



Legislation Text

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Clerk 10/20/2016

AN ORDINANCE setting the 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; amending Ordinance 17515, Section 4, as amended, and K.C.C. 4A.675.020, Ordinance 17515, Section 8, as amended, and K.C.C. 4A.675.030, Ordinance 1710, Section 2, as amended, and K.C.C. 6.27.020, Ordinance 1710, Section 3, and K.C.C. 6.27.030, Ordinance 10171, Section 1, as amended, and K.C.C. 6.27.054, Ordinance 1710, Section 6, as amended, and K.C.C. 6.27.060 and Ordinance 1711, Section 4, as amended, and K.C.C. 14.44.040 and adding new sections to K.C.C. chapter 6.27.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

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

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

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

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

E. Utility companies must apply for a franchise to use the right-of-way under K.C.C. chapter 6.27. Franchises are memorialized in a franchise agreement that is negotiated by the parties, and approved by the King County council. King County currently recovers from utility companies some but not all of the costs of reviewing and processing an application for a franchise.

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

G. RCW 70.315.040 authorizes the county to contract with water purveyors for the provision of fire suppression water facilities and services.

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

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

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

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

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

A. The right-of-way construction permit application fee for a party requesting a permit under K.C.C. chapter 14.44, is two hundred dollars, ~~((as specified in K.C.C. 14.44.040.A))~~ except that the fee is five hundred dollars when the utility requesting the permit has not been granted a franchise or has been previously granted a franchise but the term of the franchise as set forth in the franchise has expired.

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

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

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

Persons or private or municipal corporations are required, in accordance with RCW 36.55.010, to obtain and maintain in good standing a right-of-way franchise approved by the King County council in order to use the right-of-way of county roads for the construction and maintenance of waterworks, gas pipes, telephone, telegraph and electric lines, sewers, cable TV and petroleum products and any other such public and private utilities. This requirement may be waived for the purpose of issuing ~~((emergency))~~ right-of-way construction permits as provided in K.C.C. 14.44.055.

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

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

SECTION 6. Ordinance 10171, Section 1, as amended, and K.C.C. 6.27.054 are each hereby amended to read as follows:

A. A party requesting a new franchise, amended franchise, renewal, extension of an existing franchise or transfer shall pay a franchise application fee as set forth in K.C.C. 4A.675.020. The fee is for ((

~~reimbursement to the real estate services section of the facilities management division for~~) the administrative costs and expenses incurred by the county in the reviewing and processing of the franchise application. The franchise application fee is payable at the time the application is filed with the clerk of the council. In addition, each applicant shall pay an advertising fee as set forth in K.C.C. 4A.675.020.B. Franchise application and advertising fees are not refundable, even if the application is disapproved.

B. The real estate services section may require applicants to reimburse the ~~((real estate services section))~~ county for the actual costs and ~~((all))~~ expenses incurred by the ~~((real estate services section as a result of))~~ county in the reviewing and processing of an application for the issuance, renewal, amendment, extension or transfer of a franchise, to the extent the costs exceed the costs and expenses of reviewing and processing the application recovered by the application fee. The payment of actual cost balances shall be made at the time of the franchise issuance.

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

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

1. Personnel costs, including payroll and management;
2. Overhead costs, including office rent, maintenance and utilities;
3. Program planning and development;
4. Data processing and computer costs;
5. Legal and accounting services; and

6. Consulting services such as engineering and environmental assessment.

E. The facilities management division is authorized to establish rules or policies to assess annual administration charges to grantees of franchises under subsection C to reasonably cover the costs and expenses of the county in administering franchises. If the facilities management division institutes such an administration charge, the real estate services section may require applicants to reimburse the county for the actual costs and expenses incurred by the county in administering a franchise, to the extent the costs exceed the costs and expenses recovered by the administration charge.

F. All ~~((franchise application))~~ payments received under this section shall be credited to the county current expense fund.

~~((D-))~~ G. This section shall not apply to franchise applications, renewal, amendments or transfers ((made)) or franchise administration under the county's cable television regulations, K.C.C. chapter 6.27A.

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

A. All franchises granted for county rights-of-way shall be consistent with the following criteria:

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

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

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

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

B. In addition, all franchises granted for water and sewer utilities shall be consistent with the following

criteria:

1. Health and sanitation regulations of the Seattle-King County health department and the state;
2. County standards for water mains and fire hydrants((5)) and other fire suppression water facilities and services as defined in chapter 70.315 RCW. Consistent with the authority in chapter 70.315 RCW, except when the county is acting as a customer or as a purveyor, the grantee of a franchise shall, at no expense to the county, provide fire suppression water facilities and services and shall indemnify, defend and and hold harmless the county against damages arising from fire suppression activities during fire events;
3. The grantee of the franchise shall, at no expense to the county, repair all existing facilities that it owns within county road rights-of-way, including all appurtenant facilities and service lines connecting its system to users, if ((such)) the repair is required by the county for any reasonable purpose;
4. The grantee of the franchise shall, at no expense to the county, adjust, remove or relocate existing facilities with county road rights-of-way, including all appurtenant facilities and service lines connecting its system to users, if the county determines ((such)) the adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the county in ((such)) the road right-of-way. The county shall give the grantee written notice of ((such)) the requirement as soon as practicable, at the beginning of the ((~~pre-design~~)) predesign stage for projects that are part of the county's capital improvement program, including such available information as is reasonably necessary for the grantee to plan for ((such)) the adjustment, removal or relocation;
5. For projects that are a part of the county's capital improvement program, in addition to any other notice given to the grantee of the franchise, the county shall provide a vertical and horizontal profile of the roadway and drainage facilities within it, both existing and as proposed by the county, and the proposed construction schedule; notwithstanding any permit conditions that may later be applied to the county project, this initial design information shall be given at least ((180)) one hundred eighty days before construction is scheduled to begin, except in cases of urgent construction or emergencies. The grantee shall respond to this

