

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Citizen			August 17, 1993	09/07/93	Received petition
Commission Head:					Council/Introduction
Dept. Head:					Council/Hearing
Prosecutor:					
Purchasing/Budget:					
Executive:					

SUBJECT:

Ordinance granting a non-exclusive franchise to the City of Ferndale for a period of 25 years pursuant to State Law and Section 9.30 of the Whatcom County Home Rule Charter, to operate and maintain water mains and water distribution lines along a portion of Graveline Road from Smith Road south (see map) within the unincorporated areas of Whatcom County.

ATTACHMENTS:

- Letter requesting the franchise
- Letter from Public Works, plus the ordinance

SUMMARY STATEMENT:

Please complete sections of box as appropriate & explain the item below.

Related County contract #:	Should Clerk schedule a hearing? YES /xx/ Requested date: To be determined; see above
Amount budgeted for this item/project: \$ N/A	Is it (or will it be) within budget? YES / / NO / / (Please explain below) N/A
Budget line item number(s): N/A	

Petitioners seek a franchise from the County, as provided for under RCW 36.55. The Administration will prepare an ordinance for introduction and hearing. If granted, this franchise would allow the petitioner construct, maintain and repair system and all related equipment along, over and across various county roads, as described in the petition. The general area covered by this request is: existing water mains on a portion of Graveline Road bounded by Smith Road on the north.

ORIGINATOR'S RECOMMENDED ACTION:

Recommend approval, following the public hearing.

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

9/07/93: Received

Related File Numbers:

Ordinance or Resolution Number (this item only):

Ord. 093-065

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INTRODUCED BY: Consent
PROPOSED BY: Public Works Dept.
DATE INTRODUCED: 9/14/93

ORDINANCE NO. 93-065

AN ORDINANCE IN THE MATTER OF GRANTING A NON-EXCLUSIVE FRANCHISE TO THE CITY OF FERNDAL FOR A PERIOD OF 25 YEARS PURSUANT TO STATE LAW AND SECTION 9.30 OF THE WHATCOM COUNTY HOME RULE CHARTER TO OPERATE AND MAINTAIN WATER MAINS AND WATER DISTRIBUTION LINES ALONG CERTAIN ROADS WITHIN THE UNINCORPORATED AREAS OF WHATCOM COUNTY

WHEREAS, the Home Rule Charter for Whatcom County authorizes the County Council to grant non-exclusive franchises for a fixed term not to exceed 25 years for the use of any street, road or public place; and

WHEREAS, R.C.W. Chapter 36.55 and Section 36.55.010 provides that the County Council may grant franchises to persons or private or municipal corporations to use that right-of-way of County roads in their respective counties for the construction and maintenance of water works, gas pipes, telephones, telegraph and electrical light lines, sewers and other such facilities and including cable television wires and other cable television facilities; and

WHEREAS, the City of Ferndale has applied for a 25-year non-exclusive franchise for installation, operation, maintenance, and repair of water mains and water distribution lines in and along certain roads in Whatcom County, Washington, and notice of this hearing having been duly published on the 18th and 25th days of September, 1993, in the Bellingham Herald, the official newspaper for Whatcom County, and that it appearing to the County Council that notice of said hearing having been given as required by law and that it is in the public interest to grant the franchise for a period of 25 years; and

WHEREAS, the City of Ferndale has agreed to the addition of certain administrative provisions to the franchise as provided herein;

NOW, THEREFORE, BE IT ORDAINED by the Council of Whatcom County, Washington:

Section 1. Franchise Granted

(a) A non-exclusive franchise for the City of Ferndale, located in the

1 County of Whatcom, its successors and assignees, referred to as the grantee, is
2 hereby granted for a period of 25 years, the non-exclusive rights and privilege
3 to construct, erect, operate, maintain, and repair water mains and water distri-
4 bution lines in, along and across county roads or portions thereof as named
5 herein.

6 (b) The rights and privileges granted herein shall apply to all roads
7 and public ways listed as follows:

8 All Whatcom County rights-of-way located within
9 north 1,130 feet of Graveline Road of Section 34,
10 Township 39 North, Range 2 Est of W.M.

