to perform the public works project as well as all required  
207 adjustments, removals or relocations of the grantee's facilities. ((Such)) The bid  
208 documents shall provide for an appropriate cost allocation between the parties. The  
209 county shall have sole authority to choose the contractor to perform ((such)) the work.  
210 The grantee and the county may negotiate an agreement for the grantee to pay the county  
211 for its allocation of costs, but neither party shall be bound to enter into such an  
212 agreement. Under such an agreement, in addition to the grantee's allocation of contractor  
213 costs, the grantee shall reimburse the county for costs, such as for inspections or soils  
214 testing, related to the grantee's work and reasonably incurred by the county in the  
215 administration of ((such)) the joint construction contract((s)). ((Such)) The costs shall be  
216 calculated as the direct salary cost of the time of county professional and technical  
217 personnel spent productively engaged in ((such)) the work, plus overhead costs at the  
218 standard rate charged by the county on other similar projects, including joint projects  
219 with other county agencies((-)); and

220           6. The grantee of the franchise shall, at no expense to the county, assume the  
221 following obligations with respect to facilities connected to its system that are within  
222 county road rights-of-way and ((which)) that it does not own, including appurtenant  
223 facilities and service lines connecting its system to users:

224 a. The grantee shall apply for, upon request and on behalf of the owner of the  
225 facilities, a county right-of-way construction permit for any repairs required for ~~((such))~~  
226 the facilities~~((; provided such))~~, but only if the owner agrees to reimburse the grantee for  
227 all costs incurred by the grantee and any other reasonable conditions the grantee requires  
228 as a precondition to applying for the permit. All work to be performed in the county  
229 right-of-way shall comply with all conditions of the county permit and all applicable  
230 county requirements. The grantee may at its option perform any part of the repair with its  
231 own forces or require the owner to employ a contractor for that purpose, ~~((provided~~  
232 ~~such))~~ but only if the contractor is approved by the county;

233 b. In the event that the county determines emergency repair of ~~((such))~~ the  
234 owner's facilities is necessary to halt or prevent significant damage to county road rights-  
235 of-way or significant threats to the health, safety or welfare of parties other than the  
236 owner or the occupants of the building served by ~~((such))~~ the facilities, the grantee shall  
237 take prompt remedial action to correct the emergency to the county's approval, which the  
238 county shall not unreasonably withhold; and

239 c. When the county or its contractor provides notice to the grantee, ~~((pursuant~~  
240 ~~to))~~ in accordance with chapter 19.122 RCW, of its intent to excavate with county road  
241 rights-of-way, the grantee shall provide to the county or its contractor the best  
242 information available from the grantee's records or, where reasonable, from the use of  
243 locating equipment as to the location of ~~((such))~~ the facilities, including surface markings  
244 where these would reasonably be of use in the excavation. If the grantee fails to make  
245 good faith efforts to provide the ~~((above))~~ information required in this subsection C.6.c.  
246 within the deadlines provided by chapter 19.122 RCW, the grantee shall defend,

247 indemnify and hold the county harmless for all claims and reasonable costs that result  
248 from damage to ~~((such))~~ the facilities if ~~((such))~~ the damage occurs as a result of the  
249 failure to provide ~~((such))~~ the information. Nothing in this subsection is intended or shall  
250 be construed to create any rights in any third party or to form the basis for any obligation  
251 or liability on the part of the county or the grantee toward any third party, nor is anything  
252 in this subsection intended or to be construed to alter the rights and responsibilities of the  
253 parties under chapter 19.122 RCW, as amended.

254 NEW SECTION. SECTION 8. There is hereby added to K.C.C. chapter 6.27 a  
255 new section to read as follows:

256 A. Each franchise for electric, gas, water or sewer utilities granted by King  
257 County shall include a requirement that the grantee of the franchise provide the county  
258 reasonable compensation in return for the right to use the right-of-way for the purposes of  
259 constructing, operating, maintaining and repairing utility facilities and related  
260 appurtenances, which for the purposes of this section is "franchise compensation." This  
261 requirement and the process outlined in this section for determining franchise  
262 compensation shall apply to franchises granted after the effective date of this ordinance,  
263 and to existing franchises that include terms that authorize compensation in return for the  
264 right to use the right-of-way. For the purpose of determining franchise compensation  
265 under this section, an applicant for a franchise and a grantee of an existing franchise that  
266 includes terms that authorize compensation in return for the right to use the right-of-way  
267 is "the applicant."

268 B. Franchise compensation shall be in the nature of rent and shall be paid  
269 annually. Franchise compensation may be in the form of money, in-kind services or  
270 other nonmonetary benefits, accruing to King County.

271 C. Franchise compensation shall be determined through consideration of the  
272 following relevant factors, not all of which must be applied to each franchise: the land  
273 value of right-of-way within the applicant's service area; the approximate amount of area  
274 within the right-of-way that will be needed to accommodate the applicant's use; a  
275 reasonable rate of return to King County for the applicant's use of the right-of-way; the  
276 business opportunity made available to the applicant; density of households served; a  
277 reasonable annual adjustment; and other factors that are reasonably related to the value of  
278 the franchise or the cost to King County of negotiating the franchise.

279 D. The facilities management division is authorized to establish policies that  
280 create a process for the determination of franchise compensation. These policies may  
281 include different processes for the determination of franchise compensation depending on  
282 the size and complexity of the franchise. As part of the process, the facilities  
283 management division may request from the applicant information relevant to the  
284 determination of franchise compensation. Also as part of the process, the facilities  
285 management division shall make a reasonable estimate of franchise compensation and  
286 provide that estimate to the applicant. Thereafter, the applicant shall have a reasonable  
287 opportunity to suggest adjustments to the estimate in order to reach agreement with King  
288 County as to the amount and type of franchise compensation.

289 NEW SECTION. SECTION 9. There is hereby added to K.C.C. chapter 6.27 a  
290 new section to read as follows:

291 A. The executive is authorized to consider alternative means of providing utility  
292 services, including but not limited to:

- 293 1. Establishing a King County utility to provide utility services, or
- 294 2. Granting nonexclusive franchises.

295 B. In exchange for a forbearance payment by a utility company, the county may  
296 contract with the utility company:

- 297 1. To forbear from establishing a King County utility to compete with the utility  
298 company; and
- 299 2. To forbear from requiring the utility company to provide the county  
300 reasonable compensation in return for the right to use the right-of-way as required by  
301 K.C.C. 6.27.060.B.

302 C. The forbearance agreement may take the form of a franchise agreement, an  
303 interlocal agreement under chapter 39.34 RCW or an agreement under other contracting  
304 authority, and shall be subject to approval by the King County council.

305 NEW SECTION. SECTION 10. There is hereby added to K.C.C. chapter 6.27 a  
306 new section to read as follows:

307 If any person or entity installs or maintains utility facilities in the right-of-way of  
308 county roads without the required franchise, or has not complied with the terms of an  
309 existing franchise, the executive is authorized to initiate legal proceedings to seek all  
310 legal and equitable remedies to effectuate this chapter, including, but not limited to:

311 A. Ejecting a person or entity occupying the right-of-way of county roads that  
312 refuses to enter into a franchise with King County or to pay franchise compensation as

313 required by K.C.C. 6.27.060.B., or an application fee or other cost related to use of the  
314 right-of-way;

315 B. Confirming the reasonableness of the franchise compensation required by  
316 K.C.C. 6.27.060.B. that is sought by King County;

317 C. Enforcing the terms and conditions of a franchise; or

318 D. Revoking a franchise.

319 NEW SECTION. SECTION 11. There is hereby added to K.C.C. chapter 6.27 a  
320 new section to read as follows:

321 In addition to judicial enforcement under section 10 of this ordinance, the  
322 manager of the real estate services section and the director of the road services division  
323 are authorized to enforce this chapter and any rules or regulations adopted under this  
324 chapter in accordance with the enforcement and penalty provisions of K.C.C. Title 23. A  
325 citation under K.C.C. 23.32.010.A.1.a. for violation of this chapter and any rules or  
326 regulations adopted under this chapter shall be in the amount of two hundred fifty to one  
327 thousand dollars, depending on the amount of right-of-way being occupied by the person  
328 or entity responsible for code compliance. A violation of a notice and order under K.C.C.  
329 23.32.010.A.1.b. for violation of this chapter and any rules or regulations adopted under  
330 this chapter shall be two hundred fifty to one thousand dollars, depending on the amount  
331 of right-of-way being occupied by the person or entity responsible for code compliance.

332 SECTION 12. Ordinance 1711, Section 4, as amended, and K.C.C. 14.44.040 are  
333 each hereby amended to read as follows:

334 A. Each application for a right-of-way construction permit requires a fee payable  
335 to the ~~((real estate services section))~~ county as set forth in K.C.C. 4A.675.030 for the  
336 administrative costs ~~((and expenses))~~ of reviewing and processing the application.

337 B. The real estate services section shall have the authority to require applicants to  
338 reimburse the ~~((real estate services section))~~ county for the actual costs ~~((and all~~  
339 ~~expenses))~~ incurred by the ~~((real estate services section))~~ county as a result of issuance,  
340 renewal or amendment of a right-of-way construction permit, to the extent the costs ~~((and~~  
341 ~~expenses))~~ exceed the costs of reviewing and processing the application recovered by the  
342 application fee. The payment of actual costs shall be made at the time of permit issuance.

343 SECTION 13. Ordinance 11790, Section 1, as amended, and K.C.C. 14.44.055  
344 are each hereby amended to read as follows:

345 A. Before January 1, 2018, ~~((F))~~the facilities management division may issue  
346 right-of-way construction permits to unfranchised utilities. Thereafter, the facilities  
347 management division may issue right-of-way construction permits to unfranchised  
348 utilities only under the following circumstances:

349 1. When the Seattle-King County department of public health has  
350 ~~((determined))~~ certified in writing to the facilities management division that the proposed  
351 work is necessary to address a specifically identified public health hazard; ~~((or))~~

352 2. When the road services division of the department of transportation has  
353 ~~((determined))~~ certified in writing to the facilities management division that the proposed  
354 work is necessary to address specifically identified actual or imminent damage to county  
355 right-of-way or to address specifically identified hazards to users of county right-of-way;  
356 or

357           3. If the unfranchised utility is involved in good-faith negotiation with the  
358 county that is likely to result in a franchise that will be submitted to the council for  
359 approval and the executive has certified that status in writing. The certification shall be  
360 in a letter that shall be filed with the clerk of the council in the form of a paper original  
361 and an electronic copy with the clerk of the council, who shall retain the original and  
362 provide an electronic copy to all councilmembers.

363           B. No right-of-way construction permit for sewer or water facility construction  
364 shall be issued unless the facilities management division receives a determination from  
365 the chair of the utilities technical review committee that the proposed work is consistent  
366 with the King County Comprehensive Plan codified in K.C.C. Title 20 and with K.C.C.  
367 13.24.132, 13.24.134, 13.24.138 and 13.24.140.

368 C. The permit applicant shall be required to meet all conditions of this chapter,  
369 except K.C.C. 14.44.050, A, and C.  
370

Ordinance 18403 was introduced on 10/24/2016 and passed as amended by the Metropolitan King County Council on 11/7/2016, by the following vote:

Yes: 7 - Mr. Gossett, Ms. Lambert, Mr. McDermott, Mr. Dembowski,  
Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci  
No: 2 - Mr. von Reichbauer and Mr. Dunn  
Excused: 0

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



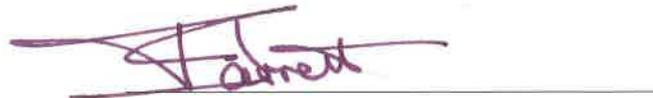
J. Joseph McDermott, Chair

ATTEST:



Melani Pedroza, Acting Clerk of the Council

APPROVED this 17<sup>th</sup> day of November, 2016.



Dow Constantine, County Executive

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Attachments: None

Document Code No.: RPM-9-2-PR

Title: Rules For Determining Franchise Compensation under K.C.C 6.27.080

Effective Date: January 29, 2018

Authorities: King County Code 6.27; Ordinance 18403

Keywords: Franchise Compensation; Utilities; Right-of-Way Franchises

Sponsoring Agency: Facilities Management Division



**King County**

Signature: \_\_\_\_\_

Date signed: 12/29/2017

**I. Purpose**

K.C.C. 6.27.080 requires that each electric, gas, water, and sewer utility operating under a franchise provide the county reasonable compensation in return for the right to use the right-of-way for the purposes of constructing, operating, maintaining, and repairing utility facilities and related appurtenances. This rule describes a standardized approach for determining franchise compensation.

**II. Applicability and Audience**

This rule applies to the Facilities Management Division when determining franchise compensation for electric, gas, water and sewer utilities.

**III. Definitions**

1. "Assessor" means the King County Assessor.
2. "Assessed Land Value" means the land value of parcels in the Franchise Area, as established by the Assessor, using parcels that are not exempt from property tax.
3. "Facilities Management Division" or "FMD" means the division within the Department of Executive Services responsible for issuing Utility franchises.
4. "Franchise Area" means the area in unincorporated King County for which the Utility requests a franchise.
5. "Franchise Compensation" shall be in the nature of rent and shall be paid annually. Franchise Compensation may be in the form of money, in-kind services or other nonmonetary benefits, accruing to King County. Franchise Compensation shall be provided in return for the valuable property right to use the right-of-way for the purposes of construction, operating, maintaining and repairing utility facilities and related appurtenances.
6. "Franchise Use Area" means the approximate amount of area within the ROW that will be available to accommodate the Utility's use.
7. "Geographic Information System" or "GIS" means the King County system which captures, stores, manipulates, and presents certain spatial and geographic data.
8. "Right-of-Way" or "ROW" means County road rights-of-way within unincorporated King County, whether maintained, unmaintained, opened, or unopened.
9. "Utility" means any organization that places electric, gas, water, or sewer infrastructure under, over, within, or across the ROW.

## **IV. Policy**

### **1. Determination of Franchise Compensation**

1.1 FMD shall make an estimate of Franchise Compensation for each Utility and provide that estimate to the Utility. The estimate will be provided after FMD has gathered sufficient information from the Utility, through its franchise application, to perform the basic estimation steps described below. The Utility shall thereafter have a reasonable opportunity to suggest adjustments to the estimate in order to negotiate and reach agreement with King County on the amount and type of Franchise Compensation. The Utility and King County shall at the same time negotiate the other terms of the franchise agreement if the Utility does not have an existing franchise agreement. A franchise will not be issued to a Utility that fails to reach an agreement on Franchise Compensation and the other terms of a franchise agreement with the County.

1.2 King County owns the ROW, which is a substantial public asset. A franchise agreement grants a valuable property right to a Utility to use the ROW. Due to the nature of a Utility, use of the ROW is continuous and extends even after the expiration of a prior franchise agreement. In order to reflect the value to the Utility for this continued use and provide appropriate compensation to the public, Franchise Compensation will accrue as of the effective date of this rule unless otherwise required by an existing franchise agreement or agreed to by the parties.

1.3 The agreed upon Franchise Compensation will be included in the franchise agreement, and shall be subject to an annual inflationary adjustment and to a full adjustment every five years, as agreed upon by the parties. The full adjustment will be consistent with the process set forth in this rule for determining franchise compensation.

### **2. Methodology to Estimate Franchise Compensation**

The estimate of Franchise Compensation for each Utility is based on the land value of the ROW within the Utility's Franchise Area and the approximate amount of area within the ROW that will be available to accommodate the Utility's use. FMD shall perform the following basic steps to estimate Franchise Compensation for each Utility:

2.1. Establish the per-square-foot value of the land adjacent to the ROW in the Franchise Area by dividing the total Assessed Land Value of parcels adjacent to the ROW in the Franchise Area by the total square feet of such parcels, as provided by GIS.

2.2. Establish the value of the Franchise Use Area for the Utility through the following steps:

2.2.1. Calculate the Franchise Use Area by multiplying the approximate number of linear feet of the ROW available to be occupied by the Utility by the width of a typical Utility easement.

- 2.2.2. Reduce the Franchise Use Area by multiplying the Franchise Use Area by a factor that accounts for facility location (aerial or underground).
- 2.2.3. Multiply the reduced Franchise Use Area by the per square foot value of land adjacent to the ROW calculated in Section 2.1, above. This is the value of the Franchise Use Area.
- 2.2.4. When performing the calculations in Section 2.2, the following criteria will be applied:
  - 2.2.4.1. The approximate number of linear feet of the ROW available to be occupied by the Utility will be the length of the ROW in the Franchise Area as determined by GIS. If the Utility provides verifiable information specifying the location of its facilities under, over, within or across the ROW, then the County will reduce the number of linear feet used in the calculation to the number of linear feet of the ROW occupied by the Utility.
  - 2.2.4.2. The width of a typical Utility easement and the adjustment for aerial or underground facility locations will allow for:
    - a. Reasonable clearances from other utilities;
    - b. Modest and varied appurtenant uses in the ROW, such as sewer access facilities, water and sewer lines connecting to customers, meters, hydrants, power poles, and transformers; and
    - c. Reasonable access for construction, maintenance and repair.
  - 2.2.4.3. FMD will determine the width it assigns for a typical Utility easement and the reduction for aerial or underground facility locations and post these determinations on the FMD website. FMD may periodically reassess these determinations, and will post updates on the FMD website.
    - 2.2.4.3.1 FMD may, on a case-by-case basis, adjust the assigned width of a typical Utility easement and/or the reduction for aerial or underground facility location if the size and location of the Utility's facilities are significantly different than those contemplated in the development of this rule.

- 2.3. Calculate the estimated annual Franchise Compensation for the Utility by applying a rate of return to the value of the Franchise Use Area calculated in Section 2.2.3, above.
  - 2.3.1. FMD will determine the rate of return and post this determination on the FMD website. FMD may periodically reassess this determination and will post updates on the FMD website.
- 2.4. Financial impact limiting factor.
  - 2.4.1. In order to ensure that the estimate of annual Franchise Compensation is reasonable, FMD will evaluate whether the methodology produces an estimate of annual Franchise Compensation that exceeds the monthly financial impact limiting factor established by FMD.
  - 2.4.2. In order to determine if the financial impact limiting factor is exceeded, FMD will divide the estimated annual Franchise Compensation amount by twelve to obtain the estimated monthly Franchise Compensation amount. FMD will then divide the estimated monthly Franchise Compensation amount by the total number of Utility customers. If the resulting number exceeds the monthly financial impact limiting factor, then FMD will recalculate the estimate of the annual Franchise Compensation.
  - 2.4.3. Where necessary under Section 2.4.2, FMD will recalculate the estimate of the annual Franchise Compensation by adding the product of the number of residential customers multiplied by the monthly financial impact limiting factor to the product of the number of non-residential customers multiplied by the estimated monthly Franchise Compensation amount, and will then multiply the resulting number by twelve. The resulting amount will be the estimate of the annual Franchise Compensation.
  - 2.4.4. FMD will determine the monthly financial impact limiting factor and will post this determination on the FMD website. FMD may periodically reassess this determination, and will post updates on the FMD website.
- 2.5. Crossings. Some Utilities may occupy the ROW via only one or more crossings from one side of the ROW to the other side of the ROW. In these instances, the calculation of Franchise Compensation shall be the same as described above, with the following exceptions:
  - 2.5.1. In Section 2.1, divide the Assessed Land Value of the parcels adjacent to the ROW on each side of the crossing by the total square feet of such parcels, as provided by GIS.
  - 2.5.2. In Section 2.2.1, use the actual square footage of the area of the ROW where the crossing is located instead of multiplying

the approximate number of linear feet available to be occupied by the Utility by the average width of a Utility easement.

- 2.5.3. Lateral connections to a facility within the ROW are not considered to be crossings.

**V. Implementation Plan**

This rule becomes effective for FMD on January 29, 2018. FMD is responsible for implementation of this rule. FMD shall post this rule on the Real Estate Services page of its website.

**VI. Maintenance**

This rule will be maintained by FMD or its successor agency.

**VII. Consequences for Noncompliance**

A franchise will not be issued to a Utility that fails to reach an agreement on Franchise Compensation and the other terms of a franchise agreement with the County. Nothing in this rule limits any legal or equitable remedies available to the County. See K.C.C. 6.27.150.

December 21, 1966

Mr. Jay W. Wright, President  
United Community Antenna System, Inc.  
100 Fourth Avenue North  
Seattle, Washington 98109

Dear Sir:

Continued hearing was had by the Board of County Commissioners in regular session on December 19, 1966, in the matter of the application of United Community Antenna System, Inc. for a TV Cable Line Franchise.

In accordance with the recommendation of the County Engineer, the application was approved and Franchise No. 546 was granted, subject to the acceptance of the terms thereof by United Community Antenna System, Inc., for a period of twenty-five years.

We are holding all copies of Franchise No. 546 in our office pending the acceptance of United Community Antenna System, Inc., which must be prior to January 19, 1967.

Very truly yours,

BOARD OF COUNTY COMMISSIONERS  
ROBERT A. MORRIS, Clerk of Board

By

Ralph E. Stender, Deputy

RRS:ks

cc: County Engineer

UNITED PACIFIC INSURANCE COMPANY



A MEMBER OF UNITED PACIFIC INSURANCE GROUP  
HOME OFFICE: TACOMA, WASHINGTON

FIDELITY & SURETY DEPARTMENT

B O N D

KNOW ALL MEN BY THESE PRESENTS:

That we, UNITED COMMUNITY ANTENNA SYSTEM, INC., as Principal and the UNITED PACIFIC INSURANCE COMPANY, a corporation organized under the laws of the State of Washington, and authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto COUNTY OF KING, a municipal corporation of the State of Washington, in the just and full sum of TWENTY-FIVE THOUSAND AND NO/100 (\$25,000.00) DOLLARS, for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 10th day of January, 1967.

WHEREAS, the above named Principal has been granted Franchise number 546 to construct, maintain and operate transmission and distribution lines or cables for the transmitting and distribution of television, FM radio and other audiovisual electric signals.

NOW, THEREFORE, if the said Principal shall strictly conform to the provisions, conditions and covenants of said Franchise and shall indemnify King County and save it harmless from any and all loss, damage or liability by reason of injury or damage to the persons or property of another caused by or resulting from the construction, maintenance or operation under said franchise, then this obligation to be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that the surety hereon may terminate its liability by giving notice to the County of King of its desire to do so, and the surety shall not be liable thereon for any action of the above named principal occurring after sixty (60) days form service of this notice.

UNITED COMMUNITY ANTENNA SYSTEM, INC.

By Jay W. Wright  
PRESIDENT

COUNTERSIGNED:  
STANLEY T. SCOTT & CO., INC.

UNITED PACIFIC INSURANCE COMPANY

By Eugene W. Scott  
Resident Agent, Seattle, Wash.

By E.W. Scott  
E.W. Scott, Attorney-in-Fact

16

December 1, 1966

Mr. Jay W. Wright, President  
United Community Antenna System, Inc.  
100 Fourth Avenue North  
Seattle, Washington 98109

Dear Sir:

The Board of County Commissioners in regular session on November 30, 1966 again considered the matter of TV Cable Line Franchises, an application for which was submitted by United Community Antenna System, Inc.

In accordance with the recommendation of the County Engineer, this matter was continued until December 19, 1966 at 9:30 A.M.

Very truly yours,

BOARD OF COUNTY COMMISSIONERS  
ROBERT A. MORRIS, Clerk of Board

By

Ralph R. Stender, Deputy

RRS:dw

cc: County Engineer

November 2, 1966

Mr. Jay W. Wright, President  
United Community Antenna System, Inc.  
100 Fourth Avenue North  
Seattle, Washington 98109

Dear Sir:

In accordance with your request, the Board of County Commissioners in regular session on October 31, 1966 directed that the hearings scheduled for November 14, 1966 at 9:30 A.M. to consider applications for Cable Line Franchises be continued until November 21, 1966 at 9:30 A.M.

Very truly yours,

BOARD OF COUNTY COMMISSIONERS  
ROBERT A. MORRIS, Clerk of Board

By

Ralph R. Stender, Deputy

KRS:dv

cc: Master Cable TV System  
1422 34th Avenue  
Seattle, Washington 98122  
Northwest Cablevision, Inc.  
3520 Stone Way North  
Seattle, Washington  
Rune Goranson Co., Inc.  
314 First Avenue West  
Seattle, Washington 98119  
Telecable, Inc.  
1616 Norton Building  
Seattle, Washington 98104  
Colorecable, Inc.  
400 Hoge Building  
Seattle, Washington 98104  
Vista Television Cable, Inc.  
P. O. Box 823  
Bellevue, Washington 98004  
County Engineer

**UNITED COMMUNITY ANTENNA SYSTEM, INC.**

100 FOURTH AVENUE NORTH  
SEATTLE, WASHINGTON 98109  
TELEPHONE 206/MAIN 4-6000

January 10, 1967

The Board of County Commissioners  
of King County, Washington  
402 King County Court House  
Seattle, Washington

Re: Franchise No. 546

Gentlemen:

You will please take notice that United Community Antenna System, Inc. as the franchise holder under Franchise No. 546 hereby accepts the rights and privileges conferred thereby and the terms, conditions, and restrictions imposed thereby and herewith files its bond in the sum of \$25,000 as required by Paragraph 17 of said Franchise.

Very truly yours,

UNITED COMMUNITY ANTENNA SYSTEM, INC.

By

*Jay W. Wright*  
President

RALPH R. STENDER  
DEPUTY CLERK OF BOARD  
COUNTY COMMISSIONERS

'67 JAN 17 PM 2:40

RECEIVED



In the matter of the application of  
 UNITED COMMUNITY ANTENNA SYSTEM, INC.  
 to construct, maintain and operate  
 transmission and distribution lines  
 or cables for the transmitting and  
 distribution of television, FM radio  
 and other audiovisual electric signals.

THE BOARD OF COUNTY COMMISSIONERS OF KING COUNTY, WASHINGTON,  
 granting franchise rights to UNITED COMMUNITY ANTENNA SYSTEM, INC.  
 for installation, maintenance and operation.

Franchise No. 546

The application of UNITED COMMUNITY ANTENNA SYSTEM, INC.  
 for a franchise to construct, maintain and  
 operate transmission and distribution lines or cables for the trans-  
 mitting and distribution of television, FM radio, and other audio-  
 visual electric signals, together with poles and other appurtenances  
 upon, over, along, underneath and across the public roads and rights  
 of way of King County, situated within the described sections, Town-  
 ship and range of King County, Washington, having come on before the  
 undersigned Board of King County Commissioners this 6th day of  
September, 19 66, and it having been made to appear  
 to the said Board that all of such county roads and rights of way  
 lies within King County and outside of any incorporated cities or  
 towns; and

It further appearing that due and legal notice of said hearing  
 on application for franchise having been posted and published in  
 the manner prescribed by law; and

The Board of King County Commissioners having held a public  
 hearing in respect to such application, having considered the respective  
 interests proposed and advanced, and being fully advised in the premises,  
 does hereby find that the granting of this franchise to be in the  
 public interest,

ORDERED by the Board of County Commissioners of King County,  
 Washington, that there be and there is hereby granted to said

UNITED COMMUNITY ANTENNA SYSTEM, INC.  
 hereinafter called the Grantee, and to their successors and assigns,  
 subject to all the terms and conditions hereof for the term of  
TWENTY FIVE Years from the date hereof, the right,  
 privilege, authority and franchise for itself, its successors and  
 assigns, to construct, maintain and operate transmission and distribu-  
 tion lines and/or cables for the transmitting and distributing of  
 television, FM radio, and other audio-visual electrical signals,  
 together with poles, and other appurtenances, upon, over, along,  
 underneath and across all county roads and rights of way, now existing  
 or hereafter existing, within the following-described sections, town-  
 ships and range of King County:

The location and nature of the franchise being more particular  
 described as follows:

LEGAL DESCRIPTION ON ATTACHED PAGES

Boundaries of the proposed Parkwood service area.

