



Signature Report

February 23, 2000

Ordinance 13734

Proposed No. 1999-0297.2

Sponsors Sullivan, Miller, Pullen and Pelz

1 AN ORDINANCE establishing procedures and fees for
2 authorizing minor communication facilities to use county
3 rights-of-way; and creating a new chapter in K.C.C. Title 14
4 and adding new sections to K.C.C. Title 14.

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7 **SECTION 1. Findings.** The Metropolitan King County council makes the
8 following findings.

9 A. The King County executive signed into law Ordinance 13129, which
10 established land use policies and development standards regulating the siting of minor
11 communication facilities. Ordinance 13129 encourages location of wireless
12 telecommunications towers in non-residential areas, joint use of new and existing
13 wireless telecommunications tower sites and tower and antenna siting in areas where the
14 adverse impact on the community is minimal.

15 B. Wireless telecommunication providers have requested access to and use of
16 county right-of-way for facilities for provision of wireless telecommunications services.

17 C. County right-of-way may be used and occupied by wireless
18 telecommunications providers for facilities for the delivery, conveyance, and

19 transmission of wireless telecommunications, for the enhancement of the health, welfare,
20 and general economic well-being of the county and its citizens.

21 D. King County seeks to promote the availability of high-quality and diverse
22 wireless telecommunications services to county residents, businesses, the county and
23 other public institutions, and seeks to encourage competition and neither to promote nor
24 to hinder one wireless telecommunication service provider over others.

25 E. New technology and competition fosters intensive use and occupancy of
26 county right-of-way by multiple users. Intensive use and occupancy of county right-of-
27 way requires coordination and management to ensure orderly planning, entry,
28 construction, repair, maintenance, coordination and acquisition of county right-of-way, as
29 well as mechanisms to protect and assure the public health, safety and welfare, and
30 reliable delivery of essential county services.

31 F. King County has the authority under federal, state and local laws to acquire,
32 construct, maintain, abandon and regulate the use and occupancy of streets, right-of-way,
33 and other county property, to grant access thereto upon certain terms and conditions; and
34 to obtain compensation for the use of county right-of-way.

35 G. Wireless minor communication facilities are non-lineal and will occupy both
36 smaller and fewer areas of the right-of-way than traditional utility facilities. As such,
37 they are not required to be subject to the franchise application, notice and legislative
38 action requirements applicable under state law to lineal facilities such as water, sewer or
39 gas pipelines, and telephone, cable, telegraph and electric light lines.

40 H. It is appropriate to provide for agreements to authorize and manage such use
41 consistent with the policy decisions set forth in Ordinance 13129 by requiring owners of

42 wireless telecommunications facilities to obtain a right-of-way use agreement for each
43 site-specific proposal to place facilities.

44 I. The County must exercise its authority in order to:

- 45 1. protect county right-of-way throughout the county,
- 46 2. provide for county management of the placement of wireless
47 telecommunications facilities in the county right-of-way,
- 48 3. ensure that wireless telecommunications providers are treated in a non-
49 discriminatory manner while requiring compliance with all applicable codes and
50 standards;
- 51 4. minimize disruption to existing and future public services relying on wireless
52 telecommunications facilities in the county right-of-way, including, but not limited to
53 county 800 MHz radio communications;
- 54 5. ensure public safety;
- 55 6. ensure compatibility with other infrastructure in the county right-of-way; and
- 56 7. provide for receipt of fair and reasonable compensation from wireless
57 telecommunication providers for use of county right-of-way.

58 J. The privilege to place wireless telecommunications facilities and fixtures in
59 county right-of-way is a valuable economic benefit that is available through the use of
60 property rights held by the county. County right-of-way is a unique public resource
61 acquired and maintained at substantial expense to the county and its taxpayers. The
62 county has an obligation to manage the county right-of-way as a trustee for the public.
63 The county shall manage the county right-of-way in a manner recognizing the economic
64 value of the publicly owned asset and protecting the health, safety and welfare of the

65 public.

