



SPONSORED BY: Consent  
PROPOSED BY: Council Clerk  
INTRODUCTION DATE: 2/12/2008

**ORDINANCE NO. 2008-005**

**AMENDING WHATCOM COUNTY CODE (WCC) CHAPTER 12.24,  
FRANCHISE REQUIREMENTS**

**WHEREAS**, the Home Rule Charter of Whatcom County, Section 9.30 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**, the Revised Code of Washington (RCW) Chapter 36.55 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

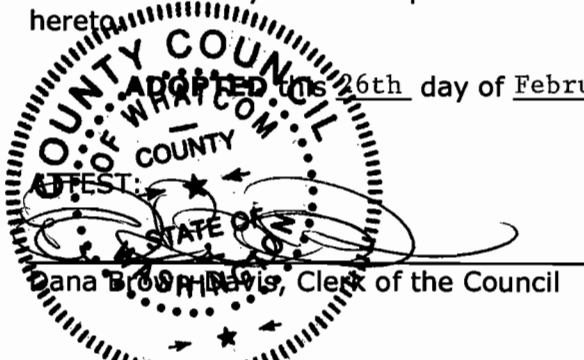
**WHEREAS**, often during the terms of franchises granted by the County Council there are changes in ownership and/or control of the company to which the franchise was granted; and

**WHEREAS**, it is ordinarily provided within the franchise ordinance and agreement, and is good practice in any event, that such changes in ownership and/or control of the company receive the review of and be subject to approval by the County Council in order to insure that the proposed new franchisee is able and willing to perform the conditions that were placed upon the original franchisee; and

**WHEREAS**, the County Council wishes to amend WCC Chapter 12.24 to more clearly define the process for reviewing and approving transfers of ownership and/or control by the franchisee.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that Whatcom County Code Chapter 12.24 is hereby amended as shown in Exhibit A attached hereto.

ADOPTED on the 26th day of February, 2008.



APPROVED AS TO FORM:

Daniel L. Gibson  
Daniel Gibson  
Assistant Chief Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

Carl Weimer  
Carl Weimer, Council Chair

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

Pete Kremen  
Pete Kremen, County Executive  
( ) Approved ( ) Denied

## Chapter 12.24 FRANCHISE REQUIREMENTS

### Sections:

- 12.24.011 Authority-
- 12.24.021 Application requirements-
- 12.24.025 Transfer of ownership or control
- 12.24.031 Forward to public works-
- 12.24.041 Ordinance-
- 12.24.051 Application – Notice of hearing-
- 12.24.061 Recording of franchise-
- 12.24.070 Submittal of plans and specifications-
- 12.24.080 Time limit-
- 12.24.090 Surety bonds-
- 12.24.100 Inspection-
- 12.24.110 Approval of alteration or revision-
- 12.24.120 Liability for construction or maintenance-

### **12.24.011 Authority-**

This chapter is enacted pursuant to authority contained in Chapter 36.55 RCW and Whatcom County Charter Section 9.30. (Ord. 2004-022).

### **12.24.021 Application requirements-**

A. Application for franchises on county roads and bridges shall be submitted to the Whatcom County council pursuant to RCW 36.55.040.

B. Every franchise application submitted to the county council shall be accompanied by a franchise application fee as set forth in the current Whatcom County unified fee schedule.

C. Every franchise application submitted to the county council must also be accompanied by a sketch of the proposed installation. (Ord. 2004-022).

### **12.24.025 Transfer of ownership or control**

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

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

C. A franchisee shall promptly notify the county council prior to any proposed change in, or transfer of, or acquisition by any other party of control of a franchisee's company. Every change, transfer, or acquisition by any other party of control of a franchisee's company shall cause a review of the proposed transfer. In the event that the county council adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the county may cancel the franchise. Approval shall not be required for mortgaging

purposes or if said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee.

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

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

F. Regardless of the circumstances, a franchisee shall promptly notify the county prior to any proposed name change of the franchisee's company. In the event that the county approves a resolution withholding its consent to the name change within sixty days of receipt of notice thereof, the county may cancel the franchise unless the parties to such change reverse its effects within sixty days after the county notifies the franchisee of its intent to cancel the franchise hereunder.

#### **12.24.031 Forward to public works-**

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

#### **12.24.041 Ordinance-**

Whatcom County public works director or the county engineer shall prepare an ordinance granting the franchise for consideration by the county council. (Ord. 2004-022).

#### **12.24.051 Application – Notice of hearing-**

The clerk of the council shall schedule a public hearing on the ordinance granting the franchise pursuant to RCW 36.55.050. (Ord. 2004-022).

#### **12.24.061 Recording of franchise-**

The Whatcom County council clerk shall cause the franchise to be recorded by the county auditor pursuant to RCW 36.55.080. (Ord. 2004-022).

#### **12.24.070 Submittal of plans and specifications-**

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

#### **12.24.080 Time limit-**

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

#### **12.24.090 Surety bonds-**

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

#### **12.24.100 Inspection-**

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

**12.24.110 Approval of alteration or revision-**

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

**12.24.120 Liability for construction or maintenance-**

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