North - West on N 163rd St from Interstate Highway # 5 to Ashworth Ave N.

West - South on Ashworth Ave N from N 163rd St to N 145th St.

South - East on N 145th St from Ashworth Ave N to Interstate Highway # 5.

East - North on Interstate Highway # 5 from N 145th St to N 163rd St.

Boundaries of the proposed Sheridan Heights service area.

North - East on NE 170th St from Bothell Way NE to NE 170th Pl.  
East on NE 170th Pl ( Hamlin Road ) to NE 178th St.  
East on NE 178th St to 35th Ave NE.

West - South on 35th Ave NE from NE 178th St to NE 156th St.

South - West on NE 156th St from 35th Ave NE to 37th Ave NE.  
North on 37th Ave NE to NE 157th St.  
East on NE 157th St to 38th Ave NE.  
North on 38th Ave NE to NE 160th St.  
East on NE 160th St to Bothell Way NE.

East - North on Bothell Way NE from NE 160th St to NE 170th St.

Boundaries of the proposed Richmond Beach - Innis Arden service area.

North - West on the King-Pierce County Line from 15th NW to Puget Sound.

West - South on the shore of Puget Sound from the King-Pierce County Line to Beach Drive ( an extension of N 165th St. )

South - East on Beach Drive from Puget Sound to the intersection formed by an extension of 15th Ave NW and Beach Drive.  
North on the extension of 15th Ave NW to NW 167th St.  
East on NW 167th St to 10th Ave NW.  
North on 10th Ave NW to NW 175th St.

East - West on NW 175th St from 10th Ave NW to 10th Ave NW at NW 175th Pl.  
North on 10th Ave NW to NW180th St.  
East on NW 180th St to 8th Ave NW.  
North on 8th Ave NW to Richmond Beach Road.  
Northwest on Richmond Beach Road to 15th Ave NW.  
North on 15th Ave NW to the King-Pierce County Line.

Boundaries of the proposed Echo Lake service area.

North - West on N 205th St from Meridian Ave N to Ashworth Pl N.  
South on Ashworth Pl N to N 200th St.  
East on N 200th St to Aurora Ave N.

West - South on Aurora Ave N from N 200th St to N 192nd St.

South - West on N 192nd St from Aurora Ave N to Ashworth Ave N.

East - North on Ashworth Ave N from N 192nd St to N 195th St.  
East on N 195th St to Wallingford Ave N.  
North on Wallingford Ave N to N 198th St.  
East on N 198th St to Meridian Ave N.  
North on Meridian Ave N to N 205th St.

subject to the following conditions and stipulations:

1. The franchise holder shall at all times use existing poles when available and practicable, unless waived in writing by the King County Engineer, through a joint use pole agreement with any other public utility which has previously installed and maintains poles along and across the public roads and rights of way within the sections, townships and range described herein. The franchise holder shall likewise extend the right to use its poles to other and similar franchise holders having a franchise and permit to maintain its lines and facilities upon the same road or right of way. Where a line of poles is shared by two or more franchise holders, the owner of the line of poles may charge the additional users a use charge, that is proportionate to the number of franchise holders using the line of poles and is proportionate of the fair value of the line of poles. Whenever the line of poles, or parts thereof, are required to be removed, repaired, raised, lowered, or relocated by or under the terms of this franchise, such costs or charges are to be apportioned to the franchise holders using such line of poles in such a manner as is reflected in the use charge.
2. Franchise holder shall have the right to install its facilities in underground conduit, notwithstanding Section 1 herein, and may be required to install, or remove, existing facilities and re-install its facilities in underground conduit if so deemed by the King County Engineer to be consistent with the installations of other franchise holders in the same or nearby area of this franchise.
3. The franchise holder shall have the right and authority to enter upon the county roads and rights of way described herein, and situated without any incorporated cities or towns, for the purpose of constructing, extending, repairing or replacing, servicing and otherwise

operating and maintaining its transmission and distribution lines or cables, and appurtenant facilities, and connecting the same to consumer service lines, upon the condition that prior to such work within the county road or right of way, the franchise holder shall first obtain a work permit from Board of Commissioners.

All permits, whether the work to be done thereunder be by the forces of the franchise holder, its contractor or by third parties connecting to the lines or cable or appurtenant facilities of the franchise holder, shall be applied for and given in the name of the franchise holder who shall be held responsible for all work done thereunder.

Application for work permit shall first be presented to the King County Engineer, who may require copies of plans, blueprints, cross sections or such further detail of the work to be done as is, or may be, required by resolution in other instances of work within public rights of way. All work done hereunder shall include necessary paving, patching, grading and any other reasonably necessary repair, or restoration, to the pre-existing county road or right of way, and shall be to the satisfaction of the King County Engineer.

4. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner and may be subject to the supervision, inspection and approval of the King County Engineer, or such agent or employee as he may appoint, but in accordance, however, with the laws of the State of Washington applicable thereto. All trees and brush cut or pruned shall be promptly removed from the road or right of way.

5. All wires used by the franchise holder shall be carefully insulated, connected and fastened, so as not to be or come within direct contact with any object through which a "ground" could be formed. All facilities including wires shall be so positioned and stretched as not to interfere with the free and undisturbed use of the road or right of way. In such instance as the movement of

special equipment upon the road or right of way shall necessitate the raising or temporary removal of the lines of the franchise holder, they shall be raised or temporarily removed upon written notice by the Board of Commissioners of at least twenty-four hours (24) in advance of the time for such raising or removal.

Whenever the franchise holder shall permanently discontinue the use of any pole or line erected by it which is not lawfully in use by any other franchise holder, such unused pole or line shall be immediately removed by the franchise holder.

Whenever the poles, lines or cable of the franchise holder shall be contiguous to any airport, landing field or airplane approach pattern, whether private or public, as such airport, landing field or approach pattern now exists or as may come into existence in whole or in part, the franchise holder shall immediately so modify its lines or cables and other appurtenant facilities as to conform with the regulations of any governmental agency having jurisdiction and authority over such airport or landing field, or upon written notice from the Board of Commissioners to lower, remove or adjust such poles, lines or cable of the franchise holder. In every case the franchise holder may elect whether to lower its poles, lines or cable, or, to install such lines or cable in conduit underground.

6. All rights granted unto the franchise holder under this document shall not be construed to preclude King County from performing work upon its road or right of way or appurtenant drainage facilities in the nature of constructing, altering, renewing, paving, widening, grading, blasting or excavating.

In such instance as work upon the road or right of way or appurtenant drainage facility by King County shall reasonably necessitate the removal and relocation of the lines, cable or appurtenant facilities of the franchise holder, the same shall be promptly removed or relocated upon written notice by the Board of Commissioners to the franchise holder. In the event that franchise holder shall fail to remove and relocate its line, cable or appurtenant facilities as requested by written notice, King County may do so, and franchise holder, upon rendition of bill therefor, shall be liable for all reasonably necessary costs, including labor and equipment, incurred in the removal and relocation of the same.

Any damage suffered to the line, cable or appurtenant facilities by the removal or relocation by King County, after failure of franchise holder to so promptly remove and relocate upon written notice, shall be without remedy or compensation from King County.

7. The franchise holder, its successors and assigns, shall indemnify King County and save it harmless from any and all loss, damage or liability by reason of injury or damage to the person or property of another caused by or resulting from the construction, maintenance or operation under this franchise; provided that, in the event any suit or action is brought for injury or damage to persons or property of others against King County based upon, or alleged to be arising out of, the construction, maintenance or operations of the franchise holder, King County shall give written notice of such suit or action to franchise holder and the franchise holder shall defend the same at its own cost and expense by counsel of its own selection. If final judgment shall be rendered or given against King County in any suit or action, the same shall be paid and satisfied in full by the franchise holder, its successors or assigns.

8. So long as the Franchise holder shall exercise any right or privilege granted by this ordinance, it shall provide and maintain in full force and effect public liability insurance, with the County as an additional insured, providing for a limit of not less than One Hundred Thousand Dollars ( \$ 100,000 ) for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of not less than Five Hundred Thousand Dollars ( \$ 500,000 ) for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence; and property damage liability insurance providing for a limit of not less than Fifty Thousand Dollars ( \$ 50,000 ) for all damage arising out of injury to or destruction of property in any one occurrence. A copy of such policy or certificate evidencing the same shall be filed in the office of the County Engineer prior to issuance of any permit for construction and shall provide for ten (10) days notice to the County of any change, cancellation or lapse thereof.

9. If any pole, line cable or appurtenant facility of the franchise holder or its construction, operation or maintenance, shall increase the hazard of travel along the road, upon demand of the Board of Commissioners, the franchise holder shall install, maintain and operate sufficient safety lights and warning devices as are commonly used in similar situations upon public roads of King County.

10. Rates charged by the franchise holder for service hereunder shall be fair and reasonable and designed to meet all necessary costs of service, including a fair rate of return on the net valuation of its properties devoted thereto, under efficient and economical management. The franchise holder shall be subject to all authority now or hereafter possessed by King County, or any other governmental body having competent jurisdiction to fix just, reasonable and compensatory service rates.

The franchise holder shall offer service to all persons desiring to subscribe to the services of the franchise holder for a minimum period of one year, where such person resides within the area of this franchise and the point of reception is within three hundred feet of the closest existing facility of franchise holder, or to two or more subscribers for a distance from the existing facilities at the ratio of one subscriber per three hundred feet. The cost of extending facilities along the road or right of way shall be borne by the franchise holder, and the costs of extending lines from the road or right of way to the subscriber may be contracted for between the franchise holder and subscriber, provided the charges for extension and connection are reasonable. The foregoing shall not be construed as to preclude franchise holder from extending services upon its own terms to subscribers where the point of reception is beyond the ratio of one subscriber per three hundred feet, or multiples thereof. In no event shall franchise holder extend services where the point of reception is outside of the franchise area.

11. This franchise, and all lines, cable and appurtenant facilities, constructed and maintained hereby is subject to the exercise of eminent domain. The value to be attributed to all the rights granted under this franchise shall in no instance exceed the actual cost paid King County in obtaining this franchise, in the instance of an exercise of eminent domain.

12. Whenever the decision, requirement or approval is by this document to be a determination of the King County Engineer, that determination shall be conclusive upon the parties hereto, except in that instance where the determination is arbitrary, made in bad faith or to defraud the parties hereto.

13. All rights arising to the franchise holder herein are nonexclusive, and King County reserves the right to grant other and similar franchises to other and similar persons, private corporations and municipal corporations upon the county roads and rights of way subject to this franchise, to the extent that such other and similar franchises are in the public interest.

14. If upon expiration of this franchise, franchise holder shall not have renewed or caused to have reissued a franchise for its lines, cable and appurtenant facilities, upon the county roads and rights of way included herein, King County shall have the right to remove or relocate the same; provided, that the removal or relocation is reasonably necessary for the safe condition of the road, right-of-way, or the lines and facilities of other franchise holders, or are reasonably necessary for the construction, renewing, altering or improving of such road or right of way; and further provided, that such removal or relocation is done within two years from the expiration hereof. If franchise holder shall have failed to apply for a renewal or reissuance of a franchise within two years from the expiration hereof, all right, title and interest to its lines, cable and appurtenant facilities shall be forfeited unto King County, at the election of the Board of Commissioners.

In no event, upon expiration of this franchise, shall the franchise holder have any right to the operation, maintenance or revenue to franchise holder from the operation or maintenance of the lines, cable or appurtenant facilities created or existing hereby.

15. The Board of Commissioners may, upon giving thirty days written notice to the franchise holder of its intention so to do, amend, alter, change or supplement the rights and responsibilities created hereby.

If the franchise holder, its successors or assigns, shall violate or fail to comply with any of the terms, conditions or stipulations of this franchise, for a period of thirty days after receiving written notice from the Board of Commissioners of such violation or failure to comply with this franchise, then this franchise may be declared revoked by the Board of Commissioners, if they after having a public hearing find such revocation to be in the public interest.

16. The franchise holder shall not have the right to assign this franchise without consent of the Board of Commissioners given by Resolution. No such assignment shall be of any force or effect unless an acceptance by the assignee of all rights, conditions, terms provisions and responsibilities contained herein, and the posting of all surety bonds as the Board of Commissioners may deem necessary.

17. The franchise holder, its successors and assigns, shall be deemed to have forfeited and abandoned all rights granted hereby, unless the franchise holder shall within thirty days after the granting of this franchise, execute its acceptance of the rights, privileges, obligations and responsibilities provided herein and this franchise shall be null and void and of no force or effect, unless Franchise holder shall within thirty (30) days after the effective date of this ordinance file with the Board of County Commissioners its written acceptance of the rights and privileges hereby conferred and the terms, conditions and restrictions hereby imposed; and shall at the same time file with said Board of Commissioners a good and sufficient bond in the penal sum of Twenty-five Thousand Dollars (\$ 25,000) executed by a surety company authorized and qualified to do business in the State of Washington as a surety, conditioned that Franchise holder shall strictly comply with each and every condition and covenant of this ordinance; Provided, whenever in the judgment of the Board of County Commissioners, any bond or bonds filed by Franchise holder pursuant to the provisions hereof shall be deemed insufficient to satisfy the conditions of the bond, the Franchise holder shall upon demand furnish a new or additional bond in such amount as may be specified by the Board of County Commissioners.

18. As rental and compensation for the use of county roads and rights of way, and to assist in reimbursing King County for the occupancy of such roads and rights of way, franchise holder shall pay unto King County on the 10th day of Feb., the 10th day of May, 10th day of August and the 10th day of November, each year, an amount equal to four per cent (4%) of the gross income received for such services rendered in the County of King for which any part of the rights exercised under this franchise are used. Such quarterly payments shall be based on the gross income from such business for the three month period preceding these dates and ending respectively on December 31, March 31, June 30, and September 30, of each year. Said quarterly payments shall become delinquent if not paid on or before thirty (30) days after the date due, and shall thereafter bear interest at the rate of ten per cent (10%) per annum of the amount due until paid.

Franchise holder shall make available at all times its records and books of account relative to its operations under this franchise for inspection by an authorized representative of the Board of County Commissioners. Such information as may be gained by inspection of said records and books of account shall be deemed confidential between franchise holder and the Board of Commissioners, or anyone authorized to act on their behalf, except that the same may be used to enforce the provisions of this franchise.

19. The franchise holder shall, within six months (6 Months) from executing its acceptance of this franchise as hereinbefore provided, commence and provide a reasonable program for the completion of the construction and location of its transmission lines or cables upon the County roads and rights of way situated within the area of this franchise. Failure by the franchise holder to have constructed and located such lines and cables shall at the option of the Board of County Commissioners operate as an abandonment of the rights under this franchise to those areas wherein such lines and cables are not located.

20. This franchise shall be construed as to effectuate the purposes and uses under this franchise consistent with economical and efficient services rendered in the public interest.

Should any provision of this franchise , or its application, be held invalid, the remaining provisions of the franchise shall subsist and remain valid, unless the dominant purpose of the franchise or the public interest is therein is thwarted thereby.

21., All rights and privileges conferred under this franchise shall expire December 18, 1991 ( 25 Years)

DONE IN REGULAR SESSION IN THIS OFFICE OF THE BOARD OF COUNTY COMMISSIONERS OF KING COUNTY, WASHINGTON, this 19<sup>th</sup> day of December 1966.

BOARD OF COUNTY COMMISSIONERS  
KING COUNTY, WASHINGTON

Scott Wallace  
CHAIRMAN

ATTEST:  
ROBERT A. MORRIS

Ed Munno  
COMMISSIONER

Deputy Ralph A. Stender  
COUNTY AUDITOR OF KING COUNTY  
and Ex-Officio Clerk of the  
Board of County Commissioners

John T. O'Brien  
COMMISSIONER

BY \_\_\_\_\_  
Deputy

We, the undersigned, as President and Secretary, respectively of the \_\_\_\_\_ a Washington corporation, and on behalf of said corporation, accept all the rights and privileges of the within franchise subject to all the terms, conditions, stipulations and obligations contained therein.

IN WITNESS HEREOF, we have set our hands and seal of the Corporation this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(SEAL)

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
SECRETARY

CL:mpm  
Pros. : JHN  
11/29/66

ORDINANCE NO. 00522

NO. 70-456

AMENDMENT TO FRANCHISE #563

*File Franchise #546  
See 2<sup>nd</sup> page*

In the matter of the application of Rune Gornason Co., Inc., (d/b/a King County Cable TV) for amendment of Franchise #563 by deleting the description of the land area therein described and substituting therefore the description of the land area herein described.

The above application having come before the King County Council this 13<sup>th</sup> day of July, 1970, for hearing and the following having been shown:

1. That all of the land area herein set forth and described including the public roads and rights of way of King County therein lie within King County, Washington, and outside of any incorporated cities or towns; and

2. That due and legal notice of said hearing on application for amendment of franchise having been posted and published in the manner prescribed by law; and

The King County Council having considered the respective interests proposed and advanced, and being fully advised in the premises, does hereby find that the granting of this amendment to Franchise #563 will provide services not heretofore provided and that the described area can not support more than one franchise, and is thus in the public interest,

IT IS HEREBY ORDERED

A. That the amendment be granted to run coextensive with the term of Franchise #563;

B. That the description of the land area in Franchise #563 be changed and amended by deleting the land area description contained therein and substituting therefore the following land area description; to wit;

(AMENDED BOUNDARIES OF FRANCHISE #563)

Beginning at intersection of shoreline of Puget Sound and King-Snohomish County line, thence east to Meridian Avenue North;

Thence south on Meridian Avenue North to North 163rd Street, thence east on North 163rd Street and the same extended to the west boundary of Interstate Highway No. 5, thence south along the west boundary of Interstate Highway No. 5, to north East 145th Street;

Thence west on North East, North and North West 145th Street to the shoreline of Puget Sound;

Thence northerly along said shoreline of Puget Sound to the intersection of the King-Snohomish County line and the shoreline of Puget Sound and the point of beginning.

C. That in all other respects the terms and conditions of Franchise #563 be and remain unmodified.

D. That the boundaries of Franchise #563 as hereby amended supercede and revoke all prior franchises within its confines, specifically Franchise #546 and #562, and

E. That the King County Executive is hereby directed to execute this Amendment to Franchise #563 for and on behalf of King County, Washington.

DATED THIS 13<sup>th</sup> DAY OF July, 1970.

KING COUNTY COUNCIL

BY: Bill Ramm  
Chairman

ATTEST:

Ralph Steuber  
Clerk of the Council

KING COUNTY, WASHINGTON

DEEMED ENACTED WITHOUT  
COUNTY EXECUTIVE'S SIGNATURE.

BY: DATED: July 20, 1970  
County Executive

CJL/EWM-SM/kh  
7-9-70

APPROVED AS TO FORM AND LEGALITY  
Jeremy Randolph  
Deputy Prosecuting Attorney  
July 10, 1970  
Date

ORDINANCE READINGS

1st 6-5-70  
2nd 7-13-70  
3rd 7-13-70  
Effective Date \_\_\_\_\_

KING COUNTY COUNCIL  
PUBLIC WORKS AND TRANSPORTATION COMMITTEE

July 9, 1970

Ref. Number

00522

Date

TV Cable Franchise Application - King County Cable TV (Rune Goranson)

(ITEM DESCRIPTION)

MAJORITY:

Do Pass

(Do Pass or as amended)

RALPH R. STENDER  
CLERK KING COUNTY COUNCIL

70 JUL 9 AM 9:35

RECEIVED

6/5 - 1<sup>st</sup> readings

7/13 - Hearing 70-456

Substitute Ord amendment

*[Signature]*

Chairman

Bernice F. Storn

*[Signature]*

**UNITED COMMUNITY ANTENNA SYSTEM, INC.**

13

**100 FOURTH AVENUE NORTH  
SEATTLE, WASHINGTON 98109  
TELEPHONE 206/MAIN 4-6000**

October 24, 1966

King County Commissioners  
402 King County Court House  
Seattle, Washington 98104

Attn: Mr. Ralph R. Stender, County Clerk of the Board

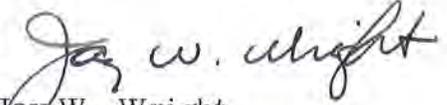
Gentlemen:

The King County Commissioners now have scheduled a hearing on November 14, 1966, to consider applications for franchises to construct, maintain and operate cable lines on certain county roads and rights-of-way in King County for community antenna systems. Unfortunately on that date the scheduled hearing conflicts with the meetings of the California Community Television Association which are particularly critical in the industry at this time and can not be postponed. Certain personnel of United Community Antenna System, Inc. and also personnel of other applicants are involved in the California Association meetings.

Accordingly, United Community Antenna System, Inc. respectfully requests that the King County Commissioners continue the hearing scheduled for November 14 for at least seven days.

Truly yours,

UNITED COMMUNITY  
ANTENNA SYSTEM, INC.

by   
Jay W. Wright  
President

JWW:gm



KING

CO.

JOHN T. O'BRIEN  
COMMISSIONER, FIRST DISTRICT

ED MUNRO  
COMMISSIONER, SECOND DISTRICT

SCOTT WALLACE  
COMMISSIONER, THIRD DISTRICT

**KING COUNTY COMMISSIONERS**  
402 KING COUNTY COURT HOUSE  
SEATTLE, WASHINGTON 98104

RALPH R. STENDER  
CLERK OF THE BOARD

September 7, 1966

*Yellow*

Mr. Warren C. Gonnason  
County Engineer  
B U I L D I N G

Dear Sir:

Hearing was had by the Board of County Commissioners in regular session on September 6, 1966 in the matter of the Applications of Northwest Cablevision, Inc., Rune Goranson Co., Inc., Telecable, Inc., United Community Antenna System, Inc., Colorcable, Inc., and seven applications from Vista Television Cable, Inc. for Cable Line Franchises.

In accordance with your recommendation, the Board continued this matter until October 3, 1966 at 9:30 A. M.

Very truly yours,

BOARD OF COUNTY COMMISSIONERS  
ROBERT A. MORRIS, Clerk of Board

By: Ralph R. Stender, Deputy

RRS:gj

cc: Northwest Cablevision, Inc.  
Rune Goranson Co., Inc.  
Telecable, Inc.  
United Community Antenna System, Inc.  
Colorcable, Inc.  
Vista Television Cable, Inc.



# King County

STATE OF WASHINGTON

## Seattle

98104

KING COUNTY COURT HOUSE  
WARREN C. GONNASON  
COUNTY ENGINEER  
ROOM 400 • MAIN 2-5900

August 1, 1966

Honorable Board of  
County Commissioners  
Seattle, Washington

Gentlemen:

Re: Franchise for United Community  
Antenna System, Inc., Television  
Cable.

Reference is made to your order of examination dated July 25,  
1966, on the above-named application for a television cable  
franchise, hearing on which was set for September 6, 1966.

It is recommended that said application be granted for a period  
of twenty-five years, under the terms provided by the attached  
franchise form in triplicate.

Very truly yours,

A handwritten signature in cursive script that reads "W.C. Gonnason".

WARREN C. GONNASON  
County Engineer

CL:mpm  
Attach:

4/13/66

**KING COUNTY**  
STATE OF WASHINGTON  
SEATTLE

OFFICE OF  
COUNTY ROAD ENGINEER

August 1, 1966

Honorable Board of  
County Commissioners  
Seattle, Washington

Gentlemen:

Re: Franchise for United Community  
Antenna System, Inc., Television  
Cable.

Reference is made to your order of examination dated July 25,  
1966, on the above-named application for a television cable  
franchise, hearing on which was set for September 6, 1966.

It is recommended that said application be granted for a period  
of twenty-five years, under the terms provided by the attached  
franchise form in triplicate.

Very truly yours,

WARREN C. GONNASON  
County Engineer

CL:mpm  
Attach:

# KING COUNTY

STATE OF WASHINGTON

SEATTLE

OFFICE OF  
COUNTY ROAD ENGINEER

August 1, 1966

Honorable Board of  
County Commissioners  
Seattle, Washington

Gentlemen:

Re: Franchise for United Community  
Antenna System, Inc., Television  
Cable.

Reference is made to your order of examination dated July 25, 1966, on the above-named application for a television cable franchise, hearing on which was set for September 6, 1966.

It is recommended that said application be granted for a period of twenty-five years, under the terms provided by the attached franchise form in triplicate.

Very truly yours,

WARREN C. GONNASON  
County Engineer

CL:mpm  
Attach:

# Order for Examination and Survey

Application  
In the Matter of the ~~Petition~~ of

UNITED COMMUNITY ANTENNA SYSTEM, INC.

ORDER FOR EXAMINATION

To the County Engineer, King County, Washington:

By Order of the Board of County Commissioners of King County, you are hereby directed to make an examination of the ~~road~~ <sup>Franchise</sup> proposed in the attached ~~petition~~ <sup>Application</sup> of ~~United Community Antenna System, Inc.~~ <sup>United Community Antenna System, Inc.</sup> and others, and to report thereon in writing to this Board as provided by law at your earliest convenience.

BOARD OF COUNTY COMMISSIONERS,  
KING COUNTY, WASHINGTON

Dated: Seattle, Washington

By ROBERT A. MORRIS, Clerk.

July 25, 1966

By Ralph R. Stender, Deputy.

MET. PREBS

4 copies of Notice attached (3 for Marion in R/W)

# KING COUNTY

STATE OF WASHINGTON

SEATTLE

98

OFFICE OF  
COUNTY ROAD ENGINEER

July 20, 1966

Honorable Board of  
County Commissioners  
Seattle, Washington

Gentlemen:

Re: Franchise for Television Cable  
for United Community Antenna System, Inc.

Reference is made to attached letter of April 13, 1966, to this office requesting a franchise for the purpose of constructing, maintaining and operating transmission and distribution lines or cables for transmitting and distribution of television, FM radio and other audiovisual electric signals.

This office has checked the description and found it to be correct. We recommend a date of hearing be set.

Very truly yours,

WARREN C. GONNASON  
County Engineer

CL:mpm  
Attach: 3 Maps & Description

CC; W. C. Gonnason



**KING COUNTY**  
STATE OF WASHINGTON  
SEATTLE

OFFICE OF  
COUNTY ROAD ENGINEER

July 20, 1966

Honorable Board of  
County Commissioners  
Seattle, Washington

Gentlemen:

Re: Franchise for Television Cable  
for United Community Antenna System, Inc.

Reference is made to attached letter of April 13, 1966, to this office requesting a franchise for the purpose of constructing, maintaining and operating transmission and distribution lines or cables for transmitting and distribution of television, FM radio and other audiovisual electric signals.

This office has checked the description and found it to be correct. We recommend a date of hearing be set.

Very truly yours,

WARREN C. GONNASON  
County Engineer

CL:mpm  
Attach:3 Maps & Description

CC; W. C. Gonnason



**NOTICE OF HEARING ON APPLICATION FOR FRANCHISE  
TO CONSTRUCT, MAINTAIN AND OPERATE CABLE LINES**

NOTICE IS HEREBY GIVEN that an application for franchise to construct, maintain and operate transmission and distribution lines and/or cables for the transmitting and distributing of television, FM radio, and other audio-visual electrical signals, together with poles, and other appurtenances, upon, over, along, underneath and across all county roads and rights of way, now existing or hereafter existing, within the following described sections, townships and range of King County, Washington, for a period of twenty-five years, has been filed with the Board of County Commissioners, the location and nature of the franchise being more particularly described as follows:

11  $\frac{1}{2}$  12 hold

11  
12  
13-DESC. NG.  
14  
15

Boundaries of the proposed Parkwood service area. (11)

North - West on N 163rd St from Interstate Highway # 5 to Ashworth Ave N.

