

PROPOSED BY: EXECUTIVE
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ORDINANCE AMENDING WHATCOM COUNTY CODE 12.24 FRANCHISE
REQUIREMENTS TO UPDATE PROCEDURES FOR PROCESSING APPLICATIONS**

WHEREAS, Whatcom County Charter Section 9.30 and the Revised Code of Washington Chapter 36.55 authorize the Whatcom County Council to grant non-exclusive franchises for a fixed term for the use of any street, road, or public place in unincorporated Whatcom County; and

WHEREAS, on October 12, 1993, Council adopted Ordinance 1993-066 replacing all references of "county commissioners" with "county council" in Whatcom County Code (WCC) Chapter 12.24; and

WHEREAS, on March 23, 2004, Council adopted Ordinance 2004-022 amending WCC Chapter 12.24 clarifying the process for franchise applications; and

WHEREAS, on February 26, 2008, Council adopted Ordinance 2008-005 amending WCC Chapter 12.24 to include a process to transfer ownership or control of a franchise; and

WHEREAS, the County Council wishes to amend WCC 12.24 to better align the processing of franchise applications with the general operations of the Public Works Department and County Council Office and provide better service to applicants.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as finding of fact in support of its action; and

BE IT FINALLY ORDAINED by the Whatcom County Council that the Whatcom County Code 12.24 is hereby amended as described in Exhibit A.

ADOPTED this ____ day of _____, 2024.

ATTEST:

Dana Brown-Davis, Clerk of the Council

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 2/16/2024)

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**
() Approved () Denied

Satpal Sidhu, County Executive

Date Signed: _____

1
2
3 **EXHIBIT A**

4 **Chapter 12.24 Franchise Requirements**

5 Sections:

- 6
7 12.24.010 Purpose.
8 12.24.011 Authority.
9 12.24.012 Compliance.
10 12.24.021 Application requirements.
11 12.24.022 Review of Applications - Hearing
12 ~~12.24.025 Transfer of ownership or control.~~
13 ~~12.24.031 Forward to public works.~~
14 12.24.030~~41~~ Ordinance.
15 ~~12.24.051 Application - Notice of hearing.~~
16 ~~12.24.061 Recording of franchise.~~
17 12.24.0740 Submittal of plans and specifications.
18 12.24.050 Recording of franchise
19 12.24.080 Time limit.
20 12.24.090 Surety bonds.
21 12.24.100 Inspection.
22 12.24.110 Approval of alteration or revision.
23 12.24.120 Liability for construction or maintenance.
24 12.24.130 Transfer of ownership or control
25 12.24.140 Revocation or Termination of Grant
26 12.24.150 Other remedies
27 12.24.160 Applicability
28 12.24.170 Severability
29
30
31

32 12.24.010 Purpose.
33 The purpose of this Chapter is to regulate the granting of County right-of-way franchises for
34 public and private utilities, and to ensure consistency of such franchises with Whatcom
35 County Comprehensive Plan, sound engineering and design standards, health and sanitation
36 regulations, and the public interest.

37
38 12.24.011 Authority.
39 This chapter is enacted pursuant to authority contained in Chapter 36.55 RCW and
40 Whatcom County Charter Section 9.30.

41
42 12.24.012 Compliance
43 All utilities with facilities within Whatcom County road rights-of-way and or bridges, whether
44 or not the utility holds a franchise from Whatcom County, shall comply with the provisions
45 of this Chapter and with all applicable federal, state, and local laws, codes, rules and
46 regulations.

1
2 12.24.021 Application requirements.

3 A. Application for franchises on county roads and bridges shall be submitted in the form
4 approved by the County Engineer to the Whatcom County Department of Public Works,
5 pursuant to RCW 36.55.040.

6
7 B. Every ~~franchise~~ application for franchise submitted to the county council shall be
8 accompanied by a franchise application fee as set forth in the current Whatcom County
9 Unified Fee Schedule.

10
11 C. Every application for franchise ~~application submitted to the county council~~ must include
12 also be accompanied by a sketch of the proposed installation location. (Ord. 2008-005 Exh.
13 A; Ord. 2004-022).

14
15 12.24.022 Review of Applications – Hearing

16 A. The Whatcom County Department of Public Works shall be responsible for the
17 administration and enforcement of franchises.

18
19 B. In accordance with RCW 36.55.040, the Whatcom County Council shall set a time and
20 place for a public hearing on each franchise application. –The Council shall post notice of
21 such hearing in three public places 15 days before the hearing and publish notice twice in
22 the official County newspaper, the last publication to be not less than 5 days prior to the
23 hearing date pursuant to the provisions of RCW 36.55.040.

24
25 12.24.025 Transfer of ownership or control.