notice, and to any later notices of revised designs based on permit conditions, within no more than ~~((30))~~ thirty days by providing to the county the best available information as to the location of all of the grantee's facilities, including all appurtenant facilities and service lines connecting its system to users and all facilities that it has abandoned, within the area proposed for the public works project. The county shall offer the grantee the opportunity to participate in the preparation of bid documents for the selection of a contractor to perform the public works project as well as all required adjustments, removals or relocations of the grantee's facilities. ~~((Such))~~ The bid documents shall provide for an appropriate cost allocation between the parties. The county shall have sole authority to choose the contractor to perform ~~((such))~~ the work. The grantee and the county may negotiate an agreement for the grantee to pay the county for its allocation of costs, but neither party shall be bound to enter into such an agreement. Under such an agreement, in addition to the grantee's allocation of contractor costs, the grantee shall reimburse the county for costs, such as for inspections or soils testing, related to the grantee's work and reasonably incurred by the county in the administration of ~~((such))~~ the joint construction contracts. ~~((Such))~~ The costs shall be calculated as the direct salary cost of the time of county professional and technical personnel spent productively engaged in ~~((such))~~ the work, plus overhead costs at the standard rate charged by the county on other similar projects, including joint projects with other county agencies~~((-)); and~~

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

a. The grantee shall apply for, upon request and on behalf of the owner of the facilities, a county right-of-way construction permit for any repairs required for ~~((such))~~ the facilities~~((;- provided such))~~, but only if the owner agrees to reimburse the grantee for all costs incurred by the grantee and any other reasonable conditions the grantee requires as a precondition to applying for the permit. All work to be performed in the county right-of-way shall comply with all conditions of the county permit and all applicable county

requirements. The grantee may at its option perform any part of the repair with its own forces or require the owner to employ a contractor for that purpose, ~~((provided such))~~ but only if the contractor is approved by the county;

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

c. When the county or its contractor provides notice to the grantee, ~~((pursuant to))~~ in accordance with chapter 19.122 RCW, of its intent to excavate with county road rights-of-way, the grantee shall provide to the county or its contractor the best information available from the grantee's records or, where reasonable, from the use of locating equipment as to the location of ~~((such))~~ the facilities, including surface markings where these would reasonably be of use in the excavation. If the grantee fails to make good faith efforts to provide the ~~((above))~~ information required in this subsection B.6.c. within the deadlines provided by chapter 19.122 RCW, the grantee shall hold the county harmless for all reasonable costs that result from damage to ~~((such))~~ the facilities if ~~((such))~~ the damage occurs as a result of the failure to provide ~~((such))~~ the information. Nothing in this subsection is intended or shall be construed to create any rights in any third party or to form the basis for any obligation or liability on the part of the county or the grantee toward any third party, nor is anything in this subsection intended or to be construed to alter the rights and responsibilities of the parties under chapter 19.122 RCW, as amended.

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

If any person or entity installs or maintains utility facilities in the right-of-way of county roads without the required franchise, or has not complied with the terms of an existing franchise, the executive is authorized

to initiate legal proceedings to seek all legal and equitable remedies to effectuate this chapter, including, but not limited to:

A. Ejecting a person or entity occupying the right-of-way of county roads but refusing to enter into a franchise with King County or to pay an application fee or other cost or expense related to use of the right-of-way;

B. Enforcing the terms and conditions of a franchise; or

C. Revoking a franchise.

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

In addition to judicial enforcement under section 8 of this ordinance, the manager of the real estate services section and the director of the road services division are authorized to enforce this chapter and any rules or regulations adopted under this chapter in accordance with the enforcement and penalty provisions of K.C.C. Title 23. A citation under K.C.C. 23.32.010.a.1.a. for violation of this chapter and any rules or regulations adopted under this chapter shall be in the amount of two hundred fifty to one thousand dollars, depending on the amount of right-of-way being occupied by the person responsible for code compliance. A violation of a notice and order under K.C.C. 23.32.010.a.1.b. for violation of this chapter and any rules or regulations adopted under this chapter shall be two hundred fifty to one thousand dollars, depending on the amount of right-of-way being occupied by the person responsible for code compliance.

SECTION 10. Ordinance 1711, Section 4, as amended, and K.C.C. 14.44.040 are each hereby amended to read as follows:

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

B. The real estate services section shall have the authority to require applicants to reimburse the (~~real~~

~~estate services section~~) county for the ~~((actual))~~ costs and ~~all~~ expenses incurred by the ~~((real estate services section))~~ county as a result of issuance, renewal or amendment of a right-of-way construction permit, to the extent the costs and expenses exceed the costs of reviewing and processing the application recovered by the application fee. The payment of actual costs shall be made at the time of permit issuance.