West - South on Ashworth Ave N from N 163rd St to N 145th St.

South - East on N 145th St from Ashworth Ave N to Interstate Highway # 5.

East - North on Interstate Highway # 5 from N 145th St to N 163rd St.

Boundaries of the proposed Sheridan Heights service area. (12)

North - East on NE 170th St from Bothell Way NE to NE 170th Pl.  
East on NE 170th Pl ( Hamlin Road ) to NE 178th St.  
East on NE 178th St to 35th Ave NE.

West - South on 35th Ave NE from NE 178th St to NE 156th St.

South - West on NE 156th St from 35th Ave NE to 37th Ave NE.  
North on 37th Ave NE to NE 157th St.  
East on NE 157th St to 38th Ave NE.  
North on 38th Ave NE to NE 160th St.  
East on NE 160th St to Bothell Way NE.

East - North on Bothell Way NE from NE 160th St to NE 170th St.

OK

Boundaries of the proposed Richmond Beach - Innis Arden service area.

North - West on the King-Pierce County Line from 15th NW to Puget Sound.

West - South on the shore of Puget Sound from the King-Pierce County Line to Beach Drive ( an extension of N 165th St. )

South - East on Beach Drive from Puget Sound to the intersection formed by an extension of 15th Ave NW and Beach Drive.  
North on the extension of 15th Ave NW to NW 167th St.  
East on NW 167th St to 10th Ave NW.  
North on 10th Ave NW to NW 175th St.

East - West on NW 175th St from 10th Ave NW to 10th Ave NW at NW 175th Pl.  
North on 10th Ave NW to NW180th St.  
East on NW 180th St to 8th Ave NW.  
North on 8th Ave NW to Richmond Beach Road.  
Northwest on Richmond Beach Road to 15th Ave NW.  
North on 15th Ave NW to the King-Pierce County Line.

Boundaries of the proposed Echo Lake service area.

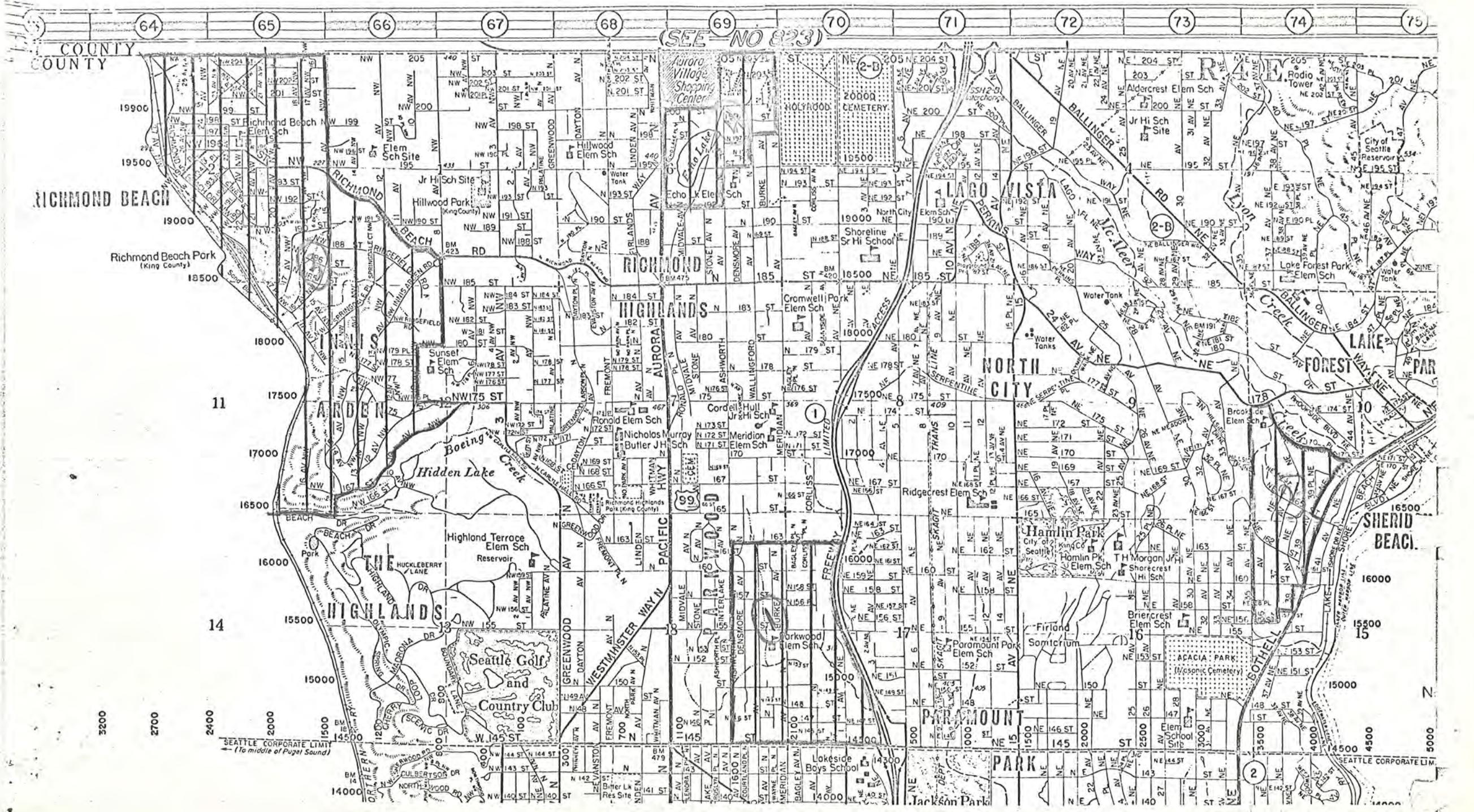
North - West on N 205th St from Meridian Ave N to Ashworth Pl N.  
South on Ashworth Pl N to N 200th St.  
East on N 200th St to Aurora Ave N.

West - South on Aurora Ave N from N 200th St to N 192nd St.

South - West on N 192nd St from Aurora Ave N to Ashworth Ave N.

East - North on Ashworth Ave N from N 192nd St to N 195th St.  
East on N 195th St to Wallingford Ave N.  
North on Wallingford Ave N to N 198th St.  
East on N 198th St to Meridian Ave N.  
North on Meridian Ave N to N 205th St.





(SEE NO 823)

SEATTLE CORPORATE LIMIT  
(To middle of Puget Sound)

N

(5)

NOTICE IS FURTHER GIVEN, that the name of the applicant for said franchise is: UNITED COMMUNITY ANTENNA SYSTEM, INC.

NOTICE IS FURTHER GIVEN, that a hearing will be held upon said application by the Board of County Commissioners at its office in the King County Courthouse, Seattle, Washington, on the 6th day of September, 1966, at 9:30 A. M., at which time and place any and all persons desiring to be heard in the matter of granting said application and franchise shall be present, and the said hearing may be continued from time to time by order of the Board of County Commissioners.

IN WITNESS WHEREOF, the undersigned, the County Auditor of King County, Washington, has hereunto set his hand and seal this 25th day of July, 1966.

ROBERT A. MORRIS, County Auditor  
and Clerk of the Board of County  
Commissioners

By: Ralph B. Stender, Deputy Clerk

**NOTICE OF HEARING ON APPLICATION FOR FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE CABLE LINES**

NOTICE IS HEREBY GIVEN that an application for franchise to construct, maintain and operate transmission and distribution lines and/or cables for the transmitting and distributing of television, FM radio, and other audio-visual electrical signals, together with poles, and other appurtenances, upon, over, along, underneath and across all county roads and rights of way, now existing or hereafter existing, within the following described sections, townships and range of King County, Washington, for a period of twenty-five years, has been filed with the Board of County Commissioners, the location and nature of the franchise being more particularly described as follows:

Boundaries of the proposed Kenilworth service area.

North—West on NE 40th St from Lake Sammamish to 172nd Ave NE.

West—South on 172nd Ave NE from NE 40th St to NE 8th St.

South—East on NE 8th St from 172nd Ave NE to Lake Sammamish.

East—North along the west shore of Lake Sammamish from an extension of NE 8th St to NE 40th St.

Boundaries of the proposed Parkwood service area.

North—West on N 163rd St from Interstate Highway # 5 to Ashworth Ave N.

West—South on Ashworth Ave N from N 163rd St to N 145th St.

South—East on N 145th St from Ashworth Ave N to Interstate Highway # 5.

East—North on Interstate Highway # 5 from N 145th St to N 163rd St.

Boundaries of the proposed Sheridan Heights service area.

North—East on NE 170th St from Bothell Way NE to NE 170th Pl.

East on NE 170th Pl (Hamilton Road) to NE 178th St.

East on NE 178th St to 35th Ave NE.

West—South on 35th Ave NE from NE 178th St to NE 156th St.

South—West on NE 156th St from 35th Ave NE to 37th Ave NE.

North on 37th Ave NE to NE 157th St.

East on NE 157th St to 38th Ave NE.

North on 38th Ave NE to NE 160th St.

East on NE 160th St to Bothell Way NE.

East—North on Bothell Way NE from NE 160th St to NE 170th St.

Boundaries of the proposed Richmond Beach-Innis Arden area.

North—West on the King-Pierce County Line from 15th NW to Puget Sound.

West—South on the shore of Puget Sound from the King-Pierce County Line to Beach Drive (an extension of N 165th St).

South—East on Beach Drive from Puget Sound to the intersection formed by an extension of 15th Ave NW and Beach Drive.

North on the extension of 15th Ave NW to NW 167th St.

East on NW 167th St to 10th Ave NW.

North on 10th Ave NW to NW 175th St.

East—West on NW 175th St from 10th Ave NW to 10th Ave NW at NW 175th Pl.

North on 10th Ave NW to NW 180th St.

East on NW 180th St to 8th Ave NW.

North on 8th Ave NW to Richmond Beach Road.

Northwest on Richmond Beach Road to 15th Ave NW.

North on 15th Ave NW to the King-Pierce County Line.

Boundaries of the proposed Echo Lake service area.

North—West on N 205th St from Meridian Ave N to Ashworth Pl N.

South on Ashworth Pl N to N 200th St.

East on N 200th St to Aurora Ave N.

West—South on Aurora Ave N from N 200th St to N 192nd St.

South—West on N 192nd St from Aurora Ave N to Ashworth Ave N.

East—North on Ashworth Ave N from N 192nd St to N 195th St.

East on N 195th St to Wallingford Ave N.

North on Wallingford Ave N to N 198th St.

East on N 198th St to Meridian Ave N.

North on Meridian Ave N to N 205th St.

NOTICE IS FURTHER GIVEN, that the name of the applicant for said franchise is: UNITED COMMUNITY ANTENNA SYSTEM, INC.

NOTICE IS FURTHER GIVEN, that a hearing will be held upon said application by the Board of County Commissioners at its office in the King County Courthouse, Seattle, Washington, on the 6th day of September, 1966, at 9:30 a. m., at which time and place any and all persons desiring to be heard in the matter of granting said application and franchise shall be present, and the said hearing may be continued from time to time by order of the Board County Commissioners.

IN WITNESS WHEREOF, the undersigned, the County Auditor of King County, has hereunto set his hand and seal this 25th day of July, 1966.

ROBERT A. MORRIS,  
County Auditor and Clerk of the Board of County Commissioners.

By: RALPH R. STENDER,  
(Seal) Deputy Clerk.

Published: August 4, 5, 1966.  
(2779-M)

**Affidavit of Publication**

STATE OF WASHINGTON, }  
COUNTY OF KING } SS.

The undersigned, being first duly sworn, on oath deposes and says that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper. That said newspaper is a legal newspaper and it is now and has been for more than six months prior to the date of the publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the said Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of said King County.

That the annexed is a true copy of a  
NOTICE OF HEARING ON APPLICATION FOR  
FRANCHISE  
as it was published in regular issues (and not in supplement form) of said newspaper once each day for a period of two ( 2 ) consecutive days, commencing on the 4th day of August 1966, and ending on the 5th day of August 1966, both dates inclusive, and that said newspaper was regularly distributed to its subscribers during all of said period.

*[Signature]*

Subscribed and sworn to before me this  
5th day of August 1966

*[Signature]*

Notary Public in and for the State of Washington, residing at Seattle  
(This form officially sanctioned by Washington State Press Association, Form C.)

*September 6th*

# Affidavit of Publication

STATE OF WASHINGTON, }  
COUNTY OF KING } SS.

The undersigned, being first duly sworn, on oath deposes and says that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper. That said newspaper is a legal newspaper and it is now and has been for more than six months prior to the date of the publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the said Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of said King County.

That the annexed is a true copy of a

~~NOTICE OF HEARING ON APPLICATION FOR FRANCHISE~~  
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*[Signature]*

Subscribed and sworn to before me this

5th day of August 1966

*[Signature]*

Notary Public in and for the State of Washington, residing at Seattle (This form officially sanctioned by Washington State Press Association.) Form C.

*September 6th*

**NOTICE OF HEARING ON APPLICATION FOR FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE CABLE LINES**  
NOTICE IS HEREBY GIVEN that an application for franchise to construct, maintain and operate transmission and distribution lines and/or cables for the transmitting and distributing of television, FM radio, and other audio-visual electrical signals, together with poles, and other appurtenances, upon, over, along, underneath and across all county roads and rights of way, now existing or hereafter existing, within the following described sections, townships and range of King County, Washington, for a period of twenty-five years, has been filed with the Board of County Commissioners, the location and nature of the franchise being more particularly described as follows:  
Boundaries of the proposed Kenilworth service area.  
North—West on NE 40th St from Lake Sammamish to 172nd Ave NE.  
West—South on 172nd Ave NE from NE 40th St to NE 8th St.  
South—East on NE 8th St from 172nd Ave NE to Lake Sammamish.  
East—North along the west shore of Lake Sammamish from an extension of NE 8th St to NE 40th St.  
Boundaries of the proposed Parkwood service area.  
North—West on N 163rd St from Interstate Highway # 5 to Ashworth Ave N.  
West—South on Ashworth Ave N from N 163rd St to N 145th St.  
South—East on N 145th St from Ashworth Ave N to Interstate Highway # 5.  
East—North on Interstate Highway # 5 from N 145th St to N 163rd St.  
Boundaries of the proposed Sheridan Heights service area.  
North—East on NE 170th St from Bothell Way NE to NE 170th Pl.  
East on NE 170th Pl (Hamlin Road) to NE 173rd St.  
East on NE 173rd St to 35th Ave NE.  
West—South on 35th Ave NE from NE 173rd St to NE 156th St.  
South—West on NE 156th St from 35th Ave NE to 37th Ave NE.  
North on 37th Ave NE to NE 157th St.  
East on NE 157th St to 38th Ave NE.  
North on 38th Ave NE to NE 160th St.  
East on NE 160th St to Bothell Way NE.  
East—North on Bothell Way NE from NE 160th St to NE 170th St.  
Boundaries of the proposed Richmond Beach-Innis Arden area.  
North—West on the King-Pierce County Line from 15th NW to Puget Sound.  
West—South on the shore of Puget Sound from the King-Pierce County Line to Beach Drive (an extension of N 165th St).  
South—East on Beach Drive from Puget Sound to the intersection formed by an extension of 15th Ave NW and Beach Drive.  
North on the extension of 15th Ave NW to NW 167th St.  
East on NW 167th St to 10th Ave NW.  
North on 10th Ave NW to NW 175th St.  
East—West on NW 175th St from 10th Ave NW to 10th Ave NW at NW 175th Pl.  
North on 10th Ave NW to NW 180th St.  
East on NW 180th St to 8th Ave NW.  
North on 8th Ave NW to Richmond Beach Road.  
Northwest on Richmond Beach Road to 15th Ave NW.  
North on 15th Ave NW to the King-Pierce County Line.  
Boundaries of the proposed Echo Lake service area.  
North—West on N 205th St from Meridian Ave N to Ashworth Pl N.  
South on Ashworth Pl N to N 200th St.  
East on N 200th St to Aurora Ave N.  
West—South on Aurora Ave N from N 200th St to N 192nd St.  
South—West on N 192nd St from Aurora Ave N to Ashworth Ave N.  
East—North on Ashworth Ave N from N 192nd St to N 195th St.  
East on N 195th St to Wallingford Ave N.  
North on Wallingford Ave N to N 198th St.  
East on N 198th St to Meridian Ave N.  
North on Meridian Ave N to N 205th St.  
**NOTICE IS FURTHER GIVEN,** that the name of the applicant for said franchise is: UNITED COMMUNITY ANTENNA SYSTEM, INC.  
**NOTICE IS FURTHER GIVEN,** that a hearing will be held upon said application by the Board of County Commissioners at its office in the King County Courthouse, Seattle, Washington, on the 6th day of September, 1966, at 9:30 a. m., at which time and place any and all persons desiring to be heard in the matter of granting said application and franchise shall be present, and the said hearing may be continued from time to time by order of the Board County Commissioners.  
IN WITNESS WHEREOF, the undersigned, the County Auditor of King County, has hereunto set his hand and seal this 25th day of July, 1966.  
ROBERT A. MORRIS,  
County Auditor and Clerk of the Board of County Commissioners.  
By: RALPH R. STENDER,  
(Seal) Deputy Clerk.  
Published: August 4, 5, 1966.  
(2779-M)

**NOTICE OF HEARING ON APPLICATION FOR FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE CABLE LINES**

NOTICE IS HEREBY GIVEN that an application for franchise to construct, maintain and operate transmission and distribution lines and/or cables for the transmitting and distributing of television, FM radio, and other audio-visual electrical signals, together with poles, and other appurtenances, upon, over, along, underneath and across all county roads and rights of way, now existing or hereafter existing, within the following described sections, townships and range of King County, Washington, for a period of twenty-five years, has been filed with the Board of County Commissioners, the location and nature of the franchise being more particularly described as follows:

Boundaries of the proposed Kenilworth service area.

North—West on NE 40th St from Lake Sammamish to 172nd Ave NE.

West—South on 172nd Ave NE from NE 40th St to NE 8th St.

South—East on NE 8th St from 172nd Ave NE to Lake Sammamish.

East—North along the west shore of Lake Sammamish from an extension of NE 8th St to NE 40th St.

Boundaries of the proposed Parkwood service area.

North—West on N 163rd St from Interstate Highway # 5 to Ashworth Ave N.

West—South on Ashworth Ave N from N 163rd St to N 145th St.

South—East on N 145th St from Ashworth Ave N to Interstate Highway # 5.

East—North on Interstate Highway # 5 from N 145th St to N 163rd St.

Boundaries of the proposed Sheridan Heights service area.

North—East on NE 170th St from Bothell Way NE to NE 170th Pl.

East on NE 170th Pl (Hamlin Road) to NE 178th St.

East on NE 178th St to 35th Ave NE.

West—South on 35th Ave NE from NE 178th St to NE 156th St.

South—West on NE 156th St from 35th Ave NE to 37th Ave NE.

North on 37th Ave NE to NE 157th St.

East on NE 157th St to 38th Ave NE.

North on 38th Ave NE to NE 160th St.

East on NE 160th St to Bothell Way NE.

East—North on Bothell Way NE from NE 160th St to NE 170th St.

Boundaries of the proposed Richmond Beach - Innis Arden area.

North—West on the King-Pierce County Line from 15th NW to Puget Sound.

West—South on the shore of Puget Sound from the King-Pierce County Line to Beach Drive (an extension of N 165th St).

South—East on Beach Drive from Puget Sound to the intersection formed by an extension of 15th Ave NW and Beach Drive.

North on the extension of 15th Ave NW to NW 167th St.

East on NW 167th St to 10th Ave NW.

North on 10th Ave NW to NW 175th St.

East—West on NW 175th St from 10th Ave NW to 10th Ave NW at NW 175th Pl.

North on 10th Ave NW to NW 180th St.

East on NW 180th St to 8th Ave NW.

North on 8th Ave NW to Richmond Beach Road.

Northwest on Richmond Beach Road to 15th Ave NW.

North on 15th Ave NW to the King-Pierce County Line.

Boundaries of the proposed Echo Lake service area.

North—West on N 205th St from Meridian Ave N to Ashworth Pl N.

South on Ashworth Pl N to N 200th St.

East on N 200th St to Aurora Ave N.

West—South on Aurora Ave N from N 200th St to N 192nd St.

South—West on N 192nd St from Aurora Ave N to Ashworth Ave N.

East—North on Ashworth Ave N from N 192nd St to N 195th St.

East on N 195th St to Wallingford Ave N.

North on Wallingford Ave N to N 198th St.

East on N 198th St to Meridian Ave N.

North on Meridian Ave N to N 205th St.

NOTICE IS FURTHER GIVEN, that the name of the applicant for said franchise is: UNITED COMMUNITY ANTENNA SYSTEM, INC.

NOTICE IS FURTHER GIVEN, that a hearing will be held upon said application by the Board of County Commissioners at its office in the King County Courthouse, Seattle, Washington, on the 6th day of September, 1966, at 9:30 a. m., at which time and place any and all persons desiring to be heard in the matter of granting said application and franchise shall be present, and the said hearing may be continued from time to time by order of the Board County Commissioners.

IN WITNESS WHEREOF, the undersigned, the County Auditor of King County, has hereunto set his hand and seal this 25th day of July, 1966.

ROBERT A. MORRIS, County Auditor and Clerk of the Board of County Commissioners.

By: RALPH R. STENDER, (Seal) Deputy Clerk. Published August 4, 5, 1966. (2779-M)

# Affidavit of Publication

STATE OF WASHINGTON, }  
COUNTY OF KING } SS.

The undersigned, being first duly sworn, on oath deposes and says that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper. That said newspaper is a legal newspaper and it is now and has been for more than six months prior to the date of the publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the said Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of said King County.

That the annexed is a true copy of a

~~NOTICE OF HEARING ON APPLICATION FOR FRANCHISE~~ published in regular issues (and not in supplement form) of said newspaper once each day for a period of two ( 2 ) consecutive days, commencing on the 4th day of August 1966, and ending on the 5th day of August 1966, both dates inclusive, and that said newspaper was regularly distributed to its subscribers during all of said period.

*[Signature]*

Subscribed and sworn to before me this

5th day of August 1966

*[Signature]*

Notary Public in and for the State of Washington, residing at Seattle (This form officially sanctioned by Washington State Press Association.) Form C.

*September 6th*

**NOTICE OF HEARING ON APPLICATION FOR FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE CABLE LINES**

NOTICE IS HEREBY GIVEN that an application for franchise to construct, maintain and operate transmission and distribution lines and/or cables for the transmitting and distributing of television, FM radio, and other audio-visual electrical signals, together with poles, and other appurtenances, upon, over, along, underneath and across all county roads and rights of way, now existing or hereafter existing, within the following described sections, townships and range of King County, Washington, for a period of twenty-five years, has been filed with the Board of County Commissioners, the location and nature of the franchise being more particularly described as follows:

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West—South on 172nd Ave NE from NE 40th St to NE 8th St.

South—East on NE 8th St from 172nd Ave NE to Lake Sammamish.

East—North along the west shore of Lake Sammamish from an extension of NE 8th St to NE 40th St.

Boundaries of the proposed Parkwood service area.

North—West on N 163rd St from Interstate Highway # 5 to Ashworth Ave N.

West—South on Ashworth Ave N from N 163rd St to N 145th St.

South—East on N 145th St from Ashworth Ave N to Interstate Highway # 5.

East—North on Interstate Highway # 5 from N 145th St to N 163rd St.

Boundaries of the proposed Sheridan Heights service area.

North—East on NE 170th St from Bothell Way NE to NE 170th Pl.

East on NE 170th Pl (Hamlin Road) to NE 178th St.

East on NE 178th St to 35th Ave NE.

West—South on 35th Ave NE from NE 178th St to NE 156th St.

South—West on NE 156th St from 35th Ave NE to 37th Ave NE.

North on 37th Ave NE to NE 157th St.

East on NE 157th St to 38th Ave NE.

North on 38th Ave NE to NE 160th St.

East on NE 160th St to Bothell Way NE.

East—North on Bothell Way NE from NE 160th St to NE 170th St.

Boundaries of the proposed Richmond Beach - Innis Arden area.

North—West on the King-Pierce County Line from 15th NW to Puget Sound.

West—South on the shore of Puget Sound from the King-Pierce County Line to Beach Drive (an extension of N 165th St).

South—East on Beach Drive from Puget Sound to the intersection formed by an extension of 15th Ave NW and Beach Drive.

North on the extension of 15th Ave NW to NW 167th St.

East on NW 167th St to 10th Ave NW.

North on 10th Ave NW to NW 175th St.

East—West on NW 175th St from 10th Ave NW to 10th Ave NW at NW 175th Pl.

North on 10th Ave NW to NW 180th St.

East on NW 180th St to 8th Ave NW.

North on 8th Ave NW to Richmond Beach Road.

Northwest on Richmond Beach Road to 15th Ave NW.

North on 15th Ave NW to the King-Pierce County Line.

Boundaries of the proposed Echo Lake service area.

North—West on N 205th St from Meridian Ave N to Ashworth Pl N.

South on Ashworth Pl N to N 200th St.

East on N 200th St to Aurora Ave N.

West—South on Aurora Ave N from N 200th St to N 192nd St.

South—West on N 192nd St from Aurora Ave N to Ashworth Ave N.

East—North on Ashworth Ave N from N 192nd St to N 195th St.

East on N 195th St to Wallingford Ave N.

North on Wallingford Ave N to N 198th St.

East on N 198th St to Meridian Ave N.

North on Meridian Ave N to N 205th St.

NOTICE IS FURTHER GIVEN, that the name of the applicant for said franchise is: UNITED COMMUNITY ANTENNA SYSTEM, INC.

NOTICE IS FURTHER GIVEN, that a hearing will be held upon said application by the Board of County Commissioners at its office in the King County Courthouse, Seattle, Washington, on the 6th day of September, 1966, at 9:30 a. m., at which time and place any and all persons desiring to be heard in the matter of granting said application and franchise shall be present, and the said hearing may be continued from time to time by order of the Board County Commissioners.

IN WITNESS WHEREOF, the undersigned, the County Auditor of King County, has hereunto set his hand and seal this 25th day of July, 1966.

ROBERT A. MORRIS,  
County Auditor and Clerk of the Board of County Commissioners.

By: RALPH R. STENDER,  
(Seal) Deputy Clerk.

Published: August 4, 5, 1966.  
(2779-M)

## Affidavit of Publication

STATE OF WASHINGTON, }  
COUNTY OF KING } SS.

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Subscribed and sworn to before me this

5th day of August 1966

Notary Public in and for the State of Washington, residing at Seattle  
(This form officially sanctioned by Washington State Press Association.)  
Form C.

*September 6th*

Eng. 9

# Order for Examination and Survey

RECEIVED FROM COUNTY COMMISSIONERS

**Application**  
In the Matter of the ~~Petition~~ of

BY Z. J.

UNITED COMMUNITY ANTENNA SYSTEM, INC.

ON 7/29 19 66

**ORDER FOR EXAMINATION**

To the County Engineer, King County, Washington:

By Order of the Board of County Commissioners of King County, you are hereby directed to make an examination of the ~~XXXX~~ **Franchise** ~~XXXXXX~~ **Application** proposed in the attached ~~petition~~ of.....