26 A. A franchise shall not be sold, transferred, leased, assigned or disposed of in whole or in
27 part either by sale, voluntary or involuntary merger, consolidation or otherwise, unless
28 approval is granted by the county council to ensure a review of circumstances not present
29 at the time of the adoption of the original franchise. The council's approval shall not be
30 unreasonably withheld. Such costs associated with this review process shall be reimbursed
31 to the county council by a new prospective franchisee.

32
33 B. An assignment of a franchise shall be deemed to occur if there is an actual change in
34 control or where ownership of 50 percent or more of the beneficial interests, singly or
35 collectively, are obtained by other parties. The word "control" as use herein is not limited to
36 majority stock ownership only, but includes actual working control in whatever manner
37 exercised.

38
39 C. A franchisee shall promptly notify the county council prior to any proposed change in, or
40 transfer of or acquisition by any other party of control of a franchisee's company. Every
41 change, transfer, or acquisition by any other party of control of a franchisee's company shall
42 cause a review of the proposed transfer. In the event that the county council adopts a
43 resolution denying its consent and such change transfer or acquisition of control has been
44 effected, the county may cancel the franchise. Approval shall not be required for mortgaging
45 purposes or if said transfer is from a franchisee to another person or entity controlling,
46 controlled by, or under common control with a franchisee.

1
2 ~~D. Application for transfer of ownership or control shall be submitted to the county council.~~

3
4 ~~E. Every franchise application for transfer of ownership submitted to the county council shall~~
5 ~~be accompanied by a franchise transfer of ownership fee as set forth in the current~~
6 ~~Whatcom County Unified Fee Schedule.~~

7
8 ~~F. Regardless of the circumstances, a franchisee shall promptly notify the county prior to~~
9 ~~any proposed name change of the franchisee's company. In the event that the county~~
10 ~~approves a resolution withholding its consent to the name change within 60 days of receipt~~
11 ~~of notice thereof, the county may cancel the franchise unless the parties to such change~~
12 ~~reverse its effects within 60 days after the county notifies the franchisee of its intent to~~
13 ~~cancel the franchise hereunder. (Ord. 2008-005 Exh. A).~~

14
15 ~~12.24.031 Forward to public works:~~

16 ~~Upon receipt of franchise application, application fee, and sketch of proposed installation, or~~
17 ~~application for transfer of ownership and transfer of ownership fee, the clerk of the council~~
18 ~~shall forward a complete copy to the director of Whatcom County public works or the county~~
19 ~~engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022; Ord. 93-066 Exh. A; prior code §~~
20 ~~4.44.010. Formerly 12.24.010).~~

21
22 ~~12.24.041030 Ordinance.~~

23 ~~The Whatcom County Department of pPublic wWorks director or the county engineer shall~~
24 ~~will prepare an proposed ordinance granting the franchise for consideration by the county~~
25 ~~council. (Ord. 2008-005 Exh. A; Ord. 2004-022).~~

26
27 ~~12.24.051 Application— Notice of hearing.~~

28 ~~The clerk of the council shall schedule a public hearing on the ordinance granting the~~
29 ~~franchise pursuant to RCW 36.55.050. (Ord. 2008-005 Exh. A; Ord. 2004-022).~~

30
31 ~~12.24.061 Recording of franchise.~~

32 ~~The Whatcom County council clerk shall cause the franchise to be recorded by the county~~
33 ~~auditor pursuant to RCW 36.55.080. (Ord. 2008-005 Exh. A; Ord. 2004-022).~~

34
35 ~~12.24.0740 Submittal of plans and specifications.~~

36 ~~There shall be submitted to the director of Whatcom County public works or the county~~
37 ~~engineer three copies of the final plans, specifications or special provisions of the proposed~~
38 ~~installation, at the time of the granting of a franchise. (Ord. 2008-005 Exh. A; Ord. 2004-~~
39 ~~022; Ord. 93-066 Exh. A; prior code § 4.44.020. Formerly 12.24.020).~~

40
41 ~~12.24.050 Recording of franchise.~~

42 ~~The Clerk of the Council shall cause the franchise to be recorded by the County Auditor~~
43 ~~pursuant to RCW 36.55.080. (Ord. 2008-005 Exh. A; Ord. 2004-022).~~

44
45 ~~12.24.080 Time limit.~~

1 There shall be a time limit imposed upon the construction of any facility granted by
2 franchise on any county road or bridge, subject to the approval of the county engineer.
3 (Ord. 2008-005 Exh. A; Ord. 2004-022; prior code § 4.44.030. Formerly 12.24.030).

4
5 12.24.090 Surety bonds.