66 SECTION 2. There is hereby added to K.C.C. Title 14 a new chapter entitled as
67 follows: "**Wireless Minor Communication Facilities Within County Rights-of-Way**"

68 NEW SECTION. SECTION 3. There is hereby added K.C.C. Chapter 14 a new
69 section to read as follows:

70 Purpose. The purpose of this chapter is to grant, through right-of-way use
71 agreements, authority for the placement of minor communication facilities within the
72 county rights-of-way, and to establish standards for right-of-way use agreements which:

73 A. Compensate the county for the value of the use of the county right-of-way by
74 wireless telecommunications providers; and

75 B. Reimburse the county for ongoing costs associated with those uses of the
76 county right-of-way; and

77 C. Encourage competition by establishing consistent terms and conditions under
78 which wireless telecommunications providers may use valuable public property to serve
79 the public; and

80 D. Fully protect the public and the county from any harm that may flow from
81 such private use of county right-of-way; and

82 E. Protect and carry out the authority of the county over activities in the county
83 right-of-way, while recovering costs; and

84 F. Allow the county to exercise its stewardship responsibilities with regard to
85 county right-of-way in a manner consistent with all applicable county policies and codes,
86 including but not limited to the zoning code, the county comprehensive plan, county road
87 standards; and

88 G. Otherwise protect the public interests in the development and use of the
89 county right-of-way infrastructure and in preserving and improving the aesthetics of the
90 community.

91 NEW SECTION. SECTION 4. There is hereby added to K.C.C. Title 14 a new
92 section to read as follows:

93 Definitions. The following terms shall be applicable to this chapter:

94 A. "Right-of-way" is land, property or property interest, such as an easement,
95 usually in a strip, as well as bridges, trestles, or other structures, dedicated to, or
96 otherwise acquired by the county for public motor vehicle transportation purposes,
97 including, but not limited to, roads, streets, avenues, and alleys, whether or not opened,
98 improved or maintained for public motor vehicle transportation purposes.

99 B. "Right-of-way use agreement" is an agreement between the county and a
100 wireless telecommunications provider through which is granted a site-specific and
101 revocable privilege to use county right-of-way at a location identified in the agreement
102 for wireless telecommunications facilities, and through which are set forth the terms and
103 conditions for exercising the granted privilege to use the county right-of-way.

104 C. "Wireless telecommunications facility" is the capital, equipment and property,
105 including but not limited to the poles, pipes, mains, conduits, ducts, pedestals, and
106 electronic equipment within the right-of-way used for the purpose of transmitting,
107 receiving, distributing, providing, or offering wireless telecommunications.

108 D. "Wireless telecommunications provider" is every person that owns, controls,
109 operates or manages a wireless minor telecommunication facility within the county right-
110 of-way for the purpose of offering wireless telecommunication services (i.e. transmission

111 for hire of information in electronic or optical form, including, but not limited to, voice,
112 video, or data).

113 E. "Wireless" means transmissions through the airwaves including, but not
114 limited to, infrared line of sight, cellular, microwave, or satellite.

115 NEW SECTION. SECTION 5. There is hereby added to K.C.C. Title 14 a new
116 section to read as follows:

117 Exemptions. The following wireless minor telecommunication facilities are not
118 subject to the provisions of this chapter:

119 A. Facilities located or constructed by King County or under contract to King
120 County; and

121 B. Facilities for wireless telecommunication service providers that have current
122 franchise agreements pursuant to K.C.C. chapter 6.27A.

123 NEW SECTION. SECTION 6. There is hereby added to K.C.C. Title 14 a new
124 section to read as follows:

125 Grant of authority - Right-of-way use agreement required. Wireless minor
126 communication facilities shall only be located or constructed within King County rights-
127 of-way after a right-of-way use agreement is issued by the property services division of
128 the department of construction and facility management. Prior to issuing the agreement,
129 the division shall ensure that the proposed facility is located, designed and proposed to be
130 constructed in a manner that complies with all applicable county policies and codes,
131 including but not limited to the provisions of this ordinance, zoning code, the county
132 comprehensive plan, county road standards, and the Regulation for Accommodations of
133 Utilities on county Roads Right-of-Way adopted by K.C.C. 14.44.060. Furthermore, the

134 right-of-way use agreement shall only allow placement of wireless telecommunication
135 facilities on improved and maintained county road rights-of-way.

136 NEW SECTION. SECTION 7. There is hereby added to K.C.C. Title 14 a new
137 section to read as follows:

138 Effective period for grant of authority. The right-of-way use agreement
139 constitutes authorization for the applicant to use the county right-of-way at the location
140 specified in the agreement for no more than ten years. Failure to comply with the terms
141 and conditions of the right-of-way agreement, including payment of required annual
142 compensation, is cause for revoking of the use agreement. The agreement holder shall
143 remove facilities authorized the agreement from the county right-of-way upon expiration
144 of the agreement, unless renewed, or upon revocation of the agreement for cause.