United Community Antenna System, Inc. ~~and others~~, and to report thereon in writing to this Board as provided by law at your earliest convenience.

BOARD OF COUNTY COMMISSIONERS,  
KING COUNTY, WASHINGTON

Dated: Seattle, Washington

By ROBERT A. MORRIS, Clerk.

July 25, 1966

By Ralph R. Stender, Deputy.

MET. PRESS

**4 copies of Notice attached (3 for Marion in R/W)**

**NOTICE OF HEARING ON APPLICATION FOR FRANCHISE  
TO CONSTRUCT, MAINTAIN AND OPERATE CABLE LINES**

NOTICE IS HEREBY GIVEN that an application for franchise to construct, maintain and operate transmission and distribution lines and/or cables for the transmitting and distributing of television, FM radio, and other audio-visual electrical signals, together with poles, and other appurtenances, upon, over, along, underneath and across all county roads and rights of way, now existing or hereafter existing, within the following described sections, townships and range of King County, Washington, for a period of twenty-five years, has been filed with the Board of County Commissioners, the location and nature of the franchise being more particularly described as follows:

*Published*

*Daily Jour. of Comm.  
Aug. 4<sup>th</sup> + 5<sup>th</sup>*

*Billed direct*

Boundaries of the proposed Parkwood service area.

- North - West on N 163rd St from Interstate Highway # 5 to Ashworth Ave N.
- West - South on Ashworth Ave N from N 163rd St to N 145th St.
- South - East on N 145th St from Ashworth Ave N to Interstate Highway # 5.
- East - North on Interstate Highway # 5 from N 145th St to N 163rd St.

Boundaries of the proposed Sheridan Heights service area.

- North - East on NE 170th St from Bothell Way NE to NE 170th Pl.  
East on NE 170th Pl ( Hamlin Road ) to NE 178th St.  
East on NE 178th St to 35th Ave NE.
- West - South on 35th Ave NE from NE 178th St to NE 156th St.
- South - West on NE 156th St from 35th Ave NE to 37th Ave NE.  
North on 37th Ave NE to NE 157th St.  
East on NE 157th St to 38th Ave NE.  
North on 38th Ave NE to NE 160th St.  
East on NE 160th St to Bothell Way NE.
- East - North on Bothell Way NE from NE 160th St to NE 170th St.

Boundaries of the proposed Richmond Beach - Innis Arden service area.

North - West on the King-Pierce County Line from 15th NW to Puget Sound.

West - South on the shore of Puget Sound from the King-Pierce County Line to Beach Drive ( an extension of N 165th St. )

South - East on Beach Drive from Puget Sound to the intersection formed by an extension of 15th Ave NW and Beach Drive.  
North on the extension of 15th Ave NW to NW 167th St.  
East on NW 167th St to 10th Ave NW.  
North on 10th Ave NW to NW 175th St.

East - West on NW 175th St from 10th Ave NW to 10th Ave NW at NW 175th Pl.  
North on 10th Ave NW to NW180th St.  
East on NW 180th St to 8th Ave NW.  
North on 8th Ave NW to Richmond Beach Road.  
Northwest on Richmond Beach Road to 15th Ave NW.  
North on 15th Ave NW to the King-Pierce County Line.

Boundaries of the proposed Echo Lake service area.

North - West on N 205th St from Meridian Ave N to Ashworth Pl N.  
South on Ashworth Pl N to N 200th St.  
East on N 200th St to Aurora Ave N.

West - South on Aurora Ave N from N 200th St to N 192nd St.

South - West on N 192nd St from Aurora Ave N to Ashworth Ave N.

East - North on Ashworth Ave N from N 192nd St to N 195th St.  
East on N 195th St to Wallingford Ave N.  
North on Wallingford Ave N to N 198th St.  
East on N 198th St to Meridian Ave N.  
North on Meridian Ave N to N 205th St.

(5)

NOTICE IS FURTHER GIVEN, that the name of the applicant for said franchise is: UNITED COMMUNITY ANTENNA SYSTEM, INC.

NOTICE IS FURTHER GIVEN, that a hearing will be held upon said application by the Board of County Commissioners at its office in the King County Courthouse, Seattle, Washington, on the 6th day of September, 1966, at 9:30 A. M., at which time and place any and all persons desiring to be heard in the matter of granting said application and franchise shall be present, and the said hearing may be continued from time to time by order of the Board of County Commissioners.

IN WITNESS WHEREOF, the undersigned, the County Auditor of King County, Washington, has hereunto set his hand and seal this 25th day of July, 1966.

ROBERT A. MORRIS, County Auditor  
and Clerk of the Board of County  
Commissioners

By: Ralph R. Stender, Deputy Clerk

July 28, 1966

Daily Journal of Commerce  
83 Columbia Street  
Seattle, Washington

Gentlemen:

Attached please find a copy of the Notice of Hearing for United Community Antenna System, Inc., for a franchise to construct, maintain and operate cable lines on certain county roads and rights of way of King County, Washington, which is for publication in your paper on August 4, and 5, 1966.

Please forward the affidavits of publication to this office, however, please bill United Community Antenna System, Inc., 100 Fourth Avenue North, Seattle, Washington 98109, Attention: Jay W. Wright, President.

Also, please provide us with a copy of each paper in which this notice appears at the time it is published.

Very truly yours,

BOARD OF COUNTY COMMISSIONERS  
ROBERT A. MORRIS, Clerk of Board

By: Ralph R. Stender, Deputy

RRS:gj

Enclosure

July 28, 1966

Mr. Jay W. Wright, President  
United Community Antenna System, Inc.  
100 Fourth Avenue North  
Seattle, Washington 98109

Dear Sir:

The Board of County Commissioners in regular session on July 25, 1966 set the date of September 6, 1966 at 9:30 A. M. for hearing the application of United Community Antenna System, Inc., for a franchise to construct, maintain and operate cable lines on certain county roads and rights of way of King County, Washington.

The attached Notice of Hearing will be published in the Daily Journal of Commerce on August 4 and 5, 1966, and we have instructed them to bill United Community Antenna System, Inc., to your attention.

Very truly yours,

BOARD OF COUNTY COMMISSIONERS  
ROBERT A. MORRIS, Clerk of Board

By: Ralph R. Stender, Deputy

RRS:gj

Enclosure

11 -> 15

**UNITED COMMUNITY ANTENNA SYSTEM, INC.**

100 FOURTH AVENUE NORTH  
SEATTLE, WASHINGTON 98109  
TELEPHONE 206/MAIN 4-6000

April 13, 1966

KING COUNTY  
ENGINEER

APR 15 PM 2:38

RECEIVED

King County Commissioners  
c/o Right-of-Way Department  
400 County-City Building  
Seattle, Washington

Dear Sirs:

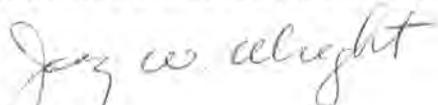
We understand that the County Commission has recently decided to require the franchising of CATV operators in King County. Accordingly, this letter constitutes the request of United Community Antenna System, Inc., a corporation owned jointly by the licensees of television stations KING-TV, KIRO-TV and KOMO-TV, for a King County franchise covering the areas  
\* detailed on the attached maps.

Construction has been in progress in the Kenilworth and Sheridan Heights area for some time and we trust that no delays will be encountered in franchising the systems in these areas.

Very truly yours,

UNITED COMMUNITY ANTENNA SYSTEM, INC.

by



Jay W. Wright  
President

JWW:gm  
\* Atts.



# KING COUNTY

STATE OF WASHINGTON

SEATTLE

11 → 15

OFFICE OF  
COUNTY ROAD ENGINEER

April 27, 1966

Mr. Jay W. Wright, President  
United Community Antenna Systems, Inc.  
100 Fourth Ave. N.  
Seattle, Washington, 98109

Dear Mr. Wright:

It has been the policy of King County for many years to require all utilities wishing to use our rights-of-way to have a franchise with King County, and also to file for a construction permit each time they start a project within the right-of-way. Anyone who constructs within the right-of-way without the permit is in violation of King County Code.

It is necessary for us to maintain this policy in order to give us a measure of control over the use of county rights-of-way by both public and private agencies.

We must, therefore, request that you stop all construction within our rights-of-way until you have a franchise, at which time we can give you the necessary permits.

Very truly yours,

WARREN C. GONNASON  
County Engineer

By CHRIS J. LOUTSIS  
Right of Way & Permits  
Supervisor

CJL/adc

cc: W.C.Gonnason  
Pac. N.W. Bell  
West Coast Tel.  
Seattle City Light  
Puget Sound P & L

OFFICE OF THE KING COUNTY ENGINEER

Date 4-15-66

PRIORITY

COUNTY ENGINEER	TRAFFIC DIVISION	
ASSISTANT COUNTY ENGINEER	FLOOD CONTROL DIVISION	
OFFICE ENGINEER	BUILDING INSPECTION DIVISION	
FIELD ENGINEER	RIGHT OF WAY DIVISION	<input checked="" type="checkbox"/>
DISTRICT ENGINEER #2	ACCOUNTING DIVISION	
DISTRICT ENGINEER #3		
SUPERINTENDENT DISTRICT #2		
SUPERINTENDENT DISTRICT #3		

ACTION REQUESTED

For your information

Investigate & prepare letter   
(For my signature \_\_\_\_\_)

This matter previously referred.

Investigate & report findings

Appropriate action

What was your action?

Above action must be taken by (date) \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Hold  
Chris 4/21/66*

WARREN C. GONNASON  
County Engineer *C*



KING COUNTY COURT HOUSE  
WARREN C. GONNASON  
COUNTY ENGINEER  
ROOM 400 • MAIN 2-5900

# King County

STATE OF WASHINGTON

## Seattle

98104

RECEIVED

JUL 22 AM 9:42

RALPH R. STENDER  
DEPUTY CLERK OF BOARD  
COUNTY COMMISSIONERS

July 20, 1966

Honorable Board of  
County Commissioners  
Seattle, Washington

Gentlemen:

Re: Franchise for Television Cable  
for United Community Antenna System, Inc.

Reference is made to attached letter of April 13, 1966, to this office requesting a franchise for the purpose of constructing, maintaining and operating transmission and distribution lines or cables for transmitting and distribution of television, FM radio and other audiovisual electric signals.

This office has checked the description and found it to be correct. We recommend a date of hearing be set.

Very truly yours,

*W. C. Gonnason*  
FOR WARREN C. GONNASON  
County Engineer

CL:mpm  
Attach:3 Maps & Description

CC; W. C. Gonnason

**KING COUNTY**  
STATE OF WASHINGTON  
SEATTLE

OFFICE OF  
COUNTY ROAD ENGINEER

July 20, 1966

Honorable Board of  
County Commissioners  
Seattle, Washington

Gentlemen:

Re: Franchise for Television Cable  
for United Community Antenna System, Inc.

Reference is made to attached letter of April 13, 1966, to this office requesting a franchise for the purpose of constructing, maintaining and operating transmission and distribution lines or cables for transmitting and distribution of television, FM radio and other audiovisual electric signals.

This office has checked the description and found it to be correct. We recommend a date of hearing be set.

Very truly yours,

WARREN C. GONNASON  
County Engineer

CL:mpm  
Attach:3 Maps & Description

CC; W. C. Gonnason

**KING COUNTY**  
STATE OF WASHINGTON  
SEATTLE

OFFICE OF  
COUNTY ROAD ENGINEER

July 20, 1966

Honorable Board of  
County Commissioners  
Seattle, Washington

Gentlemen:

Re: Franchise for Television Cable  
for United Community Antenna System, Inc.

Reference is made to attached letter of April 13, 1966, to this office requesting a franchise for the purpose of constructing, maintaining and operating transmission and distribution lines or cables for transmitting and distribution of television, FM radio and other audiovisual electric signals.

This office has checked the description and found it to be correct. We recommend a date of hearing be set.

Very truly yours,

WARREN C. GONNASON  
County Engineer

CL:mpm  
Attach: 3 Maps & Description

CC; W. C. Gonnason

Boundaries of the proposed Parkwood service area.

North - West on N 163rd St from Interstate Highway # 5 to Ashworth Ave N.

West - South on Ashworth Ave N from N 163rd St to N 145th St.

South - East on N 145th St from Ashworth Ave N to Interstate Highway # 5.

East - North on Interstate Highway # 5 from N 145th St to N 163rd St.

Boundaries of the proposed Sheridan Heights service area.

North - East on NE 170th St from Bothell Way NE to NE 170th Pl.  
East on NE 170th Pl ( Hamlin Road ) to NE 178th St.  
East on NE 178th St to 35th Ave NE.

West - South on 35th Ave NE from NE 178th St to NE 156th St.

South - West on NE 156th St from 35th Ave NE to 37th Ave NE.  
North on 37th Ave NE to NE 157th St.  
East on NE 157th St to 38th Ave NE.  
North on 38th Ave NE to NE 160th St.  
East on NE 160th St to Bothell Way NE.

East - North on Bothell Way NE from NE 160th St to NE 170th St.

Boundaries of the proposed Richmond Beach - Innis Arden service area.

North - West on the King-Pierce County Line from 15th NW to Puget Sound.

West - South on the shore of Puget Sound from the King-Pierce County Line to Beach Drive ( an extension of N 165th St. )

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East - West on NW 175th St from 10th Ave NW to 10th Ave NW at NW 175th Pl.  
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North on 8th Ave NW to Richmond Beach Road.  
Northwest on Richmond Beach Road to 15th Ave NW.  
North on 15th Ave NW to the King-Pierce County Line.

Boundaries of the proposed Echo Lake service area.

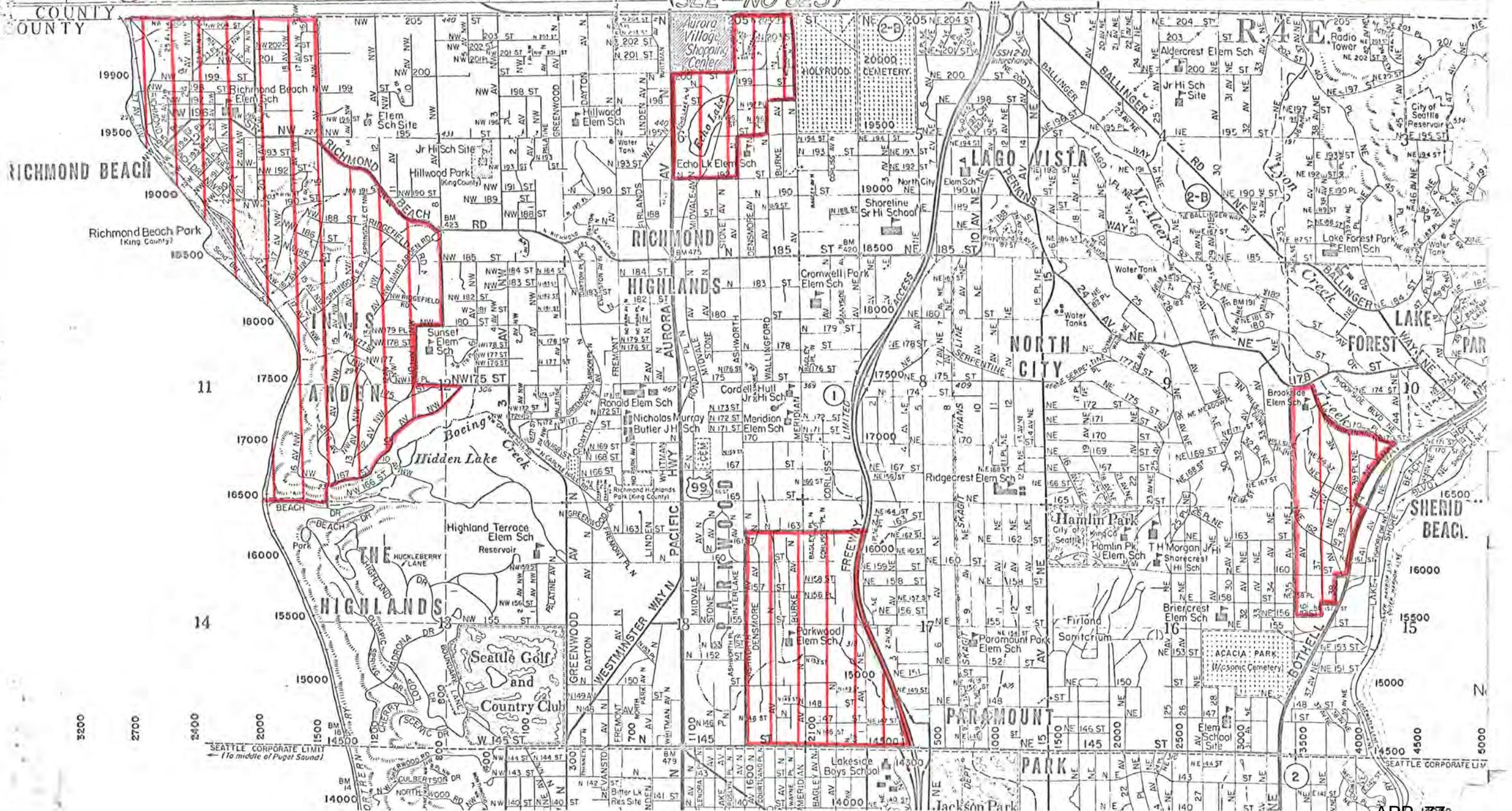
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South on Ashworth Pl N to N 200th St.  
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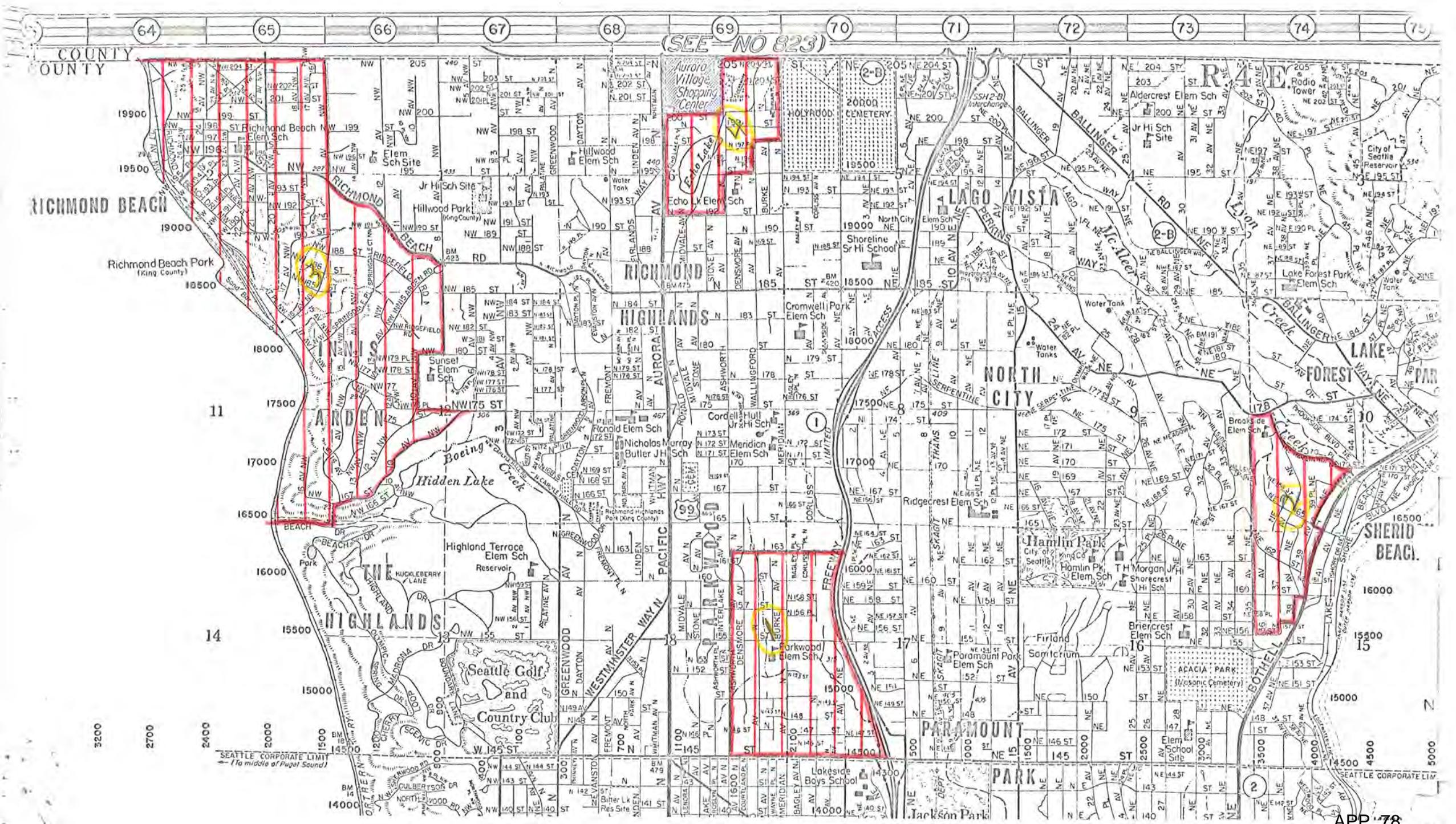
West - South on Aurora Ave N from N 200th St to N 192nd St.

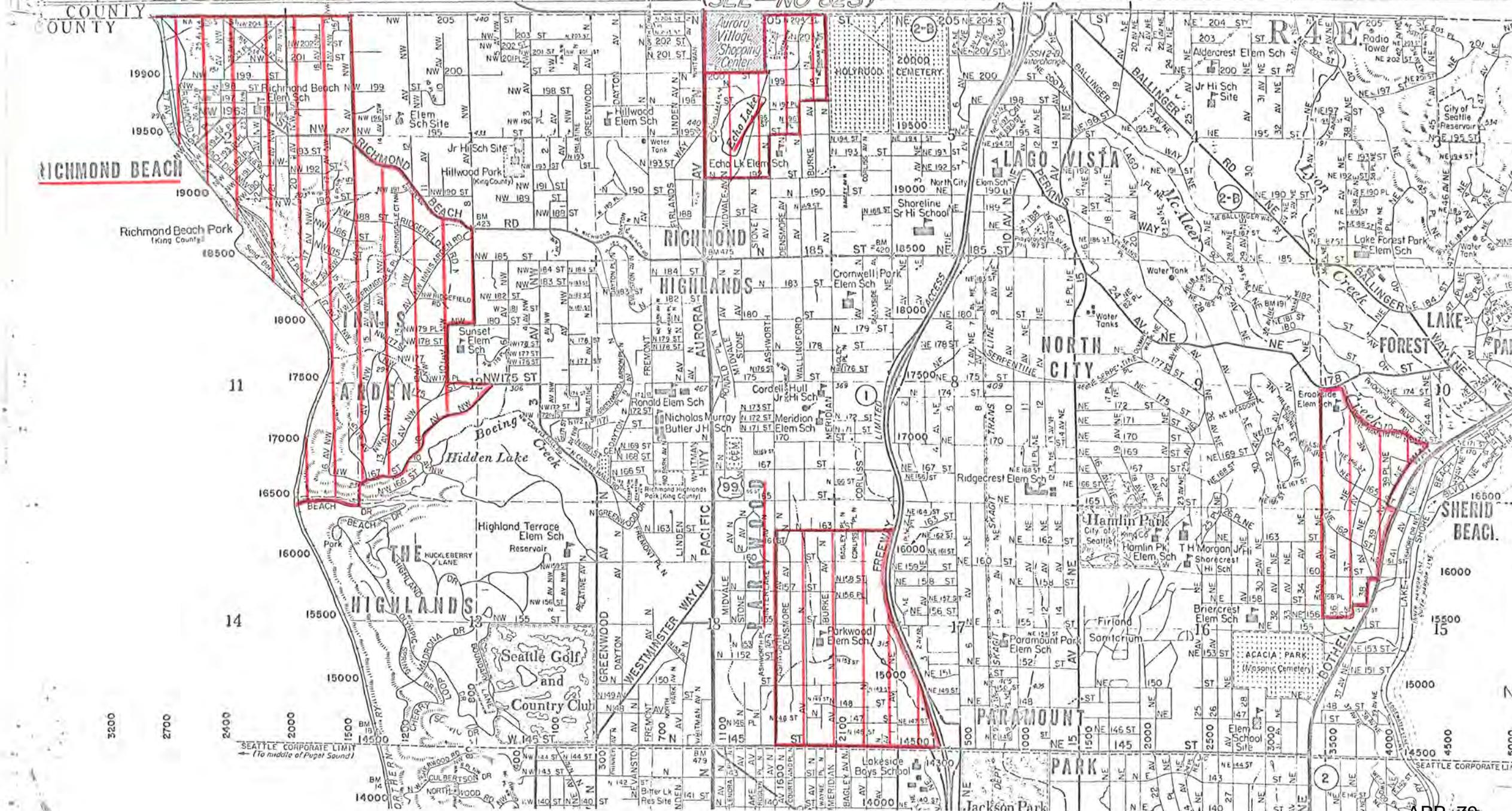
South - West on N 192nd St from Aurora Ave N to Ashworth Ave N.

East - North on Ashworth Ave N from N 192nd St to N 195th St.  
East on N 195th St to Wallingford Ave N.  
North on Wallingford Ave N to N 198th St.  
East on N 198th St to Meridian Ave N.  
North on Meridian Ave N to N 205th St.

(SEE NO 823)







Ralph,

Post 3 places in  
Courthouse before  
August 22<sup>nd</sup>



SESSION LAWS  
OF THE  
STATE OF WASHINGTON,

ENACTED BY THE  
FIRST STATE LEGISLATURE,  
SESSION OF 1889-90.

---

[COMPILED IN CHAPTERS, WITH MARGINAL NOTES AND INDEX, BY  
ALLEN WEIR, SECRETARY OF STATE.]

---

PUBLISHED BY AUTHORITY.

---

OLYMPIA, WASH.:  
O. C. WHITE, STATE PRINTER.  
1890.

## CHAPTER VII.—CITIES.

### CITIES AND TOWNS; ORGANIZATION AND GOVERNMENT OF.

AN ACT providing for the organization, classification, incorporation and government of municipal corporations, and declaring an emergency.

*Be it enacted by the Legislature of the State of Washington:*

#### ORGANIZATION OF MUNICIPAL CORPORATIONS.

##### CITY OR TOWN MAY INCORPORATE.

SECTION 1. Any portion of a county containing not less than three hundred inhabitants, and not incorporated as a municipal corporation, may become incorporated under the provisions of this act, and when so incorporated, shall have the powers conferred, or that may hereafter be conferred, by law upon municipal corporations of the class to which the same may belong: *Provided*, That nothing herein contained shall prevent the re-incorporation of towns and villages under the provisions of this act, whatever their population, heretofore incorporated or intended so to be, under the provision of the act approved February 2, 1888, entitled "An act for the incorporation of towns and villages in the Territory of Washington," and said re-incorporation shall be construed as a full acceptance of all the terms and conditions imposed by this act.

Towns and villages.

##### STEPS TO BE TAKEN.

SEC. 2. A petition shall first be presented to the board of county commissioners of such county, signed by at least sixty qualified electors of the county, residents within

Petition to county commissioners.

ment of its affairs, not especially devolved upon some officer named in this chapter; and the chief of police or any policeman, at his discretion, shall serve all notices by this chapter provided to be served in which the city is in any way interested, and the return of the officer so serving shall be evidence of the facts in such return stated, but none of such officers shall serve or execute any civil protest, except as provided in this chapter.