11 Section 2. Acceptance of Franchise.

12 (a) No franchise hereunder shall become effective for any purpose
13 unless and until written acceptance therefore shall have been filed with the
14 Whatcom County Council and County Director of Public Works and such written
15 acceptance shall be in form and substance as shall be prescribed and approved
16 by the County Prosecuting Attorney and operate as an acceptance of each and
17 every term and condition and limitation contained in this ordinance, and in such
18 franchise;

19 (b) Such written acceptance shall be filed by Grantee not later than
20 the thirtieth day following the effective date of the ordinance granting such
21 franchise; and in default of the filing of such written acceptance as herein
22 required, Grantee shall be deemed to have rejected the same.

23 Section 3. Entering Rights of Way.

24 The Grantee, its successors and assignees, shall have the right and
25 authority to enter upon the above-mentioned county roads, rights-of-way and
26 other county property as designated hereinbefore, for the purposes of construct-
27 ing, operating, maintaining and repairing water mains and water distribution
28 lines and facilities and operating and maintaining such lines and facilities.

Section 4. Construction Standards.

All construction and installation work along and under county roads or
rights-of-way or other County property outside the corporate limits of any
incorporated town shall be subject to the approval and pass the inspection of
the Director of Public Works or designee and shall conform to all applicable
County and State codes or regulations, and the County expressly reserves the
right to prescribe how and where water mains and water distribution lines shall
be installed and may from time to time, upon reasonable notice, require the
removal and replacement thereof in the public interest, at the expense of the
franchise holder.

Section 5. Construction Application.

(a) Prior to commencement of construction of said water mains and water

1 distribution lines, Grantee shall first file with the Director of Public Works
2 its application for permit to do such work, together with plans and specifica-
3 tions in duplicate showing the position and location of all such lines and faci-
4 lities sought to be constructed, laid, installed or erected at that time,
5 showing their relative position to existing county roads, rights-of-way or other
6 county property upon plans drawn to scale, hereinafter collectively referred to
7 as the "map of definite location."

8 (b) The water lines and appurtenant facilities shall be laid in exact
9 conformity with said map of definite location, except in instances in which
10 deviation may be allowed thereafter in writing by the Director of Public Works
11 pursuant to application by Grantee. The plans and specifications shall specify
12 the class and type of material and equipment to be used, manner of excavation,
13 construction, installation, backfill, erection of temporary structures, erection
14 of permanent structures, traffic control, traffic turn-outs and road obstruc-
15 tion, etc. No such construction shall be commenced without the Grantee first
16 securing a written permit from the Director of Public Works, including approval
17 endorsed on one set of plans and specifications returned to the Grantee. All
18 such work shall be subject to the approval of and shall pass the inspection of
19 the Director of Public Works or designee. The Grantee shall pay all actual and
20 necessary costs of and expenses incurred in the examination, inspection and
21 approval of such work on account of granting said permits.

22 Section 6. Construction on Roadways/Other County Property.

23 (a) In any work which requires breaking of soil of the county roads,
24 rights-of-way or other county property subject to this franchise for the purpose
25 of laying, relaying, connecting, disconnecting and repairing the said
26 transmission lines and facilities, and making connections between the same to
27 structures and buildings of consumers or making connections to other facilities
28 of the Grantee now in existence or hereafter constructed, the Grantee shall be
governed by and conform to the general rules adopted by the officers charged
with the supervision and care of such county roads, rights-of-way, and other
county property; and the Grantee at its own expense and with all convenient
speed shall complete the work for which the soil has been broken and forthwith
replace the work and make good the county road, rights-of-way or other county
property and leave the same in as good condition as before the work was com-
menced.

29 (b) Applications for permits referred to in Section 5 above shall be
30 accompanied by specifications for the restoration of the county road, rights-of-
31 way or other county property and to the same condition it was prior to such
32 breaking, and such specifications must be approved by the Director of Public
33 Works before such breaking of the soil is commenced. Provided, that the
34 Director of Public Works may require a performance bond in the sum sufficient to
35 guarantee that such county roads, rights-of-way or other county property shall
36 be restored to the same condition as they were prior to the breaking of the
37 soil. Said bond shall be in addition to any other such requirements contained
38 herein.

39 (c) Furthermore, all transmission lines and facilities placed under or
40 on top of the ground as a result of this franchise shall be maintained so as not

1 to impede the use of the right-of-way by pre-existing utilities or the public.
2 Furthermore, the Grantee agrees to maintain the area around all pedestals or
3 above ground improvements made as a result of this franchise. In order to main-
4 tain this area, the grantee shall remove or trim the vegetation within a five
5 foot (5') radius from the above ground improvement and shall maintain that radius
6 so that the improvements shall be visible to the County crews in their efforts to
7 maintain the shoulders of the roadway.