145 NEW SECTION. SECTION 8. There is hereby added to K.C.C. Title 14 a new
146 section to read as follows:

147 Contents of application. A. The property services division shall not commence
148 review of any application set forth in this chapter until the applicant has submitted the
149 following:

- 150 1. An application form provided by the property services division and
151 completed by the applicant;
- 152 2. The name of the applicant and a designated contact person;
- 153 3. Plans and specifications for any structures, antenna or other equipment to be
154 placed in the right-of-way or , if applicable, on abutting private property,
- 155 4. A vicinity map showing the specific location of right-of-way subject to the
156 application;

- 157 5. When structures and equipment are to be located on abutting properties:
158 a. a site plan illustrating the relationship to property lines and other structures
159 on the site,
160 b. legal description of the site abutting property, and
161 c. proof that the abutting property is a legally recognized lot pursuant to
162 K.C.C. Title 19A;
- 163 6. A sensitive areas affidavit if required by K.C.C. chapter 21A.24;
164 7. A completed environmental checklist, if required by K.C.C. chapter 20.44;
165 and
166 8. Payment of any review fees established by this ordinance;
- 167 B. The applicant shall attest by written oath to the accuracy of all information
168 submitted for an application.

169 NEW SECTION. SECTION 9. There is hereby added to K.C.C. Title 14 a new
170 section to read as follows:

171 Application review. The property services division, roads services division of the
172 department of transportation and the department of development and environmental
173 services shall coordinate review and inspection of the application for a right-of-way use
174 agreement and, to the extent required, any zoning approvals, building permits and
175 environmental review under the state Environmental Policy Act, as follows:

176 A. The property services division shall coordinate the review by all departments
177 of right-of-way use agreement applications.

178 B. The roads services division shall review and evaluate applications with respect
179 to the hazard and risk of the proposed construction and location of the proposed

180 construction in relation to other utilities in the right-of-way.

181 C. The department of development and environmental services shall review and
182 evaluate all applications to determine consistency with respect to the standards and
183 requirements of K.C.C. chapter 21A.26 and this ordinance. The department shall also be
184 the lead agency for purposes of any environmental review required under K.C.C. 20.44.

185 NEW SECTION. SECTION 10. There is hereby added to K.C.C. chapter 14.44
186 a new section to read as follows:

187 Application review and inspection fees. The following fees shall be required for
188 the administrative costs and expenses of processing and inspecting a right-of-way use
189 agreement application.

<u>Review Agency</u>	<u>Fee</u>
190 Property services division (application processing)	\$100
191 Department of development	as provided in K.C.C. 27.10.120
192 and environmental services (zoning review)	
193 Road services division (inspection)	\$125 per hour

194
195 NEW SECTION. SECTION 11. There is added to K.C.C. Title 14 a new section
196 to read as follows:

197 Annual compensation for use of right of way.

198 A. In consideration for continuing use of the county rights-of-way, an agreement
199 holder shall commit to provide an annual use payment The amount of the use payment
200 shall be as follows:

<u>Type of Equipment/Facility within the right-of-way</u>	<u>Use Payment</u>
201 Separate support structure (such as a monopole or lattice)	\$5,000

203 used solely for wireless antenna, with antenna/receiver transmitter
204 and/or equipment cabinet

205 Antenna/receiver transmitter (on an existing or replacement pole) \$3,000

206 and equipment cabinet

207 Antenna/receiver transmitter (on an existing or replacement pole) \$2,000

208 or equipment cabinet, but not both

209 B. For the purpose of this section, "replacement pole" means a new utility pole
210 replacing an existing utility pole in the county right-of-way with no increase in the total
211 number of utility poles in the right-of-way. Replacement poles provide extra capacity to
212 support attached wireless telecommunications facilities.

213 C. Use payments shall be paid to the property services division and are due upon
214 the signing of the agreement, prorated to the end of the year, and the first of January
215 every year thereafter.

216 D. All use payments prescribed by subsection A shall be automatically escalated
217 annually, beginning January 1, 2001 and every year thereafter, for the change in the U.S.
218 Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban
219 Consumers ("CPI-U") for the Seattle-Tacoma-Bremerton Statistical Metropolitan Area
220 for the preceding calendar year. In the event the CPI-U (or a successor or substitute
221 index) is no longer published, a reliable government or other non-partisan index of
222 inflation selected by the county shall be used to calculate the adjusted amounts.

223 NEW SECTION. SECTION 12. There is hereby added to K.C.C. Title 14 a new
224 section to read as follows:

225 Insurance requirements. A. For any right-of-way use agreement, the agreement

226 holder must carry commercial general liability, automobile liability and stop gap or
227 employers liability coverage, each in minimum limits of not less than one million dollars
228 (\$1,000,000), in an amount approved by the King County office of risk management. All
229 policies must name King County as an additional named insured.