#### POWERS OF JUSTICES.

SEC. 102. The justices of the peace in and for the township embracing such city shall have the same powers as the same officers in any justice court of the county, and shall have and may exercise like powers and authority: *Provided, however,* That no justice of the peace in such city shall have power to conduct or try and decide any proceedings or cases of the classes mentioned in section two hundred and six of this act, but nothing in this section shall be construed to prevent any of the justices in said city from acting as police judge.

#### INTERESTED PARTY NOT DISQUALIFIED.

SEC. 103. The interest which an inhabitant of such city may have in a penalty for the breach of a by-law or ordinance of such city, shall not disqualify said inhabitant to act as judge, juror or witness in any prosecution to recover the penalty.

#### MUNICIPAL CORPORATIONS OF THE THIRD CLASS.

[A charter for cities having a population of more than fifteen hundred and not exceeding ten thousand.]

#### GENERAL POWERS.

SEC. 104. Every municipal corporation of the third class shall be entitled "The city of —— [naming it]," and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the city authorities, and may purchase, lease, receive, hold and enjoy real and personal property, and control and dispose of the same for the common benefit.

Must have a seal.

the proposed meeting. All meetings of the city council shall be held within the corporate limits of the city at such place as may be designated by ordinance, and shall be public.

#### MEETINGS.

**Quorum.** SEC. 114. At any meeting of the city council a majority of the councilmen shall constitute a quorum for the transaction of business, but a less number may adjourn from time [to time], and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The mayor shall preside at all meetings of the council, and in case of his absence the council may appoint a mayor *pro tem.*; and in case of the absence of the clerk, the mayor or mayor *pro tem.* shall appoint one of the members of the city council clerk *pro tem.*

**Pro tem. officers.**

#### RULES.

**Conduct.** SEC. 115. The city council shall judge of the qualifications of its members and of all election returns, and determine contested elections of all city officers. They may establish rules for the conduct of their proceedings, and punish any member, or other person, for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and, at the desire of any member, shall cause the ayes and noes to be taken on any question, and entered on the journal.

**Journal.**

#### LIMITATION ON PASSAGE OF ORDINANCES.

**Limit of time.** SEC. 116. No ordinance and no resolution granting any franchise for any purpose shall be passed by the city council on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting, nor without being submitted to the city attorney. No resolution or order for the payment of money shall be passed at any other time than at a regular meeting. And no such ordinance, resolution or order shall have any validity or effect unless passed by the votes of at least four city councilmen.

**At regular meeting.**

**Validity.**

## POWERS OF COUNCIL.

SEC. 117. The city council of such city shall have power —

*Ordinances.*—(1) To pass ordinances not in conflict with the constitution and laws of this state or of the United States.

*City Real Estate.*—(2) To purchase, lease or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of and convey the same for the benefit of the city: *Provided*, That they shall not have power to sell or convey any portion of any water front; but may rent such water front for a term not exceeding ten years, for the purpose of erecting bath-houses thereon; and may improve part of such water front by building inclines or wharves for the accommodation of shippers, and to charge and collect for the use of the same such amounts as will compensate the city for the expenses incurred and the repairs needed from time to time; to prevent and regulate the running at large of any or all domestic animals within the city limits or any part thereof.

Cannot sell water front.

*Water.*—(3) To contract for supplying the city with water for municipal purposes.

*Public Highways.*—(4) To establish, build and repair bridges; to establish, lay out, alter, keep open, open, improve and repair streets, sidewalks, alleys, squares and other public highways and places within the city, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, plank, pave, macadamize, gravel and curb the same, in whole or in part, and to construct gutters, culverts, sidewalks and cross-walks therein or upon any part thereof; to cause to be planted, set out and cultivated shade trees therein; and generally to manage and control all such highways and places.

*Sewers.*—(5) To establish, construct and maintain drains and sewers.

*Fire Extinguishment.*—(6) To provide fire-engines and all other necessary or proper apparatus for the prevention and extinguishment of fires.

*Poll Tax.*—(7) To impose on and collect from every male inhabitant between the ages of twenty-one and fifty years an annual street poll tax, not exceeding two dollars, and no other road poll tax shall be collected within the limits of such city: *Provided*, That any member of a volunteer fire company in such city shall be exempt from such tax.

*Dog Tax.*—(8) To impose and collect an annual license, not exceeding two dollars, on every dog owned or harbored within the limits of the city.

*Property Tax.*—(9) To levy and collect annually a property tax, which shall be apportioned as follows: For the general fund, not exceeding sixty cents on each one hundred dollars; for street fund, not exceeding thirty cents on each one hundred dollars; and for sewer fund, not exceeding ten cents on each one hundred dollars. The levy for all purposes for any one year shall not exceed one dollar on each one hundred dollars of the assessed value of all real and personal property within such city.

*Liquor Tax.*—(10) To license, for purposes of regulation and revenue, all and every kind of business, including the sale of intoxicating liquors, authorized by law, and transacted or carried on in such city, and all shows, exhibitions and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same, by suit or otherwise.

*River Improvements.*—(11) To improve the rivers and streams flowing through such city, or adjoining the same; to widen, straighten and deepen the channels thereof, and to remove obstructions therefrom; to improve the water front of the city, and to construct and maintain embankments and other works to protect such city from overflow; to prevent the pollution of streams of water, and for this purpose shall have jurisdiction over all streams within its limits and for two miles beyond in either direction.

*Municipal Buildings.*—(12) To erect and maintain buildings for municipal purposes.

*Tracks and Pipes.*—(13) To permit, under such restrictions as they may deem proper, the laying of railroad tracks, and the running of cars drawn by horses, steam or

other power thereon, and the laying of gas and water pipes in the public streets, and to construct and maintain, and to permit the construction and maintenance of, telegraph, telephone and electric light lines therein.

*Ward Division.*—(14) In its discretion, to divide the city, by ordinance, into a convenient number of wards, not exceeding six, to fix the boundaries thereof, and to change the same from time to time: *Provided*, That no change in the boundaries of any ward shall be made within sixty days next before the date of such general municipal election, nor within twenty months after the same shall have been established or altered. Whenever such city shall be so divided into wards, the city council shall designate by ordinance the number of councilmen to be elected from each ward, apportioning the same in proportion to the population of such wards; and thereafter the councilmen so designated shall be elected by the qualified electors resident in such ward, or by a general vote of the whole city, as may be designated in such ordinance. Council must apportion.

*Policemen.*—(15) To appoint and remove such policemen and other subordinate officers as they may deem proper, and to fix their duties and compensation.

*Violation of Ordinances.*—(16) To impose fines, penalties and forfeitures for any and all violations of ordinances; and for any breach or violation of any ordinance to fix the penalty by fine or imprisonment, or both, but no such fine shall exceed three hundred dollars, nor the term of such imprisonment exceed three months.

*Prison Labor.*—(17) To cause all persons imprisoned for violation of any ordinance to labor on the streets, or other public property or works within the city.

*Fire Limits.*—(18) To establish fire limits, with proper regulations.

(19) The city council may appropriate from the general fund an amount not exceeding one-fourth of one mill of the taxable property of the city for the purpose of establishing and maintaining a public library.

*Other Acts.*—(20) To make all such ordinances, by-laws, rules, regulations and resolutions not inconsistent with the constitution and laws of the State of Washington

## NUISANCES.

SEC. 141. Every act or thing done or being within the limits of such city, which is or may be declared by law or by an ordinance of such city to be a nuisance, shall and is hereby declared to be a nuisance, and shall be considered and treated as such in all actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto.

## MUNICIPAL CORPORATIONS OF THE FOURTH CLASS.

[A charter for towns having a population of not exceeding fifteen hundred.]

## GENERAL POWERS.

SEC. 142. Every municipal corporation of the fourth class shall be entitled the town of —— (naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the town authorities, and may purchase, lease, receive, hold and enjoy real and personal property, and control and dispose of the same for the common benefit.

## OFFICERS.

SEC. 143. The government of such town shall be vested in a mayor and council, to consist of five members; a clerk, who shall be *ex-officio* assessor; a treasurer; a marshal, who shall be *ex-officio* tax and license collector; a police justice, to be appointed by the council, and who may be one of the justices of the peace of the township in which said town is situated; and such subordinate officers as are hereinafter provided for.

## ELECTION AND TENURE OF OFFICE.

SEC. 144. The mayor, members of the council and the treasurer shall be elected by the qualified electors of said town at a general municipal election to be held therein on the Tuesday after the first Monday in December in each year. The treasurer shall hold office for the period of one year from and after the second Tuesday in January next succeeding the day of such election, and until his successor is elected and qualified. The mayor and mem-

hours before the time specified for the proposed meeting. All meetings of the council shall be held within the corporate limits of the town, at such place as may be designated by ordinance, and shall be public.

## MEETINGS.

SEC. 151. At any meeting of the council a majority of the councilmen shall constitute a quorum for the transac-<sup>Quorum.</sup> tion of business, but a less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The mayor shall preside at all meetings of the council, and in case of his absence the council may appoint a president *pro tem.*, and in case of the absence of the clerk, the mayor or president *pro tem.* shall appoint one of the members of the council clerk *pro tem.*

## RULES.

SEC. 152. The council shall judge of the qualifications of its members and of all election returns, and determine contested elections of all town officers. They may establish rules for the conduct of their proceedings, and punish any member or other person for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and at the desire of <sup>Journal.</sup> any member shall cause the ayes and noes to be taken on any question and entered on the journal.

## FRANCHISES AND RESOLUTIONS TO PAY MONEY.

SEC. 153. No ordinance and no resolution granting any franchise for any purpose shall be passed by the council on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting. No resolution or order for the payment of money shall be passed <sup>How passed.</sup> at any other time than at a regular meeting; and no such ordinance, resolution or order shall have any validity or effect unless passed by the votes of at least three councilmen.

## POWERS.

SEC. 154. The council of said town shall have power: *Ordinances.*—(1) To pass ordinances not in conflict

with the constitution and laws of this state or of the United States.

*Real Estate.*—(2) To purchase, lease or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of and convey the same for the benefit of the town: *Provided*, That they shall not have power to sell or convey any portion of any water front.

*Water.*—(3) To contract for supplying the town with water for municipal purposes, or to acquire, construct repair and manage pumps, aqueducts, reservoirs or other works necessary or proper for supplying water for the use of such town or its inhabitants, or for irrigating purposes therein.

*Highways.*—(4) To establish, build and repair bridges; to establish, lay out, alter, widen, extend, keep open, open, improve and repair streets, sidewalks, alleys, squares and other public highways and places within the town, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, plank, macadamize, gravel and curb the same, in whole or in part, and to construct gutters, culverts, sidewalks and crosswalks therein, or on any part thereof; to cause to be planted, set out and cultivated shade trees therein; and generally to manage and control all such highways and places.

*Sewers.*—(5) To construct, establish and maintain drains and sewers.

*Fires.*—(6) To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires.

*Poll Tax.*—(7) To impose on and collect from every male inhabitant between the ages of twenty-one and fifty years an annual street poll tax, not exceeding two dollars; and no other road poll tax shall be collected within the limits of such town.

*Dog Tax.*—(8) To impose and collect an annual license, not exceeding two dollars, on every dog owned or harbored within the limits of the town.

*Property Tax.*—(9) To levy and collect annually a

property tax. The levy for all purposes, for any one year, shall not exceed one dollar on each one hundred dollars of the assessed value of all real and personal property within such town.

*Licenses.*—(10) To license, for purposes of regulation and revenue, all and every kind of business authorized by law in such town, and all shows, exhibitions and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise.

*Water Front Improvement.*—(11) To improve the rivers and streams flowing through such town, or adjoining the same; to widen, straighten and deepen the channels thereof and remove obstructions therefrom; to prevent the pollution of streams of water running through such town, and for this purpose shall have jurisdiction for two miles in either direction; to improve the water front of the town, and to construct and maintain embankments and other works to [protect] such town from overflow.

*Public Buildings.*—(12) To erect and maintain buildings for municipal purposes.

*Tracks and Pipes.*—(13) To permit, under such restrictions as they may deem proper, the laying of railroad tracks and the running of cars drawn by horses, steam, electricity or other power thereon, and the laying of gas and water pipes in the public streets; and to construct and maintain and to permit the construction and maintenance of telegraph, telephone and electric light lines therein.

*Violation of Ordinances.*—(14) To impose fines, penalties and forfeitures for any and all violation of ordinances; and for any breach or violation of any ordinances, to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed three hundred dollars, nor the term of imprisonment exceed three months.

*Prison Labor.*—(15) To cause all persons imprisoned for violation of any ordinance to labor on the streets or other public property or works within the town.

*Other Acts.*—(16) To make all such ordinances, by-laws, rules, regulations and resolutions not inconsistent with the constitution and laws of the State of Washington as may

month, and immediately pay the same into the treasury on the order of the clerk, for the benefit of the funds to which such moneys respectively belong.

NO OFFICER TO BE INTERESTED IN ANY PUBLIC CONTRACT.

SEC. 176. No officer of such town shall be interested, directly or indirectly, in any contract with such town, or with any of the officers thereof, in their official capacity, nor in doing any work nor furnishing any supplies for the use of such town, or its officers in their official capacity; and any claim for compensation for work done or supplies or materials furnished in which any such officer is interested shall be void, and if audited and allowed shall not be paid by the treasurer. Any willful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor and punished as such. Invalld claims.

SEC. 177. There being no law in this state for the organization of, classification, incorporation and government of municipal corporations, an emergency exists; therefore, this act shall take effect and be in force from and after its approval by the governor.

Approved March 27, 1890.

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CITIES OF TWENTY THOUSAND AND UPWARD; TO PROVIDE FOR THE GOVERNMENT OF.

AN ACT to provide for the government of cities having a population of twenty thousand or more inhabitants, and declaring an emergency to exist.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. Any city now having, or which may hereafter have, a population of twenty thousand or more inhabitants, may frame a charter for its own government.

fifteen freeholders to prepare a charter for the city of ——— ; that due notice of such election was given in the manner provided by law; that on the ——— day of ———, 18—, said election was held, and the votes cast thereat were duly canvassed by the legislative authority of said city, and the following named persons were declared duly elected to prepare and propose a charter for said city, to-wit: ——— That thereafter, to-wit: On the ——— day of ———, 18—, said board of freeholders duly returned a proposed charter for the city of ———, signed by the following members thereof, to-wit: ———. That thereafter such proposed charter was duly published in two daily newspapers in said city and of general circulation therein, to-wit: For a period of ——— days, said publication in each of said papers, commencing on the ——— day of ———, 18—. That thereafter, on the ——— day of ———, 18—, at a ——— election duly called by the legislative authority of said city, the proposed charter was submitted to the qualified electors thereof, and the returns of such election were duly canvassed by the legislative authority thereof at a meeting held on the ——— day of ———, 18—, and the result of said election was found to be as follows: For said proposed charter, ——— votes; against said proposed charter, ——— votes. Majority for said proposed charter, ——— votes. Whereupon, the said charter was declared duly ratified by a majority of the qualified electors voting at said election. And I further certify that the foregoing is a full, true and complete copy of the proposed charter so voted upon and ratified as aforesaid.

In testimony whereof, I hereunto set my hand and affix the corporate seal of said city at my office this ——— day of ———, 18—.

Attest: \_\_\_\_\_,  
 \_\_\_\_\_, Mayor of the city of \_\_\_\_\_.  
 Clerk of the city of \_\_\_\_\_ [Corporate seal.]

Charter book.

Such charter shall immediately thereafter be recorded by the clerk of said city in a book to be provided and kept for that purpose and known as the charter book of the city of ———, and when so recorded shall be attested by the clerk and mayor of said city under the corporate seal thereof, and thereafter any and all amendments to said charter shall be in like manner recorded and attested, and, when so recorded and attested, all courts in this state shall take judicial notice of said charter and all amendments thereto.

General powers of city.

SEC. 5. Any such city shall have power: *First*, to provide for general and special elections for questions to be voted upon, and for the election of officers; *second*, to provide for levying and collecting taxes on real and personal property, for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation; *third*, to control the finances and property

of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require; *fourth*, to borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for any purpose, become indebted to an amount in the aggregate to exceed ten per centum of the value of the taxable property Debt limit. therein, to be ascertained by the last assessment for city purposes previous to the incurring of such indebtedness; *fifth*, to issue bonds in place of, or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same; *sixth*, to purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use; Private property for public use. *seventh*, to lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof; *eighth*, to change the grade of any street, highway or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvement upon such street, highway or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway or alley as the same existed prior to such change; Changing grades. *ninth*, to authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley or public place in such city, and to prescribe the terms Regulating railroads.

and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars and locomotives within the corporate limits of said city, and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads; *tenth*, to provide for making local improvements and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof; *eleventh*, to acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same; *twelfth*, to construct and keep in repair bridges, viaducts and tunnels, and to regulate the use thereof; *thirteenth*, to determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining, contiguous or proximate property, or others specially benefited thereby, and to provide for the manner of making and collecting assessments therefor; *fourteenth*, to provide for erecting, purchasing or otherwise acquiring water works within or without the corporate limits of said city, to supply said city and its inhabitants with water, or to authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied; *fifteenth*, to provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect or otherwise acquire and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof; *sixteenth*, to establish and regulate markets, and to provide for the weighing, measuring and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the keeping of proper legal weights and measures by all venders in such city, and to provide for the inspection thereof; *seventeenth*, to erect and establish hospitals and

Parks.

Bridges.

Water works.

Lights.

Markets.

Hospitals.

SESSION LAWS  
OF THE  
State of Washington

NINTH SESSION

1905

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Compiled by Chapters, with Marginal Notes

By SAM H. NICHOLS

Secretary of State

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PUBLISHED BY AUTHORITY

(Indexed)

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1905

per annum, payable as now provided by law. (2) Salaries of constables in cities having a population of more than thirty-five thousand (35,000) inhabitants, nine hundred and sixty dollars (\$960.00) per annum, payable as now provided by law.

*Emergency.* SEC. 4. An emergency exists and this act shall take effect immediately.

Passed the House February 28, 1905.

Passed the Senate March 8, 1905.

Approved by the Governor March 9, 1905.

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#### CHAPTER 106.

(H. Sub. B. No. 64)

#### EMPOWERING COUNTY COMMISSIONERS TO GRANT CERTAIN PUBLIC FRANCHISES ON PUBLIC ROADS.

AN ACT giving to County Commissioners the power to grant certain public utility franchises on County roads and streets outside of incorporated towns and cities, and confirming certain such grants heretofore made.

*Be it enacted by the Legislature of the State of Washington:*

*Purposes.* SECTION 1. The county commissioners of the several counties in the State of Washington are hereby authorized and empowered to grant franchises to persons or corporations to use the county roads and streets in their several counties outside of the incorporated towns and cities for the construction and maintenance of waterworks, gas pipes, telephone, telegraph and electric light lines: *Provided*, That hereafter on application being made to the board of county commissioners for any such franchise, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county and in at least one conspicuous place on the roads or streets or parts thereof for which application is made, at least fifteen (15) days before the day fixed for such hearing, and by publishing a like notice three (3) times in some daily newspaper pub-

*Application—  
hearing—  
notice.*

lished in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five (5) days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time by the order of the board. If, after such hearing, the board shall deem it to be for the public interest to grant such franchise in whole or in part, the board may make and enter the proper order granting the franchise applied for or such part thereof as the board deems to be for the public interest, and may require any such utility and its appurtenances to be placed in such location on or along the roads or streets as the board finds will cause the least interference with other uses of the roads or streets. Any person or corporation constructing or operating such utility on or along such county road or county street shall be liable to the county for all necessary expense incurred in restoring such county road or county street to a suitable condition for travel. This act shall be construed as an addition to existing laws and shall not limit powers or rights which may be exercised under existing laws: *Provided*, That no franchise shall be granted for a period of longer than fifty years: *Provided further*, No exclusive franchise or privilege shall be granted.

Order of  
board.

Liability to  
county.

Term of  
franchises.

SEC. 2. That any and all grants, rights, privileges, franchises or powers heretofore made or attempted to be made, given or granted by the board of county commissioners of any county in this State, when such board was in regular or special session, and when the action of such board is shown by its records, to any person or corporation, to erect, construct, maintain or operate an electric railway or poles, pole lines, wires or any other matter or thing for the furnishing, transmission, delivery, enjoyment or use of electric energy, electric power, electric light, and telephone connection therewith, or any other matter or thing relating to said matters and things or either of them, or to lay or maintain pipes for the distribution of water, or gas, in, upon, along, through or over public roads and highways, or any public road or highway, outside the limits of incorporated cities and towns, be and they are hereby confirmed and declared to be valid to the extent that such road or highway has been,

Prior grants  
declared  
valid.

prior to the passage of this act, actually occupied by the *bona fide* construction and operation of such utility and no farther.

Force and  
effect rights  
and powers.

SEC. 3. Said rights, powers and grants so made or attempted to be made and hereby confirmed, shall have and be of the same force and effect as if the county commissioners in any county of this State, prior to the time of giving or granting said rights, privileges and franchises, had been specifically authorized and empowered to give and grant the same.

Passed the House February 28, 1905.

Passed the Senate March 8, 1905.

Approved by the Governor March 9, 1905.

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## CHAPTER 107.

(H. B. No. 126)

### TO ESTABLISH A STATE FISH HATCHERY ON THE UPPER METHOW RIVER.

AN ACT to establish a State Fish Hatchery on the upper Methow river, or some of its tributaries, in Okanogan County, in the State of Washington.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. That the State Fish Commissioner is hereby authorized and directed to prospect the upper Methow river and its tributaries, Okanogan County, with a view of establishing and maintaining a State salmon hatchery thereon.

SEC. 2. That if after investigation the State Fish Commissioner finds the upper Methow river in Okanogan County, or any of its tributaries, a suitable stream for the location of a salmon hatchery, he is hereby authorized and directed to establish and maintain a State salmon hatchery on said upper Methow river, or its tributaries, in Okanogan County.

Passed the House February 21, 1905.

Passed the Senate March 8, 1905.

Approved by the Governor March 9, 1905.

SESSION LAWS  
OF THE  
STATE OF WASHINGTON  
TWENTY-FIFTH SESSION

Convened January 11, Adjourned March 11

1937

Compiled in Chapters  
Under the Direction of ERNEST N. HUTCHINSON, Secretary  
of State, and including An Act Passed by the People  
at the General Election, Held on November 3,  
1936, Under the Initiative Provision  
of the State Constitution.

Marginal Notes and Index

By  
G. W. HAMILTON  
Attorney General

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1937

tive and directional signs and markings as they shall deem necessary or as may be required by law. All such markings shall be in accordance with the uniform state standard of color, design, erection and location adopted and designated by the director of highways.

Franchises,  
public  
utilities.

Application.

Notice of  
hearing.

SEC. 38. The board of county commissioners of the several counties in the State of Washington is hereby authorized and empowered to grant franchises to persons or private or municipal corporations to use the right of way of county roads in their respective counties for the construction and maintenance of water works, gas pipes, telephone, telegraph and electric light lines, sewers and any other such facilities: *Provided*, That hereafter on application being made to the board of county commissioners for any such franchise, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county and in at least one conspicuous place on the county road, or portion thereof, upon which application is made, at least fifteen (15) days before the day fixed for such hearing, and by publishing a like notice two times in some daily newspaper published in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be not less than five (5) days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the county road, or parts thereof, upon which the application for franchise is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time by the order of the board of county commissioners. If, after such hearing, the board of county commissioners shall deem

it to be for the public interest to grant such franchise in whole or in part, the board of county commissioners may make and enter proper resolution granting the franchise applied for or so much thereof as it deems to be for the public interest, and may require any such utility and its appurtenances to be placed in such location on or along the county road as the board of county commissioners finds will cause the least interference with other uses of the county road. Any person or corporation constructing or operating such utility on or along such county road shall be liable to the county for all necessary expense incurred in restoring such county road to a suitable condition for travel. This act shall be construed as an addition to existing laws and shall not limit powers or rights which may be exercised under existing laws: *Provided*, That no franchise shall be granted for a period of longer than fifty years: *Provided, further*, No exclusive franchise or privilege shall be granted: *Provided, further*, That the facilities of the holder of any such franchise shall be removed at the expense of the holder thereof, to other location on such county road in the event such county road is to be constructed, altered or improved or shall become a primary state highway and such removal is reasonably necessary for the construction, alteration or improvement thereof.

Resolution granting franchise.

Liability.

Franchise shall not be exclusive nor granted for a period longer than fifty years.

Removal of facilities.

SEC. 39. The board of county commissioners of any county of this state may grant to any person, firm or corporation the right to build and maintain tram roads and railway roads upon county roads under such regulations and conditions as said board of county commissioners may prescribe: *Provided*, Such tram road or railway road shall not occupy more than eight feet of the county road upon which the same is built and shall not be built upon the roadway of such county road nor in such a way as to interfere with the public travel upon such county road.

Franchise for tram roads.

Franchises  
upon jointly  
maintained  
bridges.

SEC. 40. The board of county commissioners are hereby empowered to grant franchises upon bridges, trestles or other structures constructed and maintained by them severally or jointly with any other county or incorporated city or town of this state, or jointly with any other state or any county, city or town of any other state, in the same manner and under the same provisions as in the act provided for the granting of franchises on county roads.

Prior grants  
held valid.

SEC. 41. Any and all grants, rights, privileges, franchises or powers heretofore made or attempted to be made, given or granted by the board of county commissioners of any county of this state, when such board of county commissioners was in regular or special session, and when the action of such board of county commissioners is shown by its records, to any person, firm or corporation, to erect, construct, maintain or operate any railway or poles, pole lines, wires, or any other matter or thing for the furnishing, transmission, delivery, enjoyment or use of electric energy, electric power, electric light, and telephone connection therewith, or any other matter or thing relating to said matters and things or either of them, or to lay or maintain pipes for the distribution of water, or gas, or to or for any other such facilities in, upon, along, through or over any county roads be and they are hereby confirmed and declared to be valid to the extent that such grants, rights, privileges, or franchises specifically refer or apply to any county road or county roads, or to the extent that any such county road has been, prior to the passage of this act, actually occupied by the *bona fide* construction and operation of such utility and no farther [further], and such rights, powers and grants hereby confirmed shall have and be of the same force and effect as if the board of county commissioners in any county of this state, prior to the time of giving or granting said rights, privileges

and franchises, had been specifically authorized and empowered to give and grant the same.

SEC. 42. It shall be the duty of the board of county commissioners to cause to be recorded with the clerk of the board of county commissioners of their respective counties within thirty days after the effective date of this act a complete record of all existing franchises upon the county roads of their respective counties and to henceforth keep and maintain a currently correct record of all franchises existing or granted with information describing the holder of the franchise, the purpose thereof, the portion of county road over or along which granted, the date of granting, term for which granted and date of expiration, and any other information with reference to any special provisions of such franchises.

Record of existing franchises.

Current record.

SEC. 43. No oil or other material shall be used in the treatment of any county road or private road or driveway, of such consistency, viscosity or nature or in such quantities and in such proximity to the entrance to or intersection with any primary state highway or county road, the roadway of which is surfaced with cement concrete or asphaltic concrete, that such oil or other material is or will be tracked by vehicles thereby causing a coating or discoloration of such cement concrete or asphaltic concrete roadway. Any person violating the provisions of this section shall be guilty of a misdemeanor.

Use of oil in proximity to primary highway.

Penalty.

SEC. 44. The boards of county commissioners of the several counties are empowered to purchase and operate, out of the county road fund, rock crushing, gravel or other road building material extraction equipment, and any crushed rock, gravel or other road building material extracted and not directly used or needed by such county in the construction, alteration, repair, improvement or maintenance of its county roads may be sold at actual cost of production by said board of county commissioners to the

Commissioners may operate road building material extraction equipment.