6 There shall be a surety bond posted at the time of granting a franchise for any facility upon
7 a county road or bridge to ensure replacement of any county road or bridge to its original
8 condition and shall be in an amount not less than 10 percent of the total estimate of the
9 proposed installation and releasable only by the county engineer. (Ord. 2008-005 Exh. A;
10 Ord. 2004-022; Ord. 93-066 Exh. A; prior code § 4.44.040. Formerly 12.24.040).

11
12 12.24.100 Inspection.

13 There shall be adequate inspection by an inspector approved by the county engineer who
14 shall be responsible to the county engineer for all construction of any facility upon any
15 county road or bridge. (Ord. 2008-005 Exh. A; Ord. 2004-022; prior code § 4.44.050.
16 Formerly 12.24.050).

17
18 12.24.110 Approval of alteration or revision.

19 No alteration or revisions of plans as submitted at the time of granting a franchise shall be
20 permitted by a person or persons, or any franchise-holder, unless prior approval is
21 requested and submitted to the county engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022;
22 Ord. 93-066 Exh. A; prior code § 4.44.060. Formerly 12.24.060).

23
24 12.24.120 Liability for construction or maintenance.

25 The foregoing regulations are not to be construed as relieving the franchise holder of any
26 responsibility or liability for the construction, reconstruction, or maintenance of such
27 facilities as the franchise may grant. (Ord. 2008-005 Exh. A; Ord. 2004-022; prior code §
28 4.44.070. Formerly 12.24.070).

29
30 12.24.130 Transfer of ownership or control.

31 A. A franchise granted under this chapter shall not be sold, transferred, leased, assigned or
32 disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation
33 or otherwise, unless approval is granted by the County Council to ensure a review of
34 circumstances not present at the time of the adoption of the original franchise. The
35 Council's approval shall not be unreasonably withheld. Such costs associated with this
36 review process shall be reimbursed to the County Public Works Department by a new
37 prospective franchisee.

38
39 B. An assignment of a franchise shall be deemed to occur if there is an actual change in
40 control or where ownership of 50 percent or more of the beneficial interests, singly or
41 collectively, are obtained by other parties. -The word "control" as used herein is not limited
42 to majority stock ownership only, but includes actual working control in whatever manner
43 exercised.

44
45 C. A franchisee shall promptly notify the County Engineer prior to any proposed change in,
46 or transfer of or acquisition by any other party of control of a franchisee's company. Every

1 change, transfer, or acquisition by any other party of control of a franchisee's company shall
2 cause a review of the proposed transfer. In the event that the County Council adopts a
3 resolution denying its consent and such change, transfer, or acquisition of control has been
4 affected, the County may cancel the franchise. Approval shall not be required for
5 mortgaging purposes or if said transfer is from a franchisee to another person or entity
6 controlling, controlled by, or under common control with a franchisee.

7
8 D. Application for transfer of ownership or control shall be submitted to the Whatcom
9 County Department of Public Works.

10
11 E. Every franchise application for transfer of ownership submitted to the Whatcom County
12 Department of Public Works and presented to the County Council shall be accompanied by a
13 franchise transfer of ownership fee as set forth in the current Whatcom County Unified Fee
14 Schedule.

15
16 F. Regardless of the circumstances, a franchisee shall promptly notify the County prior to
17 any proposed name change of the franchisee's company. In the event that the County
18 Council approves a resolution withholding its consent to the name change within 60 days of
19 receipt of notice thereof, the County may cancel the franchise unless the parties to such
20 change reverse its effects within 60 days after the County notifies the franchisee of its
21 intent to cancel the franchise hereunder. (Ord. 2008-005 Exh. A).

22
23 12.24.140 Revocation or Termination of Grant.

24 A franchise granted by Whatcom County to use or occupy rights-of-way may be revoked for
25 any one or more of the following reasons:

- 26 A. Construction or operation at an unauthorized location.
- 27 B. Misrepresentation by or on behalf of a grantee in any application to the County.
- 28 C. Failure to relocated or remove facilities as required in this Chapter.
- 29 D. Failure to pay taxes, compensation, fees, or costs when and as due the County.
- 30 E. Insolvency or bankruptcy of the grantee.
- 31 F. Violation of a material provision of this Chapter
- 32 G. Violation of a material term of the franchise.

33
34 12.24.150 Other Remedies.

35 Nothing in this Chapter shall be construed as limiting any judicial remedies that the County
36 may have, at law or in equity, for enforcement of this Chapter.

37
38 12.24.160 Applicability.

39 Where the requirements of this Title are also covered in any other law, ordinance,
40 resolution, rule, or regulation of any kind, the more restrictive shall govern.

41
42 12.24.170 Severability.

43 If any Section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its
44 application to any person is, for any reason, declared invalid, in whole or in part by any
45 court or agency of competent jurisdiction, said decision shall not affect the validity of the
46 remaining portions hereof.

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