8 (d) The Director of Public Works may at any time order, or have done,
9 any and all work that it considers necessary to restore to a safe condition any
10 such county road, rights-of-way or other county property left by the Grantee or
11 its agents in a condition dangerous to life or property, and the Grantee upon
12 demand shall pay to the County all costs of such work.

13 Section 7. Construction - Other Lines and Facilities.

14 (a) All construction or installation of such water lines or water
15 distributing systems, service, repair or relocation of same, performed above,
16 along or within the county rights-of-way or other county property subject to
17 this franchise shall be done in such a manner as not to interfere with the
18 construction and maintenance of other utilities' lines, public or private,
19 drains, drainage ditches and structures, irrigation ditches and structures
20 located therein, nor with the grading or improvement of such county roads,
21 rights-of-way or other county property.

22 (b) The owners of all utilities, public or private, installed prior in
23 time to the line and facilities of the Grantee shall have preference as to the
24 positioning and location of such utilities so installed with respect to the
25 Grantee. Such preference shall continue in the event of the necessity of relo-
26 cating or changing the grade of any such county road or right-of-way.

27 Section 8. Construction - Public Safety and Inconvenience.

28 All work done under this franchise shall be done in a thorough and
29 workmanlike manner. In the laying of transmission lines and the construction of
rights-of-way or other county property, the Grantee shall leave such trenches,
ditches and tunnels in such a way as to interfere as little as possible with
public travel and shall take all due and necessary precautions to guard the
same, so that damage or injury shall not occur or arise by reason of such work;
and where any of such trenches, ditches, or tunnels are left open at night, the
Grantee shall place warning lights and barricades at such a position as to give
adequate warning of such work. The Grantee shall be liable for any injury to
person or persons or damage to property sustained through its carelessness or
neglect, or through any failure or neglect to properly guard or give warning of
any trenches, ditches or tunnels dug or maintained by the Grantee.

30 Section 9. County Rights Reserved.

31 The County of Whatcom in granting this franchise, does not waive any
32 rights which it has now or may hereafter acquire with respect to county roads,
33 rights-of-way or other county property and this franchise shall not be construed
34 to deprive the County of any powers, rights or privileges which it now has or

1 may hereafter acquire to regulate the use of and to control the county roads,
2 rights-of-way or other County property covered by this franchise. This
franchise shall be subject to the power of eminent domain, and in any proceeding
under eminent domain, the franchise itself shall have no value.

3 Section 10. Relocation of Lines and Facilities.

4 (a) If at any time the County of Whatcom shall improve or change any
5 county road, right-of-way or other county property subject to this franchise by
6 grading or regrading, planking or paving the same, changing the grade, altering,
7 changing, repairing or relocating the same or by constructing drainage facilities,
8 or in the event that such county road, right-of-way or other county property
9 subject to this franchise shall become a Primary State Highway as provided
10 by law, the Grantee upon written notice from the Director of Public Works or the
11 Director of Highways, shall at its sole expense, immediately change the location
or readjust the elevation of its transmission lines and other facilities so that
the same shall not interfere with such County work and so that such lines and
facilities shall conform to such new grades or routes as may be established.
The County of Whatcom shall in no wise be held liable for any damage to said
Grantee that may occur by reason of any of the County's improvements, changes or
works above enumerated.

12 (b) All work to be performed by the Grantee under this section shall be
13 under the direction and approval, and shall pass the inspection of the Director
of Public Works or designee. The Grantee shall pay all actual and necessary
14 costs and expenses incurred in the examination, inspection and approval of such
work.

15 Section 11. County Road Work Permitted.

16 The laying, construction, operation and maintenance of the Grantee's
17 transmission lines and facilities authorized by this franchise shall not
preclude the County of Whatcom, its agents or its contractors from blasting,
18 grading, excavating or doing other necessary road work contiguous to the said
lines and facilities of the Grantee provided that the Grantee shall be given
19 forty-eight (48) hours notice of said blasting or other work in order that the
Grantee may protect its lines and facilities.