Sale of surplus product.

West's Revised Code of Washington Annotated  
Title 36. Counties (Refs & Annos)  
Chapter 36.55. Franchises on Roads and Bridges (Refs & Annos)

West's RCWA 36.55.010

36.55.010. Pipe line and wire line franchises on county roads

[Currentness](#)

Any board of county commissioners may grant franchises to persons or private or municipal corporations to use the right-of-way of county roads in their respective counties for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities.

**Credits**

[1963 c 4 § 36.55.010. Prior: 1961 c 55 § 2; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

[Notes of Decisions \(4\)](#)

West's RCWA 36.55.010, WA ST 36.55.010

The statutes and Constitution are current with all legislation from the 2018 Regular Session of the Washington Legislature.

*For Correspondence  
on this Opinion  
see "Enquirer"  
1936.*

August 6, 1935.

Opinion No. 59

Hon. Board of County Commissioners,  
County-City Building,  
Seattle, Washington.

Gentlemen:

In re: FRANCHISE AND PERMIT FEES --  
COMMISSIONERS' AUTHORITY TO  
FIX FOR REVENUE

---

As of June 25th, you address this office as follows:

"We wrote you under date of June 12th regarding the right to barter franchise rights for telephone services to the County. Due to an error, this barter provision was inserted in the question.

"What we really desire to know is whether or not the Board can fix a pole line permit fee for such an amount that an adequate revenue can be gained by the County for the use of its right-of-ways.

"Following the policy instituted by the City of Seattle in which a useful revenue is gained for the City, we would like, if possible, to gain profitable revenue for the County for right-of-ways used.

"We would appreciate your opinion in this matter and regret the wording of the last communication."

As a practical application of authority to "Fix a pole line permit fee" for revenue purposes, you refer to a policy adopted by the City of Seattle.

Hon. Board of County Commissioners,  
August 6, 1935.

Insofar as the City of Seattle, apart from franchise consideration, collects revenue for pole line privileges in city streets, we are advised only as to the Pacific Telephone and Telegraph Company situation whereby that company, not having a franchise, is required by the city to pay revenue in the nature of rental for use and occupancy by telephone facilities of city streets and alleys. In arriving at the amount of "rental," the number of telephone poles in use was an element of consideration. We assume your inquiry has a broader application than this.

Before passing on the question of the power to "fix a pole line permit fee" it is necessary, aside from the generally expressed purpose of gaining "profitable revenue for the county," that the specific purpose to be used as a basis for the suggested fee be classified among those purposes of which the law takes cognizance.

Within the scope of this opinion the terms "permit fee" and "license fee" are synonymous. Under these terms charges are imposed by municipalities and quasi-municipalities: (1) as a tax for the purpose of regulation; (2) as a tax upon occupations or businesses; and (3) as a charge, in the nature of rental, for private use and occupancy of property dedicated and open to general public use.

A permit charge for regulation presupposes general law and local ordinances and regulations requiring regulation, supervision and/or police surveillance of the business upon which it is sought to impose a charge for regulation. Such a charge cannot be sustained unless there is an existing purpose to which, like other taxes, the charge can be lawfully applied. Pacific Telephone and Telegraph Co. v. Everett, 97 Wash. 259. Fees imposed for the purpose of regulation must be reasonably commensurate with the expense of regulation. They cannot be legally sustained for revenue purposes, although not objectionable if incidentally some revenue is obtained, Cache County v. Jensen (Utah) 61 Pac. 303.

For revenue purposes, general law not being in conflict, license fees are sometimes sustained as a tax upon occupations or businesses. Where sustainable, they must be based, either upon a graduated scale in accordance with the amount of business done, or, as a fixed charge for the privilege of doing business. Pacific Telephone

Opinion No. 59 -- 3d.

Hon. Board of County Commissioners,  
August 6, 1935.

and Telegraph Co. v. Everett, supra. If the power to impose a charge upon occupations and business is not specifically granted, it is often sustained as a legitimate exercise of police power. This state has limited the general power to tax, for revenue purposes, occupations and business through license fees.

"Here it is well to note a vital distinction, founded on sound and just principles of law, between the power to tax occupations under the form of a license which, by reason of the character of the occupation, is subject to police regulation, and the power to tax what are termed useful trades and employments, under the guise of a license. It is well settled that the license required of employments of the latter character can carry with it only such fee as is necessary to make compensation for the regulation services and cannot be perverted into a tax."

Seattle v. Dencker, 58 Wash. 501.

What is in fact a rental charge for the use and occupancy of municipal and quasi-municipal property, has been frequently confused with a privilege or license tax. The possibility of such a charge is suggested by the subject matter of this opinion referring to a pole line permit fee for the use of county rights-of-way. The City of Seattle in effect collects such a charge from the Telephone Company as heretofore pointed out. Without anticipating a conclusion as to King County's power in the premises, the Supreme Court of this state has said that cities of the first class, if an additional franchise burden is not imposed, can legally make such charge.

"A municipality can, as a condition precedent to the use of its property, exact of the user such terms and conditions as it may deem necessary to impose, whether the property the use of which is granted be held by it in its governmental or private capacity. Any

Opinion No. 59 -- 4th.

Hon. Board of County Commissioners,  
August 6, 1935.

person or corporation accepting the privileges granted must be held to have accepted them upon the conditions imposed, and if a part of these conditions be that the acceptor of the privilege pay a fixed charge per pole for all poles it may erect in the public places of the city, the charge can be lawfully collected.

"But it does not follow that the city may grant a franchise to a corporation to use its streets and other public places upon terms mutually agreed upon, and then afterwards during the life of the franchise annex additional burdens thereto without the consent of the grantee inconsistent with the rights granted."

Pacific Telephone and Telegraph Co. v.  
Everett, 97 Wash. 259.

The general nature of the present inquiry has made necessary the foregoing rather extended review of the law in order to determine a possible legal basis upon which to predicate a revenue charge such as desired.

We come now to the question of the power of King County in the premises. The constitutional provisions and statutes bearing directly or indirectly upon the question involved are:

Art. XI, Sec. 11 of the State Constitution, as to police power:

"Any county \* \* \* may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

(R.R.S. § 3982). "The several counties in this state shall have capacity as bodies corporate \* \* \* to make such contracts, and to purchase and hold such personal property, as may be necessary to its corporate or administrative powers, and to do all other necessary acts in relation to all the property of the county."

Opinion No. 59 -- 5th.

Hon. Board of County Commissioners,  
August 6, 1935.

(R.R.S. § 4056). "The several boards of county commissioners are authorized and required --

\* \* \* \* \*

"(2) To lay out, discontinue or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law \* \* \*

"(3) To license and fix the rates of ferriage; to grant grocery and other licenses authorized by law to be by them granted;

\* \* \* \* \*

"(6) To have the care of the county property \* \* \* and such other powers as are or may be conferred by law."

(R.R.S. § 11352). "Any telegraph or telephone corporation or company, or the lessees thereof, doing business in this state, shall have the right to construct and maintain all necessary lines of telegraph or telephone for public traffic along and upon any public road, street, or highway, along or across the right of way of any railroad corporation, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixture of their lines, in such manner and at such points as not to incommode the public use of the railroad or highway, or interrupt the navigation of the waters: Provided, that when the right of way of such corporation has not been acquired by or through any grant or donation from the United States, or this state, or any county, city, or town therein, then the right to construct and maintain such lines shall be secured only by the exercise of the right of eminent domain, as provided by law: Provided further, that where the right of way, as herein contemplated, is within the corporate limits of any incorporated city, the consent of the city council thereof shall be first obtained before such telegraph or telephone lines

Hon. Board of County Commissioners,  
August 6, 1935.

can be erected thereon."

(R.R.S. § 6431). "The county commissioners of the several counties in the State of Washington are hereby authorized and empowered to grant franchises to persons or corporations to use the county roads and streets in their several counties outside of the incorporated towns and cities for the construction and maintenance of waterworks, gaspipes, telephone, telegraph and electric light lines and sewers;  
\* \* \*"

Applying the foregoing to the separate phases of the question involved, there would appear to be ample authority for the imposition of a "pole line permit fee" adequate to cover all the expense, both clerical and of investigation and supervision, provided such fee is based upon pre-established regulations, the purpose of enforcing which, is the object of the fee. Should some revenue result as an incident to the main purpose for which the fee is charged, there would seem to be no legal objection. The determining factor is found in the statement from the foregoing authority to the effect that such a fee must be reasonably commensurate with the cost and character of the regulation imposed.

In view of the foregoing analysis and from the cited cases and statutes, we find no legal basis to sustain a permit fee, charged as an occupational or business tax, for revenue purposes. Although the constitutional grant of police power and legislative grant of general powers might otherwise furnish a basis for an argument as to the legality of such a charge, we nevertheless, are faced with a definite contrary holding in Seattle v. Dencker, heretofore cited. That case is definite authority to the effect that a useful trade, or business, cannot be charged with an occupation or business license tax for revenue purposes.

We come now to the question of the right to impose a franchise fee based, in effect, upon a rental charge for the use, by poles and pole lines, of county rights-of-way.

R.R.S. 6431, supra, gives the county commissioners of the several counties of Washington the authority

Hon. Board of County Commissioners,  
August 6, 1935.

and power to grant franchises for the use of county roads and streets, outside incorporated cities and towns, for the "construction and maintenance of waterworks, gas pipes, telephone, telegraph and electric light lines and sewers." This statute was passed in 1929. Previously the power to grant such a franchise did not exist. (State ex rel. Spring Water Co. v. Monroe, 40 Wash. 545, decided November, 1905.)

Standing by itself R.R.S. § 11352, supra, would seem to impose a limitation upon the county's power in the premises since it specifically required telephone and telegraph companies to secure, in cities and towns, the consent of the city council for the erection of poles and pole lines, but made no similar requirement, as to the consent of the county commissioners, in the county. It seems logical that the subsequent enactment of R.R.S. § 6431, and after the Monroe case, indicated a legislative intent to put the county on an equal basis with the cities, in the matter of granting franchises.

R.R.S. § 6431 provides the procedure by which franchises shall be granted, but is silent as to terms to be imposed.

We are satisfied that the power to grant a franchise includes the power to name terms and conditions of the grant, where the legislature has not prescribed the same.

Authority to impose conditions, --

"In the absence of limitations the authority making the grant of a franchise can prescribe such terms and conditions for its acceptance and its enjoyment as it deems best. The legislature may regulate the mode and prescribe the conditions upon which the grant of street franchise may be conferred by local authorities within the state.

"Where the conditions to be imposed are prescribed by statute the conditions of the grant must substantially comply with the terms of the statute. The person or agency to whom

Opinion No. 59 -- 8th.

Hon. Board of County Commissioners,  
August 6, 1935.

power has been delegated has no discretion to impose additional monetary conditions than those prescribed. But reasonable conditions for the benefit of the public which are not prohibited may be imposed."

26 C. J. (Franchises) 1030;  
Christian-Todd Tel. Co. v. Commonwealth,  
161 S.W. (Ky.) 543;  
Irvine Toll Bridge Co. v. Estill Co.,  
275 S.W. 636;  
Northern Kentucky Mut. Tel. Co. v.  
Bracken Co., 295 S.W. 147.

The conclusion follows that, having the power to grant a pole line franchise, and the terms and conditions thereof not being fixed by the legislature, the power, to so fix, vests in the county commissioners.

Lest there be some confusion as to the nature of a franchise charge we quote the following:

"A charge imposed in a franchise is not a tax or a license. It is not imposed under the sovereign power of taxation or police regulation. If it were, of course, it could be challenged only if arbitrary or so grossly unreasonable as to be capricious. Such charges as these have been quite generally held to be in the nature of rental for the use and occupation of the streets."

Spokane v. Spokane Gas & Fuel Co., 175  
Wash. 103.

It must be borne in mind, however, that the power to fix a franchise fee does not apply to existing franchises. A franchise is a contract and its terms or conditions cannot, without mutual consent, be altered to impose, during its lifetime, new burdens upon the grantee. (Pacific Tel. & Tel. Co. v. Everett, 97 Wash. 259, supra).

Hon. Board of County Commissioners,  
August 6, 1935.

You are, therefore, advised:

(1) That as to new franchises, the board of county commissioners, for revenue, may "fix a pole line permit fee" through a franchise charge, in the nature of rental, for the use and occupation of county rights-of-way;

(2) That as to existing franchises, a "pole line permit fee" cannot be legally charged for revenue purposes, but that an adequate fee for supervision, regulation, and necessary expense commensurate with the service rendered, may be legally charged and an incidental revenue is not necessarily legally objectionable;

(3) That a "pole line permit fee" considered as an occupation or business tax may not for revenue purposes be legally charged.

Respectfully submitted,

WARREN G. MAGNUSON,  
Prosecuting Attorney,

By PATRICK M. TAMMANY,  
Deputy.

PMT-D

RECEIVED

APR 30 1936

CHAS. J. KLAMM  
DEPUTY CLERK OF BOARD  
COUNTY COMMISSIONERS

April 29, 1936

Opinion No. 17

Hon. Board of County Commissioners  
County City Building  
Seattle, Washington

Gentlemen:

In re: **WATER DISTRICTS -- NECESSITY  
FOR FRANCHISE.**

---

Under date of March 24, 1936, you addressed  
this office as follows:

"The Board of County Commissioners  
respectfully requests an opinion as to  
whether or not it is necessary for a  
regularly established water district to  
obtain a franchise before laying water  
pipes on county roads within the water  
district."

General jurisdiction over county roads is  
vested in the Board of County Commissioners by Rev.  
Stat. §4056, reading as follows:

"The several boards of county com-  
missioners are authorized and required,--

\* \* \* \* \*

"2. To lay out, discontinue or alter  
county roads and highways within their  
respective counties, and do all other  
necessary acts relating thereto according  
to law, except within the limits of incor-  
porated cities and towns, whereby the terms  
of the acts of incorporation, jurisdiction  
over the roads in the limits of said incor-  
porations is vested in the corporate  
authorities thereof."

Hon. Board of County Commissioners - 2d  
April 29, 1936

Rem. Rev. Stat. §6430 reads, in part, as follows:

"The county commissioners of the several counties in this state may grant to persons, companies, or corporations the right to lay down, maintain and operate in, along and upon any and all of the streets, alleys, public places and public highways within their respective counties, without the limits of incorporated cities and towns, pipes and conduits for the purpose of conducting water and maintaining and operating water systems for public or private purposes, under such regulations and conditions as such county commissioners may prescribe \* \* \*." (Underscoring ours).

Rem. Rev. Stat. §6431 reads, in part, as follows:

"The county commissioners of the several counties in the State of Washington are hereby authorized and empowered to grant franchises to persons or corporations to use the county roads and streets in their several counties outside of the incorporated towns and cities for the construction and maintenance of water-works \* \* \*. If, after such hearing, the board shall deem it to be for the public interest to grant such franchise in whole or in part, the board may make and enter the proper order granting the franchise applied for or such part thereof as the board deems to be for the public interest, and may require any such utility and its appurtenances to be placed in such location on or along the roads or streets as the board finds will cause the least interference with other uses of the roads or streets. Any person or corporation constructing or operating such utility on or along such county road or county street shall be liable to the county for all necessary

Hon. Board of County Commissioners - 3d  
April 29, 1936

expense incurred in restoring such county road or county street to a suitable condition for travel. This act shall be construed as an addition to existing laws and shall not limit powers or rights which may be exercised under existing laws \* \* \* ."

Statutory authority for the establishment, construction, maintenance, and operation of water districts for public supply systems is found in Title 84, Chap. 2, Rev. Rev. Stat. §§11579 to 11604.

Insofar as these statutes confer any right upon water districts, established thereunder, to use county roads and streets the same is found in Rev. Rev. Stat. § 11586, wherein it is provided; that it shall be lawful for an organized water district to conduct, by means of aqueducts or pipeline, water throughout the water district and to construct and lay such aqueducts or pipelines along and upon public highways, roads and streets within the district.

The foregoing mentioned section, in its present form, was adopted by the legislature in its session of 1929. At the same session of the legislature there was likewise adopted, in its present amended form, Rev. Rev. Stat. §6331 referring to the granting of franchises on public roads by the boards of county commissioners for the construction and maintenance of waterways.

In view of this situation, we believe that the several statutes referring to the maintenance of pipelines by established water districts, the granting of franchises for the use of county roads for pipelines, and the general supervision granted the county commissioners over county roads and the use thereof are, insofar as the present inquiry is concerned, in pari materia and should be construed together. This logically leads to the conclusion that franchise requirements apply to regularly established water districts.

Hon. Board of County Commissioners - 4th  
April 29, 1936

Further support is given to this conclusion when it is remembered that by Sec. 11, Art. XI of the State Constitution, a broad and comprehensive police power is granted counties and under such power, in the interest of public health, safety and convenience, the right to designate what should go into a county road and where, should be left, whenever possible, to the exercise of a reasonable discretion on the part of the board of county commissioners.

You are, therefore, advised that before laying water pipes in county roads within a regularly established water district, it is legally necessary that such district obtain a franchise from your Honorable Body.

Respectfully submitted,

WARREN G. MAGNUSON  
Prosecuting Attorney

By  
PATRICK M. TAMMANY  
Deputy

PMT:Mc

Office of the  
PROSECUTING ATTORNEY  
OF KING COUNTY, WASHINGTON

*Charles O. Carroll*  
PROSECUTING ATTORNEY

★ ★ ★ KING COUNTY COURT HOUSE . . . . SEATTLE, WASHINGTON 98104 ★ ★ ★

Administrative Assistant:  
JAMES V. FINERAN

TELEPHONE 344-2550

Criminal Deputies:  
WILLIAM L. KINZEL, Chief

February 11, 1970

Assistant Chiefs:  
NEAL J. SHULMAN  
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C. N. Marshall  
David W. Hotchkis  
Patricia G. Harber  
Steve Paul Moen  
Michael DiJulio  
Robert S. Bryan  
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Barbara M. Durham  
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John R. Cunningham  
Albert A. Rinaldi, Jr.  
Phillip Y. Killien  
Gerald M. Lorentson  
Darrell E. Lee  
James E. Anderson  
James R. Miller  
Stewart P. Riley  
James E. Wernie  
Ronald B. Kurilo  
Douglas S. Dunham  
Roy N. Howson  
Christopher J. Bell  
James J. Lamont  
Stuart A. Cohen  
Michael P. Ruark  
Byron H. Ward

Mr. Chris J. Loutsis  
Assistant Acting Manager  
Property Management Division  
Office of Property and Purchasing  
King County Court House  
Seattle, Washington 98104

Re: CATV Franchise Rental Charge

Dear Mr. Loutsis:

You have requested the opinion of this office on the following question as paraphrased by us.

May King County charge a rental rate of 6% of gross receipts on existing CATV franchises plus a fee for processing franchise applications?

You have further requested us to review the present form for CATV franchises which you note is the form approved by the County Commissioners on July 5, 1966.

We reply that King County may charge a fee for CATV franchises subject to the conditions and limitations contained in our analysis:

ANALYSIS

We note preliminarily, that your present CATV franchise form was first reviewed by this office in November, 1965 and was conditionally approved subject to suggested revisions and additions. We enclose a copy of our letter to Commissioner Scott Wallace dated November 23, 1965, to this effect. As the letter indicates, our office was of the opinion that the King County had the authority to charge for CATV franchises. The form approved by the Commissioner on July 5, 1966 (Vol. 12, Frame 902) was approved based on the report of this office, indicating that the suggested changes referred

Mr. Chris J. Loutsis  
February 11, 1970 - 2

to above had been incorporated. We further note that there are no county resolutions or ordinances relating to this subject.

The state legislature in Chapter 187, Laws of 1937 (now codified as RCW 36.55) delegated the franchise authority to counties on county roads within their respective counties. This power to grant franchises has been characterized by our Supreme Court as an extension of state power and as such the county acts as an administrative agency of state government. State ex vel. York v. County Commissioners, 28 Wn.2d 891 (1947). Thus under King County's charter form of government this authority would appropriately lie with the county administrative officer. It would be proper to revise your franchise form to reflect this change in government.

The delegated authority as set forth in RCW 36.55.010 granted to the county discretionary franchise power by use of the words "may grant franchises," and the only limitations in this power are set forth in RCW 36.55.060. There is no express or implied prohibition which would limit the power of the county to charge reasonable rates for franchises. The general rule regarding franchises and compensation therefor is found in 12 McQuillen, Municipal Corporations, §34.37 (3rd Ed.) as follows:

A municipal corporation having entire control of its streets and power to impose conditions or granting a franchise to use the streets, may require compensation for their use by public service companies as a condition of the granting of the right to use them, unless forbidden by statute or contrary to public policy, as by requiring the company to pay a certain portion of its receipts as compensation for the use of the streets, or a certain percent of dividends declared, or exacting a license fee of a certain sum for each car to be paid annually to the city, or an annual tax on each mile of its tracks.

It would thus appear that King County had the authority to charge for CATV franchises prior to the advent of the Charter. Any question as to King County's authority in this regard can be resolved in favor of the authority by virtue of King County Charter Section 110. Amendment 21 of Art. XI, §4, of the State Constitution grants to "home rule" counties the power to enact laws not inconsistent with state statutory and constitutional law. We

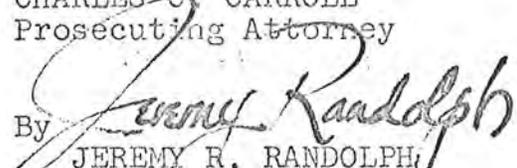
Mr. Chris J. Loutsis  
February 11, 1970  
-3-

are therefore of the opinion that King County has the authority to charge reasonable rates for CATV franchises. The amount of the rate charged is a policy question to be determined by the County Council and is subject to the limitation that the rate must be reasonable under the circumstances. See Spokane v. Spokane Gas and Fuel Co., 175 Wash. 103, 107 (1933).

If we may be of any further assistance do not hesitate to contact the undersigned.

Very truly yours,

CHARLES O. CARROLL  
Prosecuting Attorney

By   
JEREMY R. RANDOLPH  
Deputy Prosecuting Attorney

JRR:hb

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Office of the  
PROSECUTING ATTORNEY  
OF KING COUNTY, WASHINGTON

*Charles O. Carroll*

PROSECUTING ATTORNEY

\* \* \* KING COUNTY COURT HOUSE . . . SEATTLE, WASHINGTON 98104 \* \* \*

Administrative Assistant:  
VICTOR L. KRAMER

TELEPHONE MAIN 2-5900

November 23, 1965

Criminal Deputies:  
WILLIAM L. KINZEL, Chief  
Assistant Chiefs:  
JACK A. RICHEY  
THOMAS A. STANG  
KENNETH O. EIKENBERRY  
Richard J. Cloin  
David W. Soukup  
Ned Olwell  
Edwin S. Stone  
Robert E. Dixon  
Arthur D. Swanson  
Timothy H. Hill  
Larry L. Barokas  
Noel J. Shulman  
David H. Balle  
David A. Berner  
John S. Ludvigson  
Stephen R. Schaefer  
Neil C. Buren  
Walter T. Greenaway  
Herbert L. Onstad  
David L. Scott  
Donald E. Mirk  
Gary A. Cunningham  
Donald D. Skinner  
Frederick E. Meyers  
Edmund P. Allan

Honorable Scott Wallace  
King County Commissioner  
King County Courthouse  
Seattle, Washington 98104

Re: CATV Franchise

Dear Sir:

You have asked our opinion in regard to the enclosed draft form of TV-FM radio franchise. This matter has been reviewed by the Civil Department of this office. We concur with the opinion of Keith D. McGoffin that the County may charge for said franchises.

The draft form of the proposed franchise appears generally to be within the legal powers of the County Commissioners. We do believe, however, that certain additions and revisions are necessary and desirable to adequately protect the County. Some of these revisions and additions are suggested by a form of electric franchise grant used by this office, a copy of which is also enclosed. This document is referred to in our comments below, which are listed by the page number in the draft TV-FM radio franchise.

Civil Deputies:  
JAMES E. KENNEDY, Chief  
WILLIAM L. PAUL, JR.  
Asst. Chief  
Russell R. Pearson  
Richard M. Ishikawa  
J. Hartley Newcum  
John M. Wetson

Domestic Relations Deputies:  
EUGENE F. HOOPER, Chief  
Lynwood Fix  
Phillip Short  
David W. Hotchkin  
Bruce D. Brunton  
Florence D. Pence, Interviewer

Investigators:  
William A. Forant  
Ed Purcell

- pp. 1-2 There is no mention of the grantee's right to put lines underground. Cf. p. 2 of electric franchise.
- p. 2 Short paragraph introducing terms and conditions appears in two places, here and at top of p. 4, where it seems to belong. Suggest its deletion from p. 2.
- p. 2 "Existing pole" paragraph (I-A) seems out of order. Isn't it supposed to go in after condition I on p. 4? Also: Wherever it goes, it is not nearly as exhaustive as the "Common-user-rights" clause on pp. 8-10 of the electric franchise, which has

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COUNTY COMMISSIONERS

sub-clauses for division of cost and ownership, reciprocity of common rights, and withdrawal from common user.

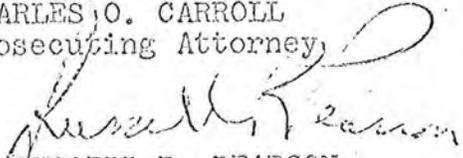
- pp. 2-3 Words "SEE EXHIBIT A", the following "NOTE" and Exhibit "A" itself listing roads where franchise is granted all seem out of place following the "existing pole" paragraph (I-A). Logically, they would seem to belong immediately after the first full paragraph of the grant proper, viz., following the words "and other appurtenances constituting the same" at the end of the first paragraph on p. 2.
- p. 4 No list of definitions is supplied. Cf. p. 3 of electric franchise.
- p. 4 Under II: It is not stated whether "five feet from edge" means inside or outside the right-of-way, nor whether the Engineer can override this provision. Suggest wording it "five feet inside [or outside] right-of-way unless Engineer designates otherwise . . ." Also, there is no provision for positioning poles in alleyways as distinguished from main thoroughfares; cf. p. 4 (top) of electric franchise.
- p. 5 Under V: Nothing said as to what happens if change of grade or alignment brings roadway too close to overhanging wires, although it does say poles have to be moved if they interfere. Also, nothing said as to raising wires to accommodate road equipment, nor as to County's right to blast or do other work contiguous to installations on proper notice. Cf. p. 4 of electric franchise.
- p. 5 Nothing said about interference with approach lanes of aircraft. Cf. p. 5 of electric franchise.
- p. 5 Nothing said as to grantee's duty to put up safety lights and warning devices if hazard of travel is increased. Cf. p. 6 of electric franchise.
- p. 6 "Safe workmanship" paragraph (VIII) is not quite as explicit as on p. 6 of electric franchise.
- p. 6 Under IX: Unused poles must come out when Commissioners say so, but there is no requirement that the Commissioners be notified when the poles are in fact unused.

p. 8 Under XIII (second line from top): Suggest changing "hereinafter described" to "above-described" in view of the fact that list of roads is referred to (and, hopefully, inserted) at an earlier point in the franchise document.

It is hoped that the foregoing comments will be of use to the persons drafting the TV-FM radio franchise grant in final form.

