

Franchise 101

March 6, 2018 Regular Meeting

Purpose & Authority

- The City Council will be considering several franchises in 2018. This presentation is intended to provide an overview of what a franchise is, and to answer potential questions Council might have regarding a franchise.
- Upcoming franchises: PSE, Verizon, Comcast and Olympic Pipeline.
- General authority to franchise under state law. Every code city has the authority to grant a franchise in the Rights-of-Ways (ROW). No ordinance granting a franchise may be adopted at the first meeting it is introduced. RCW 35A.47.040

FAQ

Q: What is a franchise?

A: A franchise is a contract between the City and provider (typically a utility, such as water, sewer, cable, telecommunications) that regulates the use of the ROW by that provider.

Q: Why would the City want to grant a franchise to use the ROW?

A: Generally, a franchise provides greater accountability for a service provider's use of the ROW. For example, instead of obtaining a simple ROW permit, a franchise requires additional safeguards, such as insurance, indemnities and bonds for the entire term of the franchise.

Q: Can we use a franchise to regulate the operation of a service provider?

A: No. Courts have held that a franchise needs to regulate the service provider's use of the ROW. For example, a franchise cannot dictate the operations of a service provider (i.e., utility charges, available cable channels, etc.), but it can regulate work done and use of the ROW.

FAQ (cont.)

Q: Can we charge a franchise fee?

A: It depends.

- Under federal law, the City may charge a 5% franchise fee for cable television
- Under state law, the City may not charge a franchise fee for natural gas or electric distribution companies. Cities may recover actual expenses relating to the franchise, and review of permits required under City's code. RCW 35.21.860
- Under state law, the City may not charge a franchise fee for a "telephone business", which telecommunications fall under (for now). But, site specific charges are allowed for: (i) placement of new structures if not required to be relocated by City; (ii) replacement structure that exceeds 60-feet; and (iii) placement of wireless facilities on city-owned poles/structures in ROW.
- Under case law, the City may charge a franchise fee for water/sewer utilities.
- The City may charge a franchise fee for gas pipelines (Olympic Pipeline).

RCW 35.99 – Master Permits

- Requests for franchises for telecommunications are more common. Chap. 35.99 RCW applies to providers of telecommunication services. Telecommunication services are defined as the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. It does not apply to the transmission of television or radio signals.
- Under Chap. 35.99 RCW franchises are defined as a “master permit”. Chapter does not apply to television, radio or cable t.v.
- A city may request, but not require, that a provider with an existing statewide grant to occupy the right-of-way obtain a master permit for wireline facilities (certain phone companies).
- Any denial of a master permit must be supported by substantial evidence contained in a written record. A service provider adversely affected by the final action denying a franchise may commence an action in court.

RCW 35.99 (cont.):

- A franchise ordinance under Chap. 35.99 RCW is authorized to:
- Facilitate the scheduling and coordination of work in the right-of-way, provide as much advance notice as reasonable of plans to open the right-of-way to those service providers who are current users of the right-of-way or who have filed notice with the clerk of the city or town within the past twelve months of their intent to place facilities in the city or town. A city is not liable for damages for failure to provide this notice. Where the city has failed to provide notice of plans to open the right-of-way consistent with this subsection, a city may not deny a use permit to a service provider on the basis that the service provider failed to coordinate with another project.
- Require that facilities are installed and maintained within the right-of-way in such a manner and at such points so as not to inconvenience the public use of the right-of-way or to adversely affect the public health, safety, and welfare.
- Service providers must:
- Obtain all permits required by the city or town for the installation, maintenance, repair, or removal of facilities in the right-of-way;
- Comply with applicable ordinances, construction codes, regulations, and standards subject to verification by the city or town of such compliance;
- Cooperate with the city or town in ensuring that facilities are installed, maintained, repaired, and removed within the right-of-way in such a manner and at such points so as not to inconvenience the public use of the right-of-way or to adversely affect the public health, safety, and welfare;
- Provide information and plans as reasonably necessary to enable a city or town to comply with subsection (5) of this section, including, when notified by the city or town, the provision of advance planning information pursuant to the procedures established by the city or town;
- Obtain the written approval of the facility or structure owner, if the service provider does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way;
- Construct, install, operate, and maintain its facilities at its expense; and
- Comply with applicable federal and state safety laws and standards.

Status of upcoming franchises

- PSE – pending negotiations (current draft not approved by PSE).
- Comcast – pending negotiations.
- Verizon – proposed franchise being reviewed by City.
- Olympic Pipeline – franchise discussions initiated.
- City Clerk has list of all City franchises.

QUESTIONS?