20 Section 12. Monuments and Survey Markers.

21 (a) Before any work is performed under this franchise which may affect
22 any existing monuments or markers of any nature relating to subdivisions, plats,
roads and all other surveys, the Grantee shall reference all such monuments and
23 markers. The reference points shall be so located that they will not be
disturbed during the Grantee's operations under this franchise. The method of
24 referencing these monuments or other points to be referenced shall be approved
by the Director of Public Works. The replacement of all such monuments or other
25 points to be referenced shall be approved by the Director of Public Works. The
replacement of all such monuments or markers disturbed during construction shall
26 be made as expeditiously as conditions permit, and as directed by the Director

1 of Public Works. The cost of monuments or other markers lost, destroyed or
2 disturbed, and the expense of replacement by approved monuments shall be borne
by the Grantee.

3 (b) A complete set of reference notes for monuments and other ties
shall be filed with the Whatcom County Director of Public Works.

4 Section 13. Vacations.

5 If at any time the County of Whatcom shall vacate any county road,
6 right-of-way or other county property which is subject to the rights granted
by this franchise and said vacation shall be for the purpose of acquiring the
7 fee of other property interest in said road, rights-of-way or other county pro-
perty for the use of Whatcom County, in either its proprietary or governmental
8 capacity, then the Council of Whatcom County may at its option and by giving
thirty (30) days written notice to the Grantee, terminate this franchise with
9 reference to such county road, right-of-way or other county property so vacated,
and the County of Whatcom shall not be liable for any damages or loss to the
10 Grantee by reason of such termination.

11 Section 14. Indemnification.

12 (a) The Grantee by acceptance of the privileges granted hereunder, does
hereby agree and covenant to indemnify, defend, and save harmless Whatcom County
13 and those persons who were, are now, or shall be duly elected or appointed offi-
cials or members or employees thereof, against and from any loss, damage, costs,
14 charges, expenses, liability, claims, demands or judgments whatsoever kind or
nature whether to persons or property, arising wholly or partially out of any
15 act, action, neglect, omissions or default on the part of the Grantee, his sub-
contractors and/or employees which may occur by reason of construction, opera-
16 tion and maintenance of the Grantee's said transmission lines and facilities.
In case that suit or action is brought against the County of Whatcom for damages
17 arising out of or by reason of the above-mentioned causes, the Grantee will upon
notice to him of the filing of a claim or the commencement of said action,
18 appear and defend the same at its sole cost and expense, and in case judgment
shall be rendered against the County of Whatcom in suit or action, the Grantee
19 will fully satisfy said judgment within ninety (90) days after said suit or
action shall have finally been determined, if determined adversely to Whatcom
20 County. Upon the Grantee's failure to satisfy said judgment within a ninety
(90) day period, this franchise shall at once cease and terminate and the County
21 of Whatcom shall have a lien upon the transmission lines and all other facili-
ties used in its construction, operation and maintenance of the Grantee's
22 transmission system which may be enforced against the property for the full
amount of any such judgment so taken against Whatcom County.

23 (b) Acceptance by the County of any work performed by the Grantee at
the time of completion shall not be grounds for avoidance of this covenant.

24 Section 15. Non-Exclusive Franchise.

25 This franchise shall not be deemed to be an exclusive franchise. It
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1 shall in no manner prohibit the County of Whatcom from granting other franchises
2 of a like nature or franchises for other public or private utilities under,
3 along, across, over and upon any of the county roads, rights-of-way, or other
4 County property subject to franchise, and shall in no wise prevent or prohibit
5 the County of Whatcom from construction, altering, maintaining, using or
6 vacating any of said roads, rights-of-way, drainage structures or facilities,
7 irrigation structure or facilities, or any other County property or affect its
8 jurisdiction over them with full power to make all necessary changes, reloca-
9 tions, repairs, maintenance as the County may deem fit.

6 Section 16. Successors and Assignees.

7 All the provisions, conditions, regulations and requirements herein
8 contained shall be binding upon the successors and assignees of the Grantee, and
9 all privileges, as well as all obligations and liabilities of the Grantee shall
10 inure to its successors and assignees equally as if they were specifically men-
11 tioned wherever the Grantee is mentioned herein.

10 Section 17. Transferability.

11 Neither this franchise nor any interest therein shall be sold, trans-
12 ferred or assigned without the previous consent in writing of the Council of
13 Whatcom County, such consent not to be unreasonably withheld.

13 Section 18. Incorporation.

14 Whenever any of the county roads, rights-of-way or other county pro-
15 perty as designated in this franchise, by reason of the subsequent incorporation
16 of any town or city, or extension of the limits of any town or city shall fall
17 within the city or town limits this franchise shall continue in force and affect
18 as to all county roads, rights-of-way or other county property not so included
19 in city or town limits.