Very truly yours,

CHARLES O. CARROLL  
Prosecuting Attorney

By   
RUSSELL R. PEARSON  
Deputy Prosecuting Attorney

RRP:bmc

Enclosures:

1. Draft TV-FM radio franchise.
2. Form electric franchise.

Wash. AGO 1977 NO. 19 (Wash.A.G.), 1977 WL 25965

\*1 Office of the Attorney General

State of Washington  
AGO 1977 No. 19  
September 27, 1977

**COUNTIES—FEES—FRANCHISES—IMPOSITION OF COMPENSATORY FRANCHISE FEE BY COUNTY**

A county granting a franchise pursuant to [RCW 36.55.010](#) may impose a reasonable franchise fee in return for the granting of a franchise to a cable television company, and likewise, may also impose similarly reasonable fees for the various other kinds of franchises which are authorized to be granted by [RCW 36.55.010](#).

Honorable Michael R. Tabler  
Prosecuting Attorney  
Douglas County  
P.O. Box 338  
Waterville, Washington 98858

Dear Sir:

This is written in response to your recent letter in which you have requested our opinion on the following two questions:  
“1. Is a county entitled to a franchise fee for franchises which are granted to a cable television company pursuant to [RCW 36.55.010](#)?

“2. If the franchise fee contemplated in the above question is properly chargeable by a county as against a cable television company, may a county impose similar fees for the various other franchises which are granted as per [RCW 36.55.010](#)?”

We answer your questions in the manner set forth in our analysis.

ANALYSIS

[RCW 36.55.010](#) provides that:

“Any board of county commissioners may grant franchises to persons or private or municipal corporations to use the right of way of county roads in their respective counties for the construction and maintenance of waterworks, gas pipes, telephone, telegraph and electric light lines, sewers and any other such facilities.”

We would agree with you that this statute is broad enough to encompass a cable television franchise. It is further true, as you have pointed out, that nothing contained therein, nor in any other section of Chapter 36.55 RCW, expressly authorizes the imposition of a franchise fee. Nevertheless, it appears to be a generally recognized principle of law that: “A municipal corporation, having entire control of its streets and the power to impose conditions on granting a franchise to use the streets, may require compensation for their use by public service companies, as a condition of the grant of the right to use them,<sup>1</sup> unless forbidden by statute,<sup>2</sup> or contrary to public policy.<sup>3</sup> The grantee may be required to pay a certain portion of its receipts as compensation for the use of streets,<sup>4</sup> or a certain percentage of its net earnings,<sup>5</sup> or a certain percent of the dividends declared,<sup>6</sup> or a license fee of a certain sum for each car to be paid annually to the city,<sup>7</sup>

or an annual tax on each mile of its tracks.<sup>8</sup> Sometimes the payment of a percentage of gross receipts is in lieu of licenses and license taxes, as well as in lieu of property taxes.”

See, 12 McQuillin, Municipal Corporations, § 34.37, and cases cited therein. Included among those cases, notably, are the following two Washington supreme court decisions: [Seattle Gas Co. v. City of Seattle](#), 192 Wash. 456, 73 P. 2d 1312 (1937), and [Spokane v. Spokane Gas & Fuel Co.](#), 182 Wash. 475, 47 P. 2d 671 (1935).

\*2 Also of interest is the matter of general practice. Although none of the various statutes authorizing cities, towns or counties to grant franchises (such as [RCW 36.55.010](#), *supra*), appear to contain express authority to impose compensatory fees, it is our understanding that the practice of doing so is quite common. See, for example, Ordinance No. A-2682 of the City of Walla Walla, copy enclosed, which has been in effect now for nearly thirty years and specifically provides, in § 9, for a franchise fee equivalent to 3% of a grantee's gross operating revenue.

Further evidencing this same general acceptance of the validity of reasonable franchise fees are two publications by the Bureau of Governmental Research and Services of the University of Washington. First, in Report No. 131, “Franchises in the State of Washington” (1956), the following discussion appears at page 29:

“XIX. CONSIDERATION FOR FRANCHISE AND TAXES. A franchise may provide that the consideration for granting a franchise may be (1) the payment of a certain flat sum of money, (2) an amount equal to a fixed percentage of the grantee's gross operating revenue within the city, or (3) certain free services (e.g. a certain number of free telephones, a certain amount of free water, or one or more of the foregoing items). Sometimes cities have been able to negotiate a franchise in which the city reserves the right to modify the amount of above items from time to time during the life of the franchise and to alter them as financial needs may require. However, unless a ceiling is fixed on the amount of such modification or increase, they may be difficult to negotiate because of the unknown financial commitment involved. In addition, where the franchise fee is small, cities require the grantee to pay a business and occupation tax to the city; this, in turn, may be on a flat fee or gross revenue basis. Payments based upon a certain per cent of the gross revenue of a telephone company made to a city under a telephone franchise are considered as 'general operating expense' and may not be passed on to the telephone ratepayers within the respective cities within which the telephone company is operating pursuant to franchises as a separate item on the telephone bill of the ratepayers, but becomes an obligation of the entire system of the company within the state, whereas payments made for municipal business and occupation taxes pursuant to municipal taxing ordinances may be passed on entirely to the telephone ratepayers within the city imposing such a tax and included as separate items on their telephone bills. In other words, in each city that imposes such taxes, the tax of that particular city will be reflected in the telephone bills within that city only.”

Secondly, in the bureau's Information Bulletin No, 181, “Natural Gas—Regulation by Washington Cities” (1956), a similar indication of existing practice will be found at page 9, as follows:

“In consideration for the valuable rights and privileges granted to private utilities in franchises to use streets, alleys, and other public properties, a number of cities and towns, by negotiation, have required the franchise holder to pay a fixed sum of money <sup>and</sup>/<sub>or</sub> a certain percentage of its gross revenue. . . .”

\*3 It would seem to us that the foregoing principles are equally applicable to a franchise granted by a county under [RCW 36.55.010](#), *supra*. Accordingly, we would conclude that a county may impose a reasonable franchise fee in return for the granting of a franchise to a cable television company pursuant to the provisions of that statute. And, likewise, a county may similarly impose reasonable fees for the various other kinds of franchises which are authorized to be granted by [RCW 36.55.010](#).

We trust that the foregoing will be of some assistance to you.

Very truly yours,

Slade Gorton  
Attorney General  
Philip H. Austin  
Deputy Attorney General

Wash. AGO 1977 NO. 19 (Wash.A.G.), 1977 WL 25965

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A TREATISE  
ON THE LAW OF  
MUNICIPAL CORPORATIONS

By EUGENE McQUILLIN  
AUTHOR OF MUNICIPAL ORDINANCES, AND  
JUDGE OF THE EIGHTH JUDICIAL  
CIRCUIT, MISSOURI

*IN SIX VOLUMES*

VOL. IV

CHICAGO:  
CALLAGHAN & COMPANY  
1912

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EUGENE McQUILLIN

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## CHAPTER 34.

### FRANCHISES; AND HEREIN PUBLIC SERVICE COMPANIES AND PUBLIC UTILITIES—WATER, LIGHT AND TRANSPORTATION.

1. DEFINITION, NATURE AND GENERAL RULES.
2. NECESSITY FOR.
3. POWER TO GRANT OR REFUSE.
4. EXCLUSIVE RIGHTS.
5. PROCEDURE TO OBTAIN.
6. CONTENTS, CONDITIONS, ACCEPTANCE, CONSTRUCTION AND ASSIGNMENT.
7. DURATION, TERMINATION, REVOCATION AND FORFEITURE.
8. EFFECT OF GRANT, AND RIGHTS AND DUTIES OF GRANTEE.
  - a. *In general.*
  - b. *Police power.*
  - c. *Right to attack franchise.*
  - d. *Duties and liabilities of grantee of franchise.*
9. COMPENSATION TO ABUTTING OWNERS.
10. RULES OF COMPANY.
11. CONTRACTS BETWEEN GRANTEE AND MUNICIPALITY.
12. RATES.
  - a. *General considerations.*
  - b. *Power to fix rates.*
  - c. *Mode of fixing rates.*
  - d. *Reasonableness of rates.*
13. REMEDIES.

#### 1. DEFINITION, NATURE AND GENERAL RULES.

Sec.

1613. Introductory.

1614. Definition and nature.

Sec.

1615. Same—corporate franchise distinguished from grant to use streets.

(3349)

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| <p>Sec.<br/>1616. Same—grant as a license rather than a franchise.<br/>1617. Same—grant to use streets usually held to be a franchise.</p> | <p>Sec.<br/>1618. What are "Public Utilities."<br/>1619. Control over by state commissions.</p> |
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## 2. NECESSITY FOR.

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| <p>Sec.<br/>1620. Necessity for obtaining consent of municipality to use of streets.</p> | <p>Sec.<br/>1621. Same—telegraph and telephone companies.<br/>1622. Same—express grant not necessary.</p> |
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## 3. POWER TO GRANT OR REFUSE.

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| <p>Sec.<br/>1623. Power of legislature.<br/>1624. Power of municipality.<br/>1625. Same—power of municipality to grant rights in streets as conferred by implication.<br/>1626. Same—curative legislation.<br/>1627. Same—power to grant for private purposes.<br/>1628. Delegation by municipality of power.</p> | <p>Sec.<br/>1629. Power of municipality to refuse to allow use of streets.<br/>1630. To whom franchise may be granted.<br/>1631. Same—grant before organization of corporation.<br/>1632. Propriety of grant of franchise not subject to review.</p> |
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## 4. EXCLUSIVE RIGHTS.

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|---|--|
| <p>Sec.<br/>1633. Power to grant exclusive franchises.<br/>1634. Exclusive use of street as distinguished from exclusive franchise.</p> | <p>Sec.<br/>1635. Construction of franchise as to exclusiveness.<br/>1636. Effect of exclusive grant where authorized.<br/>1637. Effect of exclusive grant where unauthorized.</p> |
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## 5. PROCEDURE TO OBTAIN.

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| <p>Sec.<br/>1638. Application for franchise and action thereon.<br/>1639. Submitting franchise to vote of people.<br/>1640. Consent of abutters.</p> | <p>Sec.<br/>1641. Sale of franchises to highest bidder.<br/>1642. Particular body or officer who may grant franchise.</p> |
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## 6. CONTENTS, CONDITIONS, ACCEPTANCE, CONSTRUCTION AND ASSIGNMENT.

Sec.	Sec.
1643. Contents of franchises.	1648. Same—duty to include conditions.
1644. Imposing conditions on granting franchise.	1649. Same—construction and effect of conditions.
1645. Same—requiring compensation for use of streets.	1650. Acceptance of franchises.
1646. Same—requiring plant or road to be completed within fixed time.	1651. Amendment or modification of franchise.
1647. Same—requiring railway company to pave.	1652. Construction of franchises.
	1653. Assignment of franchises.

## 7. DURATION, TERMINATION, REVOCATION AND FORFEITURE.

Sec.	Sec.
1654. Power of municipality as to fixing duration of franchise.	1662. Same—recovery of damages where municipality wrongfully revokes franchise.
1655. Duration as limited by statute or charter.	1663. Forfeiture of franchises.
1656. Construction of grant as to duration.	1664. Same—grounds for forfeiture.
1657. Termination of franchise.	1665. Same—necessity for declaration of forfeiture or resort to courts.
1658. Rights on termination of franchise.	1666. Same—who may assert forfeiture.
1659. Extension of franchise.	1667. Same—waiver of forfeiture and estoppel to assert.
1660. Surrender of franchise and withdrawal from public employment.	1668. Same—procedure to forfeit franchise.
1661. Revocation of franchise.	1669. Same—extent and effect of forfeiture.

## 8. EFFECT OF GRANT, AND RIGHTS AND DUTIES OF GRANTEE.

a. *In general.*

Sec.	Sec.
1670. Effect of grant of franchise in general.	1674. Territorial limits of franchise.
1671. Effect of grant where unnecessary or invalid.	1675. Public improvements interfering with grantee of franchise.
1672. Grant as a contract and impairment thereof.	1676. Liability of municipality for acts of public service company.
1673. Rights as between grantees of franchises.	

*b. Police power.*

Sec.	Sec.
1677. Effect of grant on subsequent exercise of police power.	1681. Same—requiring wires to be put underground.
1678. Same—police regulations must be reasonable.	1682. Same—rules as applied to railways.
1679. Same—permit to excavate in streets.	1683. License fees.
1680. Same—rules as applied to poles and wires.	1684. Same—application of rules.
	1685. Same—reasonableness of amount of license.

*c. Right to attack franchise.*

Sec.	Sec.
1686. Who may attack validity of franchises and how.	1688. Estoppel of grantee of franchise to attack it.
1687. Estoppel of municipality to object to use of streets.	

*d. Duties and liabilities of grantee of franchise.*

Sec.	Sec.
1689. Duty to furnish supply or service.	1694. Duty of water company to furnish pure water.
1690. Same—grounds for refusing supply or service.	1695. Fee for turning on supply after shutting it off.
1691. Same—compelling payment of amount due at other premises or of independent claims.	1696. Consumer as liable for connections with street mains.
1692. Same—payment of debt of another.	1697. Discrimination.
1693. Same—refusal to pay disputed bill.	1698. Liability of public service company to abutters.
	1699. Liability for loss by fire where supply of water insufficient.

## 9. COMPENSATION TO ABUTTING OWNERS.

Sec.	Sec.
1700. General considerations.	1707. Telegraph or telephone poles and wires.
1701. Commercial railroads.	1708. Electric light poles and wires.
1702. Street railroads.	1709. Subsurface use of streets.
1703. Same—elevated railroads.	1710. Additional track or other enlargement of use.
1704. Same—interurban railroads.	
1705. Same—street railroads carrying freight.	
1706. Same—subways for rapid transit.	

## 10. RULES OF COMPANY.

Sec.	Sec.
1711. Power to make.	1715. Same—meters and meter rates.
1712. Reasonableness of rules.	1716. Effect of violations of rules; waiver.
1713. Same—payment in advance.	
1714. Same—shutting off supply.	

## 11. CONTRACTS BETWEEN GRANTEE AND MUNICIPALITY.

Sec.	Sec.
1717. In general.	1722. Same—liability of municipality for supply or services furnished to it.
1718. Same—power to make contracts.	1723. Same—rescission or modification of contract.
1719. Same—validity of contracts.	1724. Same—review by courts.
1720. Same—duration of contract.	
1721. Same—construction and operation of contracts for supply or service.	

## 12. RATES.

a. *General considerations.*

Sec.	Sec.
1725. Limitations on amount.	1730. Payment of cost of meter.
1726. Rates as fixed by contract.	1731. Rates must be definite and certain.
1727. Power to charge meter rates.	1732. Construction of rates in general.
1728. Minimum charges.	
1729. Incidental charges, including rent for meters.	

b. *Power to fix rates.*

Sec.	Sec.
1733. Power to contract as to rates as distinguished from power to regulate rates.	1738. Same—power of municipality to make contract as to rates.
1734. Power of state to regulate rates.	1739. Same—whether provision in contract actually fixes rates.
1735. Same—delegation to a commission.	1740. Regulating rates outside municipality.
1736. Power of municipality to regulate rates.	1741. Company as precluded from denying power of municipality to contract as to rates or attacking reasonableness of rates.
1737. Regulation of rates must not impair obligation of contract.	

*c. Mode of fixing rates.*

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| Sec.<br>1742. Manner of fixing rates by municipality. | Sec.<br>1743. City officers as impartial tribunal to fix rates. |
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*d. Reasonableness of rates.*

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| Sec.<br>1744. Rates must be reasonable.  | Sec.<br>1752. Cost of construction and betterments as fixing value.         |
| 1745. Rates fixed by municipality presumed to be reasonable.                               | 1753. Cost of reproduction as test.   |
| 1746. How far rates subject to review by courts.   | 1754. Cost of next available substitutional system.                         |
| 1747. Court cannot itself fix rates.   | 1755. Franchise as item of value.   |
| 1748. Matters to be considered in determining reasonableness of rates.                     | 1756. Value as "Going Concern."   |
| 1749. Same — reasonableness as looked at from different standpoints of patron and company. | 1757. Good will as item of value.   |
| 1750. Same—present value of property as test.  | 1758. Deducting for depreciation.   |
| 1751. Same—rates too low as to certain items or patrons.                                   | 1759. Value of property not used.   |
|  | 1760. Effect of reduction of rates on amount of future business as element. |
|  | 1761. Capitalization and bonded indebtedness.                               |
|  | 1762. What profit deemed reasonable.  |

## 13. REMEDIES.

- |  |   |
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| Sec.<br>1763. General rules.   | Sec.<br>1770. Remedies of public service company.                 |
| 1764. Same—quo warranto.   | 1771. Same—suits against competitors, attacking their franchises. |
| 1765. Remedies of municipality.  | 1772. Remedies of patrons.  |
| 1766. Same—mandamus in behalf of municipality.   | 1773. Same—mandamus.  |
| 1767. Same—injunction in suit by municipality.   | 1774. Same—injunction.  |
| 1768. Same—resisting use of streets by force.  | 1775. Same—actions for damages.                                   |
| 1769. Same—right of city to restrain public service company from discontinuing the business. | 1776. Same—action to recover penalties.                           |
|  | 1777. Remedies of abutters.                                       |

“Municipal franchises are the concrete, definite points of contract between large public and large private interests. \* \* \* Franchises have been regarded as special privileges granted by the government to particular individuals or companies to be exploited for private profits. They are coming to be regarded, however, not so much as privileges, but rather as functions delegated to private individuals to be performed for the furtherance of the public welfare and subject to public control.”<sup>3</sup>

The idea in early days that franchises were of little value has changed, largely because of the phenomenal growth of American cities, so that now, instead of giving away franchises without consideration, the tendency is to protect fully the interests of the municipality, both for the present and the future, and to preserve the right to regulate the operations of the grantee of the franchise, for the protection of the municipality and its inhabitants against the possible greed of the grantee, arising from its having a monopoly.<sup>4</sup>

of coal and water gas in 1907 was about 150 billion cubic feet. Electric light and power companies in 1907 had a total income of more than \$175,000,000. Telephone companies, forming one of the most recent classes of important public service corporations, were capitalized in 1907 at \$815,000,000; and the various telephone systems in the United States furnished facilities for more than eleven billion conversations during that year. Street railways, telephones, telegraphs, gas and electric light and power works, central heating plants, and privately owned water supply systems, involving stupendous investments and rendering necessary and almost limitless service

to the people living in cities, and even in many cases to the inhabitants of the rural districts—all these undertakings are enabled to operate only by virtue of special franchises, granted by governmental authority for the use of the public streets.” Wilcox, *Municipal Franchises*, vol. 1, § 1.

3. Wilcox, *Municipal Franchises*, preface.

4. “During the preceding generation, franchises in the streets of our cities were considered of but little or no value and were readily given away to those promising public service benefits. Now they have become of immense value, and the public have become deeply interested in

business, the judicial decisions present few rules of law directly relating to heating franchises.<sup>10</sup>

§ 1614. Definition and nature.

Under the early English law Blackstone defines a franchise as "a royal privilege, or branch of the king's prerogative, subsisting in the hands of a subject."<sup>11</sup> Speaking for the Supreme Court of the United States, after quoting this definition, Mr. Justice Bradley observed: "Generalized, and divested of the special form which it assumes under a monarchical government based on feudal traditions, a franchise is a right, privilege or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest, and for the public security. Such rights and powers must exist under every form of society. They are always educed by the laws and customs of the community. Under our system their existence and disposal are under the control of the legislative department of the government, and they cannot be assumed or exercised without

10. Company organized to supply electric lights, steam and heat, where given a franchise to use the streets for its pipes, cannot impose a condition that no one who did not use the electricity could have steam. *Seaton Mountain Electric L. & P. Co. v. Idaho Springs Inv. Co.*, 49 Colo. 122, 111 Pac. 834.

Turnpike is public highway within statute giving to steam heating companies power to lay down their pipes upon any "street, lane, alley or highway." *Berks & Dauphin Turnpike Road*

*v. Lebanon Steam Co.*, 5 Pa. County Ct. Rep. 354.

11. 2 Bl. Comm. 37.

Being derived from the Crown, franchises must arise from royal grant, or in some cases may be held by prescription which presupposes a grant. The prerogatives of the Crown embrace the right to take waifs, estrays, wrecks, treasure-trove, royal fish and forfeitures, and all of these are franchises. So the right of forest, chase, park, warren and fishery are franchises since no subject may so apply his property for his own convenience.

legislative authority. No private person can establish a public highway, or a public ferry, or railroad, or charge tolls for the use of the same, without authority from the legislature, direct or derived. These are franchises. No private person can take another's property, even for a public use, without such authority; which is the same as to say, that the right of eminent domain can only be exercised by virtue of a legislative grant. This is a franchise. No persons can make themselves a body corporate and politic without legislative authority. Corporate capacity is a franchise."<sup>12</sup>

In American law, a franchise is defined as a special privilege conferred by the government on individuals or corporations and which does not belong to the citizens of a country generally by common right,<sup>13</sup> and it

12. *California v. Central Pacific R. R. Co.*, 127 U. S. 1, 40, 41, 8 Sup. Ct. 1073, 32 L. Ed. 150.

The word franchise is used with various meanings. In its broad and popular sense it embraces the right of trial by jury, the right to *habeas corpus*, the right to vote at an election, the right to membership in voluntary associations or corporations, the right to hold an office, and perhaps other rights. In its more restricted sense it is, in law, sometimes used to mean an exclusive right held by grant from the sovereign power. The strictly legal signification of the word is not always confined to exclusive rights; but the term is used in law to designate powers and privileges which are not exclusive in their nature. *Chicago and W. I. R. R. Co. v. Dunbar*, 95 Ill. 571.

13. *Rhinehart v. Redfield*, 87 N. Y. S. 789, 93 App. Div. 410,

aff'd in 179 N. Y. 569, 72 N. E. 1150.

In American Law, "franchises are special privileges conferred by government upon individuals, and which do not belong to the citizens of the country, generally, of common right. It is essential to the character of a franchise that it should be a grant from the sovereign authority, and in this country no franchise can be held which is not derived from a law of the state." Per Mr. Chief Justice Taney in *Bank of Augusta v. Earle*, 13 Pet. (38 U. S.) 519, 595.

As applied to American law, Blackstone's definition "is not strictly correct; since our franchises spring from contracts between the sovereign power and private citizens, made upon a valuable consideration, for purposes of public benefit as well as of individual advantage." 4 *Thomp. Corp.*, § 5335.

§ 1615. Same—corporate franchise distinguished from grant to use streets.

In the strictest sense of the term, a franchise is the right granted by the state, and which cannot be granted by any other body or person, to exist as a corporation.<sup>21</sup> Such corporate franchises conferring the right to exist as a corporation should be distinguished from franchises to exercise a privilege within a municipality.<sup>22</sup>

The term as it is ordinarily used in the decisions and by text writers, and as used in this chapter, means the right granted by the state or a municipality to an existing corporation or to an individual to do certain things

21. *Colorado*. *Iron Silver Min. Co. v. Cowie*, 31 Colo. 450, 72 Pac. 1067; *Londoner v. People*, 15 Colo. 246, 25 Pac. 183.

*Connecticut*. *State v. Travelers Ins. Co.*, 70 Conn. 590, 40 Atl. 465, 66 Am. St. Rep. 138.

*Iowa*. *Cedar Rapids Water Co. v. Cedar Rapids*, 118 Iowa 234, 91 N. W. 1081; *Young v. Webster City, etc.* R. Co., 75 Iowa 140, 39 N. W. 234.

*Kansas*. *State v. Western Irrigating Canal Co.*, 40 Kan. 96, 19 Pac. 349, 10 Am. St. Rep. 166.

*Ohio*. *Knoup v. Piqua Bank*, 1 Ohio St. 603.

Franchise to carry on the business of supplying gas by means of pipes in the streets, as distinguished from consent of municipality to use of streets, see *Ghee v. Northern Union Gas Co.*, 56 N. Y. S. 450, 34 App. Div. 551.

A general franchise of a corporation is its right to live and to do business by the exercise of the corporate powers granted by the state. *People v. State Board*

of Tax Com'rs, 174 N. Y. 417, 67 N. E. 69.

"Corporate franchise" means the right to exist as a corporation. *Adams v. Yazoo & M. D. R. Co.*, 77 Miss. 194, 24 So. 200, 60 L. R. A. 33.

A franchise to be a corporation is not property in the ordinary acceptation of the term. It cannot be transferred by ordinary conveyance, nor by sale under execution, unless the statutes of the state so provide. While corporate franchises are property, they cannot be transferred by voluntary conveyance or by sale under execution against the corporation. *State v. East Fifth St. R. Co.*, 140 Mo. 539, 548, 41 S. W. 955, 38 L. R. A. 218, 62 Am. St. Rep. 742.

22. *Cedar Rapids Water Co. v. Cedar Rapids*, 118 Iowa 234, 91 N. W. 1081; *State v. Farmers' & Mechanics' Savings Bank*, 114 Minn. 95, 130 N. W. 445; *La Crosse v. La Crosse Gas & Electric Co.*, 145 Wis. 408, 130 N. W. 530.

which a corporation or individual otherwise cannot do.<sup>23</sup> such as the right to use a street or alley for a com-

23. The word "franchises" has various significations, both in a legal and popular sense. The relation in which the term is employed controls its meaning. Speaking generally, a franchise is a special privilege of a public nature conferred by governmental authority upon individuals as such, or artificial personalities usually called corporations, and which privilege did not belong to individuals generally as a matter of common right. It is a generic term embracing all rights granted to corporations by the legislature of the state, or such right as can only be granted by the state in the first instance, which by delegated authority are conferred by the municipal corporation, or other designated public body, acting in such relation as an agency of the state. The right to conduct a business of public utility and use the streets and public ways for this purpose, as, for example, to supply the public with water, light, transportation and other comforts and conveniences in crowded urban centers, is ordinarily required to be conferred by public authority, and this constitutes the giving of a franchise. But the privilege of so providing for the municipal corporation and its inhabitants is not, in the strict sense of the term, a "corporate franchise;" that is (as often pointed out), it is not a privilege derived from or obtained by the act of incorporation. Charter rights and

privileges of a corporation are such only as are derived by virtue of its organization under legislative enactment. They do not include the right to conduct the business above mentioned. McQuillin, Mun. Ord., § 565.

The franchise of taking tolls is distinct from the "corporate franchise." Per Cooley, C. J., in *Grand Rapids Bridge Co. v. Prange*, 35 Mich. 400, 405, 24 Am. Rep. 585.

"The franchise of being a corporation belongs to the corporators, while the powers and privileges vested in and to be exercised by the corporate body as such, are the franchises of the corporation." Per Mr. Justice Matthews in *Memphis & Little Rock R. R. Co. v. R. R. Comrs.*, 112 U. S. 609, 619.

"The grant of a franchise presupposes a benefit to the public, and an equal right on the part of every member of such public, within the territory involved, to participate in this benefit upon the same terms and conditions." *Rhinehart v. Redfield*, 87 N. Y. S. 789, 93 App. Div. 410, *aff'd* in 179 N. Y. 569, 72 N. E. 1150.

Grant by town to county of permission to erect bridge on street is not a franchise. *Jackson v. Breathitt County (Ky.)*, 105 S. W. 376.

"There is a marked distinction between a franchise which is essential to the creation and continued existence of a corporation, a right to exist as an artificial

mercial or street railroad track, or to erect thereon poles and string wires for telegraph, telephone, or electric light purposes, or to use the street or alley underneath the surface for water pipes, gas pipes, or other conduits.<sup>24</sup>

This right to so use the streets or alleys of a municipality is sometimes designated as a *secondary* franchise,<sup>25</sup> and sometimes as a *special* franchise,<sup>26</sup> although in some jurisdictions the mere grant of such a right is held to be a *license* rather than a franchise.<sup>27</sup>

being, a right conferred by the sovereignty of the state, and those rights, subsidiary in their nature, by which the corporation obtains privileges of more or less value, to the enjoyment of which corporate existence is not a prerequisite." State ex rel. v. Topeka Water Co., 61 Kan. 547, 60 Pac. 337.