17 Section 19. Enforcement/Remedies.

18 If the Grantee shall willfully violate, or fail to comply with any of
19 the provisions of this franchise through willful or unreasonable neglect, or
20 fail to heed or comply with any notice given the Grantee under the provisions of
21 this franchise, then the said Grantee shall forfeit all rights conferred
22 hereunder, and this franchise may be revoked or annulled by the Council of
23 Whatcom County. In addition to any rights implied or set out elsewhere in this
24 ordinance, the Council reserves the right to require the Grantee to specifically
25 comply with the terms and conditions of the franchise ordinance, and this
26 franchise may be terminated at any time if the Grantee's lines and facilities
27 are not operated or maintained in accordance with such statute, order or regula-
28 tion.

24 Section 20. Reservation of Home Rule Charter Rights.

25 This franchise is subject to the provisions of the Home Rule Charter
26 for Whatcom County and, in particular, Section 9.30 thereof which provides as

1 follows: All franchises granted by the County Council shall be for a fixed term
2 not to exceed twenty-five (25) years and no exclusive franchise shall be granted
3 for the use of any street, road, or public place. All franchises shall be sub-
4 ject to the power of eminent domain and the right of the Council or the people
5 acting for themselves through the initiative or referendum to repeal, amend or
6 modify the franchise in the interest of the public; and every ordinance granting
7 a franchise shall contain a reservation of these rights. In any proceeding
8 under eminent domain the franchise itself shall have no value.

9 Section 21. Compliance with Laws and Regulations.

10 This franchise is subject to, and the Grantee shall comply with all
11 applicable Federal, State, County or municipal laws, regulations and policies
12 affecting performance under this franchise.

13 Section 22. Insurance.

14 (a) Upon acceptance of such franchise, the Grantee shall file with the
15 Whatcom County Council, and shall thereafter, during the entire term of such
16 franchise, maintain in full force and effect, a corporate insurance policy or
17 other adequate surety agreement in the amount of FIVE HUNDRED THOUSAND DOLLARS
18 (\$500,000.00) for the property damage coverage, and THREE HUNDRED THOUSAND DOLLARS
19 (\$300,000.00) for public liability coverage, so as to protect the County against
20 damages or costs as set forth in Section 14 above, and there shall be reco-
21 verable, jointly and seperately from the principal and surety, any such damages
22 or costs suffered or incurred by the County, including attorneys' fees and costs
23 of any action, or proceedings, and including the full amount of any compen-
24 sation, indemnification, cost of removal of any property or other costs which
25 may be incurred up to the full principal amount of such insurance policy; and
26 said condition shall be a continuing obligation during the entire term of such
27 franchise and thereafter until Grantee shall have satisfied in full any and all
28 obligations to the County and any user which arise out of or pertain to said
29 franchise. Neither the provisions of this section, nor any insurance policy
accepted by the County pursuant hereto, nor any damages recovered by the County
thereunder, shall be construed to excuse faithful performance by the Grantee, or
limit the liability of the Grantee under any franchise issued pursuant to this
ordinance.

(b) The County reserves the right to have its legislative body review
the dollar amount of said insurance policy and adjust the amount of coverage as
deemed appropriate upon an annual basis.

Section 23. License, Tax and Other Charges.

No privileges or rights granted hereunder shall exempt Grantee from any
future uniform rent, license, tax charge or impost which may hereafter be
required by the Grantor, for revenue or as reimbursement for use and occupancy
of public ways, and failure to timely remit any sums properly due thereby, shall
be cause for forfeiture of rights hereunder.

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Section 24. Severability.

If any portion of the ordinance is deemed invalid the remainder will remain in effect.

Section 25. Titles.

The section titles used herein are for reference only and should not be used for the purpose of interpreting this ordinance.

PASSED this 5th day of September, 1993.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Marge Laidlaw
MARGE LAIDLAW
CHAIRPERSON

ATTEST:

Ramona Reeves
Ramona Reeves
Clerk of the Council

() APPROVED () VETOED

Shirley Van Zanten
SHIRLEY VAN ZANTEN
COUNTY EXECUTIVE

APPROVED AS TO FORM:

Randall J. Watts
Randall J. Watts, Chief Civil
Deputy Prosecuting Attorney

10-6-93