Corporate powers or privileges. While franchises granted by municipal corporations are legislative grants, they are not *corporate powers or privileges* within the meaning of a constitutional provision that no special or private law shall be passed "granting corporate powers or privileges." When granted to a corporation, they become the property of the corporation; but they are not franchises essential to corporate existence, and granted as part of the organic act of incorporation. The phrase, "to grant corporate powers or privileges" is equivalent to the phrase "to grant corporate charters." "A franchise is not essentially corporate, and it is not the grant of a franchise that is prohibited, but of a corporate franchise." Lin-

den Land Co. v. Milwaukee Electric P. & L. Co., 107 Wis. 493, 83 N. W. 851; citing State ex rel. v. Portage City Water Co., 107 Wis. 441, 83 N. W. 697; Atty. Gen. v. Railroad Co.'s, 35 Wis. 425, 560; Black River Imp. Co. v. Holway, 87 Wis. 584, 59 N. W. 126.

24. "Municipal franchises," as used in the statute imposing a franchise tax on certain corporations but providing that it shall not be applicable to any corporation which has not or may not exercise any municipal franchise, means the consent of the municipality to exercise within its limits the franchise granted by the legislature. State ex rel. v. Plainfield Water Supply Co., 67 N. J. L. 357, 52 Atl. 230.

25. Shreveport Traction Co. v. Kansas City, S. & G. R. Co., 119 La. 759, 44 So. 457.

26. People v. State Board of Tax Com'rs, 174 N. Y. 417, 67 N. E. 69.

Statutory definition, as applied to railroads, is the same. New York, L. & W. R. Co. v. Roll, 66 N. Y. S. 748, 32 Misc. Rep. 321.

27. § 1616 *post*.

It is sometimes difficult, however, to determine whether the charter of a company or a statute actually confers authority to use the streets without the consent of the municipality;<sup>63</sup> but statutes granting a franchise to a public utility company and including therein a general right to use the streets and alleys of a municipality or municipalities, should not be construed as an express grant of the right to use such streets or alleys without the consent of the municipality, unless it is clearly apparent that such was the intention of the legislature.<sup>64</sup>

In Illinois, an interurban railway desiring to enter city and use the streets must obtain a license from the city and cannot obtain the right to use the streets by a contract for the use of the tracks of a local street railway. *Aurora v. Elgin, Aurora & S. T. Co.*, 227 Ill. 485, 81 N. E. 544, 118 Am. St. Rep. 284.

63. Statute authorizing railroad companies to construct their road upon or across any highway which the road shall intersect does not confer right to construct road longitudinally on street without the consent of the municipality. *Newcastle v. Lake Erie & W. R. Co.*, 155 Ind. 18, 57 N. E. 516.

A street railway company's charter granted it certain powers and privileges and "such other privileges as may be granted by the municipal authorities." Held, not to give the city any additional power, but merely authorized it to exercise the power it had in furtherance of the objects of the company. *Asheville St. R. Co. v. West Asheville, etc. R. Co.*, 114 N. C. 725, 19 S. E. 697.

Authority to supply gas to towns and to lay pipes in the streets of towns for this purpose does not give authority to do this without the consent of the town, under a municipal charter giving the town authorities power to control and regulate its streets. *Chicago Gaslight and Fuel Co. v. Lake*, 120 Ill. 42, 22 N. E. 616, aff'g 27 Ill. App. 346.

**Construction of statute by companies.** In determining whether it is necessary to obtain a grant from a municipality of the right to use its streets, some weight should be allowed to the practical construction placed upon the statute by the public service corporations in that they have for many years proceeded under statutory provisions as to obtaining the consent of municipalities for the use of their streets. *Farmers' Telephone Co. v. Washta (Iowa, 1911)*, 133 N. W. 361.

64. *Pawhuska v. Pawhuska Oil & Gas Co.*, 28 Okla. 563, 115 Pac. 353, holding that 1909 statute giving right to every domestic gas pipe line corporation to construct its pipes over all streets in the

wise provides; but it cannot authorize the holder of such franchise to interfere with the property rights of an abutter without just compensation.<sup>76</sup>

However, the *constitutions* of several of the states limit the legislative authority over streets by providing that no law shall be passed by the legislature granting a street railroad company (and in some states the prohibition is extended to other or all public service companies) the right to use the streets within any municipality without the consent of the local authorities,<sup>77</sup> and in some states, by constitutional provision, the consent of the voters,<sup>78</sup> or of abutting owners,<sup>79</sup> is necessary, at least as to grant of the right to use streets for a street railway.

Likewise, the *legislature may delegate* to the municipality the right to grant such use of the streets.<sup>80</sup> And

tion." *Newcastle v. Lake Erie & W. R. Co.*, 155 Ind. 18, 57 N. E. 516.

Statute authorizing any corporation having power to lay pipes in streets for gas to use the pipes to transmit gas to any other municipality to which it may have lawful authority to distribute gas, is constitutional. *Public Service Corporation of New Jersey v. De Grote*, 70 N. J. Eq. 454, 62 Atl. 65.

Grant of right to use streets of intervening municipality. The legislature has power to grant the right to use the streets of a municipality by a public service company operating in another municipality, though the former is not served or in any way benefited by such use. *Cheney v. Barker*, 198 Mass. 356, 84 N. E. 492, 16 L. R. A. (N. S.) 436.

76. § 1700 *et seq.*, *post*.

77. § 228 *ante*, vol. 1.

78. § 1639 *post*.

79. § 1640 *post*.

80. *Atchison St. Ry. Co. v. Missouri Pac. Ry. Co.*, 31 Kan. 660, 3 Pac. 284; *Grand Trunk & W. R. Co. v. South Bend*, 174 Ind. 203, 89 N. E. 885, 91 N. E. 809, 36 L. R. A. (N. S.) 850; *Harrison v. New Orleans Pac. Ry. Co.*, 34 La. Ann. 462, 44 Am. Rep. 438; *Mercer v. Pittsburgh, Ft. W. & C. R. Co.*, 36 Pa. St. 99; *City Ry. Co. v. Citizens' St. R. Co.*, 166 U. S. 557, 17 Sup. Ct. 653, 41 L. Ed. 1114, modifying *Citizens' St. R. Co. v. City Ry. Co.*, 64 Fed. 647; *Knoxville v. Africa*, 77 Fed. 501, 23 C. C. A. 252, construing Tennessee law.

See § 228 *ante*, vol. 1.

"All franchises or privileges known by that term proceed from the state in the exercise of its sovereign powers. Through different mediums or agencies the state may act in granting franchises, but it is itself the source

it may empower the municipality to accompany the grant with such restrictions and limitations as may seem proper to protect the public in the use of the highways of the municipality.<sup>81</sup> The legislature may also delegate such power to particular municipal boards.<sup>82</sup>

When franchises are granted by municipal corporations, they are regarded as coming from the state;<sup>83</sup> such an act of the municipality being considered an act of the state.<sup>84</sup>

and depositary from which the right proceeds. Sometimes the franchise is conferred directly by the state through some grant or legislative enactment, but more generally the sovereign delegates its power to municipal or local authorities." *Wilcox v. McClellan*, 185 N. Y. 9, 16, 77 N. E. 986.

**Constitutionality.** An act of the legislature empowering municipal corporations to grant the use of their streets for street railway purposes, is not in conflict with a constitutional provision that the power of granting special privileges or immunities shall only be exercised by the legislature. *Atchison St. Ry. Co. v. Missouri Pac. R. Co.*, 31 Kan. 660, 3 Pac. 284.

**Constitutional provision as self executing.** Constitutional provision as to use of streets by telegraph and telephone companies held not self-executing. *State ex rel. v. Spokane*, 24 Wash. 53, 60, 63 Pac. 1116.

81. § 1644 *post*.

82. *Sheehy v. Clausen*, 55 N. Y. S. 1000, 26 Misc. Rep. 269, *aff'd* in 59 N. Y. S. 1114, 42 App. Div. 622.

83. *Andrews v. National Foun-*

*dry, etc. Works*, 61 Fed. 782, 787, 10 C. C. A. 60.

84. *City R. Co. v. Citizen St. R. Co.*, 166 U. S. 557, 17 Sup. Ct. 653, 41 L. Ed. 1114.

Municipal legislative body are public officers especially designated by the legislature for that purpose. *Cheney v. Barker*, 198 Mass. 356, 84 N. E. 492; *Boston Consol. Gas Co. v. Cheney*, 198 Mass. 356, 84 N. E. 492.

**Exercise of legislative function.** In granting a license to use streets and alleys, the municipality exercises a legislative function as a governmental agency of the state, and the grant is made by the municipality in its governmental and not in its proprietary capacity. *People ex rel. v. Chicago Tel. Co.*, 245 Ill. 121, 91 N. E. 1065; *Potter v. Calumet Electric St. Ry. Co.*, 158 Fed. 521.

"The distinction is again affirmed in *Meyer v. Boonville*, 162 Ind. 165, 70 N. E. 146, where it is held that in granting a franchise to use the 'streets, alleys, and public places,' to furnish heat, light, water, telephone, etc., it exercises a legislative power; but when the town or city enters into

points beyond one of its *termini*, the performance of such an act not being an impossibility;<sup>87</sup> or that the company agree to observe and be subject to all ordinances of the city then in force or subsequently passed in relation to passenger railways.<sup>88</sup>

§ 1645. Same—requiring compensation for use of streets.

A municipal corporation, having entire control of its streets and power to impose conditions on granting a franchise to use the streets, may require compensation for their use by public service companies, as a condition of the grant of the right to use them,<sup>89</sup> unless forbidden

87. *People v. Barnard*, 110 N. Y. 548, 18 N. E. 354, rev'g on this point 48 Hun (N. Y.) 57.

88. *Philadelphia v. Ridge Ave. Pass. R. Co.*, 143 Pa. St. 144, 22 Atl. 695.

89. *Venner v. Chicago City R. Co.*, 236 Ill. 349, 86 N. E. 266; *Chicago General R. Co. v. Chicago*, 176 Ill. 253, 256, 52 N. E. 880, 66 L. R. A. 959, 68 Am. St. Rep. 188; *Covington St. R. Co. v. Covington*, 9 Bush (Ky.) 127; *Lancaster v. Briggs*, 118 Mo. App. 570, 96 S. W. 314; *St. Louis v. Western Union Tel. Co.*, 149 U. S. 465, 13 Sup. Ct. 990, 37 L. Ed. 810; *Memphis v. Postal Telegraph-Cable Co.*, 145 Fed. 602, 76 C. C. A. 292, rev'g 139 Fed. 707.

See *Re Central Ry. & Electric Co.*, 67 Conn. 197, 199, 35 Atl. 82.

Compare *La Crosse v. La Crosse Gas & Electric Co.*, 145 Wis. 408, 413, 130 N. W. 530.

License fees after grant of franchise, § 1683 *et seq.*, *post*.

Street railway franchises granted for compensation, description of, see *Wilcox, Municipal Franchises*, §§ 389-400.

Compensation as condition. Municipality, as a condition of granting the use of its streets to a public service company, may require it to pay annually to the municipality a fixed sum to, compensate for the city's necessary supervision of the work as well after as during its installation; and if the grant is accepted, the company is liable for the annual payment, by reason of a valid contract, and cannot contend that the sum is exacted for the purpose of general revenue so as to impose an additional tax on the company. *Columbus v. Columbus Gas Co.*, 76 Ohio St. 309, 81 N. E. 440, where gas company was required to pay eight thousand dollars annually.

The charter of a horse railroad company provided that the construction and use of its tracks in a city should be at the "assent of the city council, upon such terms and conditions as said city council may impose." This was held sufficient authority for the city to impose a money payment for the use of its streets.

by statute,<sup>90</sup> as by requiring the company to pay a certain portion of its receipts as compensation for the use

*Providence v. Union R. Co.*, 12 R. I. 473.

Agreement by interurban railway to pay nine thousand dollars for franchise to use streets—payment held due. *Olathe v. Edison*, 84 Kan. 408, 114 Pac. 228.

License fee. Where the local corporation is given power to grant franchises to street railroad companies and to stipulate the conditions upon which they may exercise the privilege, it has authority to impose a license fee as a condition to the granting of the franchise. *New York v. Eighth Avenue Ry. Co.*, 118 N. Y. 389, 23 N. E. 550; *New York v. Broadway & Seventh Ave. Ry. Co.*, 97 N. Y. 275.

Monopoly. Where consideration of franchise is agreement of company to pay three hundred dollars annually to the city, the further provision in the contract that payments are to continue only so long as the company enjoys its franchise without competition, is not contrary to public policy as tending to create a monopoly. *Richardson Gas & Oil Co. v. Altoona*, 79 Kan. 466, 100 Pac. 50.

The smallness of a charge made by city authorities for the granting of a franchise to a railway company to construct and operate a switch connection, will not invalidate the franchise. *Dulaney v. United Railways & El. Co.*, 104 Md. 423, 65 Atl. 45.

Defenses to action to collect.

In an action by a city against a gas company to collect a sum alleged to be due as an annual payment for the use of the streets, it is no defense that when the ordinance imposing such liability was passed the city knew that the only means the company had for making the payments was its receipts from the sale of gas and that to meet such annual payments it must retain its business, but that with such knowledge the city thereafter permitted another gas company to use the streets to supply *natural* gas and that it did supply such gas at a much lower price than defendant could supply artificial gas, where the first franchise was not exclusive. *Columbus v. Columbus Gas Co.*, 76 Ohio St. 309, 81 N. E. 440.

90. In Ohio, the statute as to telegraph and telephone companies provides that no municipal corporation can "demand or receive any compensation for the use of a street, alley, or public way, beyond what may be necessary to restore the pavement to its former state of usefulness;" and hence a municipality has no power to exact or receive compensation by way of free telephone service for themselves or for citizens, or to fix rates for telephone charges. *Farmer & Getz v. Columbiana County Telephone Co.*, 72 Ohio St. 526, 74 N. E. 1078.

of streets,<sup>91</sup> or a certain per cent of the dividends declared,<sup>92</sup> or exacting a license fee of a certain sum for each car to be paid annually to the city,<sup>93</sup> or an annual

91. *Asbury Park & S. G. R. Co. v. Neptune*, 73 N. J. Eq. 323, 67 Atl. 790; *Mitchell v. Dakota Central Telephone Co.*, 25 S. D. 409, 127 N. W. 582, holding that such condition was not a tax or a license, but was in the nature of rental or compensation for the use of streets, and that the fact that the state provided that a portion of the taxes assessed upon telephone corporation should be paid to the city, did not affect the right of the city to insist upon the fulfillment of the condition.

Power to prevent telephone company from using streets includes power to require it to pay a certain per cent of its gross earnings for the use of the streets. *Jamestown v. Home Telephone Co.*, 109 N. Y. S. 297, 125 App. Div. 1.

Net income, meaning of word in connection with legislation requiring certain per cent of net income of elevated railroad to be paid to the municipality. *New York v. Manhattan R. Co.*, 192 N. Y. 90, 84 N. E. 745, aff'g 104 N. Y. S. 609, 119 App. Div. 240.

Payment of certain per cent of gross receipts of business cannot be evaded in part because territory of municipality has been subdivided, and new municipalities thereby created have exacted other sums for the privilege of laying an additional track through them. *Asbury Park &*

*S. G. R. Co. v. Neptune Tp.*, 75 N. J. Eq. 562, 74 Atl. 998.

Condition as creating partnership. Grant by municipality to a street railway company of the right to use its streets is not invalid as the formation of the partnership between the municipality and the company to operate a street railway system, because it requires the company to pay to the municipality fifty-five per cent of its net earnings. *Vener v. Chicago City R. Co.*, 236 Ill. 349, 86 N. E. 266.

Laches as precluding collection. It has been held that the failure of the city for several years to take steps to enforce provisions claimed to require payment by a public service company to the municipality of a certain per cent of its gross receipts, estopped the municipality to sue for their collection. *St. Louis v. Laclede Gaslight Co.*, 155 Mo. 1, 55 S. W. 1003.

92. *Allegheny v. Millvale E. & S. St. R. Co.*, 159 Pa. St. 411, 28 Atl. 202.

93. *Byrne v. Chicago Gen. R. Co.*, 169 Ill. 75, 48 N. E. 703, aff'g 63 Ill. App. 438 (holding it immaterial that other corporations operating cars in the city are required to pay less fees); *Jersey City v. North Jersey Street R. Co.*, 78 N. J. L. 72, 73 Atl. 609 (holding that failure to collect fees did not bar the claim, that the lessee of the line was

tax on each mile of its tracks.<sup>94</sup> So where a municipality may impose conditions on granting a franchise to use the streets, it may stipulate for a free supply for certain public purposes.<sup>95</sup> And the fact that the company is engaged in interstate commerce does not affect this right of the city.<sup>96</sup>

So if the grant of the right to use streets is conditioned on the payment of a certain sum per year, the fact that such charge is called a license tax does not make it such, within the rule that license taxes must be imposed equally on all persons engaged in the same business.<sup>97</sup>

liable for the fees, and that the stipulated sum must be paid for each car regardless of the route over which it runs); *Jersey City v. Jersey City & B. R. Co.*, 70 N. J. L. 360, 57 Atl. 445.

Such condition not a tax. *Newport v. South Covington & C. St. R. Co.*, 89 Ky. 29, 11 S. W. 954, 11 Ky. L. Rep. 319.

94. *Chicago Gen. Ry. Co. v. Chicago*, 176 Ill. 253, 52 N. E. 880, 66 L. R. A. 959, 68 Am. St. Rep. 188.

95. *Henderson Water Co. v. Trustees of Henderson Graded Schools*, 151 N. C. 171, 65 S. E. 927.

Free supply. Where water is to be furnished free for "city purposes," furnishing water to board of education for public schools is not a "city purpose." *Water Supply Co. of Albuquerque v. Albuquerque*, 9 N. M. 441, 54 Pac. 969.

Construction of ordinance requiring water to be furnished free to city. *Kemble v. Millville*, 69 N. J. L. 637, 56 Atl. 311; *Methodist Episcopal Church v. Ash-*

*tabula Water Co.*, 20 Ohio Cir. Ct. 578, 10 O. C. D. 648.

A grant by a municipal corporation of a franchise for a water system, which established maximum rates for hotels, boarding houses, water closets, etc., provided for furnishing water free of charge to schools and churches. At the time the grant was made there was no sewer system in the city, but one was subsequently constructed. It was held that the company was compelled to furnish water for the sewers at the rates fixed in the grant, and to furnish water free for water closets in the schools. *Independent School Dist. v. La Mars City W. & L. Co.*, 131 Ia. 14, 107 N. W. 944, 10 L. R. A. (N. S.) 859.

96. *St. Louis v. Western Union Tel. Co.*, 148 U. S. 92, 13 Sup. Ct. 485, 37 L. Ed. 380, rev'g 39 Fed. 59.

97. *Postal Telegraph-Cable Co. v. Newport*, 25 Ky. L. Rep. 635, 76 S. W. 159.

Compensation as license fee. The fact that the word "license" appears in the title of an ordi-

# MUNICIPAL FRANCHISES

A Description of the Terms and Conditions upon which  
Private Corporations enjoy Special Privileges  
in the Streets of American Cities

BY

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IN

TWO VOLUMES

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INTRODUCTORY

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seekers becomes, at times, so habitual that bribery is regarded as almost a conventional offense. This condition holds during the long period between the time when the aldermen learn that franchises are valuable and the time when the people at large learn it.

**5. Profits and corruption suggest compensation.**—The stench of corruption and the gradual recognition that municipal franchises are monopolies, and in rapidly growing cities, monopolies of great value, result in a demand that, not the aldermen, but the taxpayers at large, should receive compensation for franchise grants. Accordingly, all over the United States a demand has arisen at one time or another that franchises should be sold to the highest bidder, either for a lump sum or for a percentage of gross receipts or for an annual rental, to the end that the companies occupying the public streets and getting rich off the necessities of the people, should be compelled to contribute a fund to lighten taxation. This idea received a great impetus in the last decade of the nineteenth century from the stories of municipal management in Great Britain and on the Continent. For several years it was generally believed in the United States that Glasgow was making enough money from its public service utilities to do away entirely with the necessity of taxation. Naturally the property owners and other direct taxpayers in American cities were attracted by this promising idea, and laws were passed in various states requiring that franchises be sold at auction to the highest bidder.

**6. Lower rates demanded.**—In American cities only a minority of the people are direct taxpayers, and after a while the workingmen, clerks and others who have to ride on the street cars and pay gas bills, begin to think that the most important reform in reference to these services is a reduction in rates. Appealing to the masses of the voters, therefore, a new class of city politicians arises, demanding lower street car fares and lower rates for gas, water, electric light and telephones, to the end that the consumers of these services may themselves get the benefit, and not be taxed either to make a few franchise holders enormously rich or to relieve the property owners from the burdens of government. The great struggle for lower rates is still going on, although there have already been large reductions, especially in the

**101. Fundamental principles generally agreed upon.**

—There have been established in the hard school of experience certain fundamental principles relating to the problem of public utilities. With due regard to modifying circumstances and minor limitations it may be fairly said that these principles are generally recognized as sound by men who have thought upon this problem. These principles are—

(1.) That a public utility requiring special and permanent fixtures in the streets cannot be operated with a high degree of success from the standpoint of either its managers or the public except as a monopoly.

(2.) That on this account a franchise grant, no matter to whom it is given or what provisions it may contain against consolidation, will either remain unused or establish a monopoly or add to the privileges of a monopoly already existing. There are many apparent exceptions in the early history of franchises, but as the years pass on every live franchise seeks the warm bosom of monopoly.

(3.) That public utilities whose importance justifies the granting of special franchises in the streets render services of general interest to the people living adjacent to the streets traversed by such utilities.

(4.) That the interests of the public demand continuous, uninterrupted service, extending over as wide an area as practicable and constantly expanding as population increases and spreads out.

(5.) That the absence of competition or its inadequacy as a force for regulating rates and service renders it necessary for the public authorities to maintain on behalf of the public a constant supervision over the exercise of a special franchise.

(6.) That aside from the inherent necessity of public control for any particular utility, the demand upon the streets for general, varied and increasing uses makes it imperative for the public authorities to maintain a continuing control of the public highways, undiminished by any irrevocable or perpetual special franchise.

The present and future welfare of many millions of American citizens is intimately concerned with the intelligent application of these principles.

**102. The elimination of special franchise values.—Still**

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TRANSPORTATION FRANCHISES  
TAXATION AND CONTROL OF PUBLIC UTILITIES

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## CHAPTER XLIV.

### COMPENSATION FOR FRANCHISES AND TAXATION OF PUBLIC UTILITY PROPERTIES.

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| 543. Compensation based on a false theory or an unfortunate condition. | 546. Taxation of intangible rights and street fixtures as real estate. |
| 544. Taxation of physical property outside of the streets.             | 547. Methods of assessing franchise values.                            |
| 545. Various forms of specific franchise taxes.                        | 548. Uses and abuses of franchise taxation.                            |

**543. Compensation based on a false theory or an unfortunate condition.**—The public streets are supposed to be open to the free use of all the citizens on equal terms. There can be no satisfactory reason for granting a special privilege in the public streets to certain individuals primarily for the purpose of enabling them to make money out of it. If the granting of franchises is to be defended at all, it must be defended on the assumption that they are granted as a convenient means of securing the performance of a necessary public function. In every case the obligations imposed should fully offset the value of the special privileges granted. Otherwise the city government finds itself playing favorites among the people from whom it springs and upon whose will it rests. It is not denied that a company undertaking to furnish a public utility under a franchise should have the right to get a reasonable profit on its investment, but there is no reason why anybody should be permitted to get rich by means of public franchises. People do not get rich on six per cent. The terms of a franchise need be only as liberal as is necessary to induce people to put their money into the enterprise, considering the rate of profit allowed, the constancy of the income and the safety of the capital invested. The granting of a franchise on more liberal terms is monstrous, as it is simply the granting to certain individuals of the right to levy tribute upon the rest of the people. If the city absorbs this tribute in its entirety through the compensation requirements

of the franchise, the transaction changes its character somewhat, and the company assumes the role of tax-gatherer for the city. The question of compensation for franchises then becomes merely a question of the justness and expediency of levying a special tax on the consumers of a particular utility for the relief of the other taxpayers. While there may be ground for argument in regard to this question, it seems to be pretty well agreed among the careful students of public utility problems that such a tax is both inexpedient and unjust. The single taxer believes in raising all governmental revenues by a tax on land values alone; but a franchise to use a street is a land value, and logically it would be no violation of the single tax theory to treat the public highways like other land and charge for their exclusive or special use the market price, or "all the traffic will bear." The single taxers, however, would in almost every case join with men belonging to other schools of economic and political thought in asserting the expediency of maintaining the streets as a common, undivided asset of the city open to the free use of all the people. This free use evidently cannot be maintained if special franchises are granted on such terms as to enable the franchise holders to make unusual profits from their occupancy of the streets. Where the principle of compensation is voluntarily adopted by a city in the granting of a franchise, unless the compensation is strictly limited to the amount of the additional expense incurred by the government on account of the exercise of the special franchise, it is based upon the theory that this species of consumption tax is justified as a means of lightening the tax burden on property. This theory appears to be false. It seems to be both just and expedient that public utilities should be furnished at as low rates as possible, to the end that their use may be as widely distributed among the people as possible.

There are unfortunate conditions, however, which sometimes justify the application of the theory of taxation to franchises. If the franchises have been granted in perpetuity or for long periods and carry with them the right to collect tribute, the state or the city is perfectly justified in using the police power and the taxing power to correct the mistake made when the franchises were granted and to divert the tribute from the private pockets of the franchise holders into

the public treasury. It is on this ground that the special franchise tax in New York can be justified. It has undoubtedly helped to bankrupt the stock-jobbing companies that have for many years been exploiting the streets of New York City, but it would be a grave mistake to repeal or suspend the law except on condition that the companies affected by such action should surrender their perpetual franchises and submit themselves to the legitimate public control naturally attaching to the agents of government.

In strictness, we should differentiate between compensation and taxation. They are supplementary. One is not in the ordinary sense a substitute for the other. Compensation is supposed to represent payment by the company either in a lump sum or by annual instalments for the capital value, so to speak, of the franchise. Even if such payments are adequate, that fact does not constitute a reason why the capital value of the franchise should not be taxed, if under all the conditions the franchise has any such value. If a man buys a piece of land from the city, he does not think of setting up the claim that he should be exempted from taxation on account of this land just because he has paid for it. If, however, instead of paying for the land outright, he pays an annual rental equal to the full annual value of the land, compensation and taxation are merged, and no further taxes can be levied on the property. The city is under no obligation to give people either land or franchises in order to get the right to tax them. Of course, if franchises of great value have been given away, that is an added reason for taxing them. Taxation is a weapon that can be used after the franchises have gone out of the control of the public authorities; compensation is something that must be determined when the grants are made. Sound public policy would require that there be no compensation for franchises, for the reason that the special privilege involved in a franchise grant should be so loaded down with obligations as to have no special value. If, however, special privileges having special value have been granted, then by all means they should be taxed. In saying that a franchise grant should be so loaded down with obligations as to have no special value either to be paid for or to be taxed, I do not mean that a franchise should be so tied up as to be useless. I mean that rates and service should be

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