230 B. All policies shall be placed with insurers having a Bests' rating of no less than
231 A:VIII or, if not rated by Bests, with surpluses equivalent to or greater than Bests' A:VIII
232 rating. The agreement holder shall send copies of certificates, endorsements or other
233 adequate evidence of compliance with this section to the office so designated in the
234 application prior to the county's execution of the agreement.

235 NEW SECTION. SECTION 13. There is hereby added to K.C.C. Title 14 a new
236 section to read as follows:

237 Liquidated damages. All right-of-way use agreements may provide for liquidated
238 damages to compensate the county for harm caused by violation of an agreement or this
239 chapter, or any applicable law in an amount which is a reasonable forecast of just
240 compensation for the harm caused by the violation.

241 NEW SECTION. SECTION 14. There is hereby added to K.C.C. Title 14 a new
242 section to read as follows:

243 Liability and indemnification. A. All right-of-way use agreements shall contain
244 the following provision: the holder of agreement shall have no recourse whatsoever
245 against the county or its officials, boards, commissions, agents, or employees for any
246 loss, costs, expenses, or damages arising out of any provision or requirement of the
247 agreement, or this ordinance because of the enforcement of the agreement, or this
248 ordinance except if such loss, costs, expenses or damages are the result of the sole

249 negligence or misconduct on the part of the county or its agents.

250 B. All right-of-way use agreements shall contain the following provision: to the
251 extent permitted by law, the holder of the agreement shall, at its sole cost and expense,
252 indemnify, hold harmless, and defend the county and its officers, boards, commissions,
253 agents and employees, against any and all claims, including but not limited to third-party
254 claims, suits, causes of action, proceedings and judgments for damages or equitable relief
255 arising out of the construction, repair, maintenance or operation of its wireless
256 telecommunication facilities, or in any way arising out of the agreement holder's
257 enjoyment or exercise of the right-of-way use agreement granted pursuant, or otherwise
258 subject, to this ordinance, regardless of whether the act or omission complained of is
259 authorized, allowed or prohibited by this ordinance or an agreement. This provision
260 includes, but is not limited to expenses for reasonable legal fees and for disbursements
261 and liabilities assumed by the county as follows:

262 1. To persons or property, in any way arising out of or through the acts or
263 omissions of the agreement, its officers, employees, or agents or to which the agreement
264 holder's negligence shall in any way contribute;

265 2. Arising out of a agreement holder's failure to comply with the provisions of
266 any federal, state or local statute, ordinance, rule, or regulation applicable to the
267 agreement holder.

268 C. The county shall give the agreement holder timely written notice of the
269 making of any claim or the commencement of any action, suit or other proceeding
270 covered by this ordinance. In the event any such claim arises, the county or any other
271 indemnified party shall tender the defense thereof to the permit and the agreement holder

272 shall have the right to defend, settle, or compromise any claims arising hereunder and the
273 county shall cooperate fully therein.

274 NEW SECTION. SECTION 15. There is added to K.C.C. Title 14 a new section
275 to read as follows:

276 Antenna and equipment cabinets/buildings abutting residential zones. Antenna
277 and equipment cabinets/buildings abutting zoned UR, RA or R shall be subject to the
278 following:

279 A. Antennas shall not extend horizontally more than three feet from any pole to
280 which it is mounted. This provision shall be reviewed one year after the effective date of
281 this ordinance to evaluate aesthetic benefits upon residential neighborhoods and to
282 determine the effects upon the ability of wireless service providers to reasonably and
283 efficiently place facilities within the right-of-way. In order to facilitate this review,
284 wireless service providers shall provide photographs documenting antennas located on all
285 current facilities that are subject to right-of-way use agreements.

286 B. Electronic equipment cabinets or buildings shall be constructed underground
287 when there is an existing residential dwelling unit within three hundred feet, unless the
288 required excavation will occur within the required buffers of sensitive areas, such as
289 wetlands, streams and steep slopes, thus posing greater potential for environmental
290 degradation of the sensitive area.

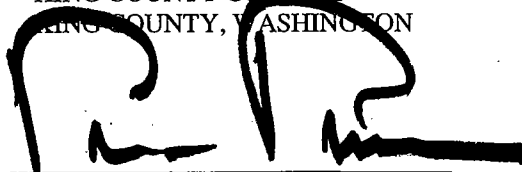
Ordinance 13734 was introduced on 5/24/99 and passed as amended by the Metropolitan King County Council on 2/22/00, by the following vote:

Yes: 12 - Mr. von Reichbauer, Ms. Miller, Ms. Fimia, Mr. Pelz, Mr. McKenna, Ms. Sullivan, Mr. Nickels, Mr. Pullen, Mr. Gossett, Ms. Hague, Mr. Vance and Mr. Irons

No: 0

Excused: 1 - Mr. Phillips

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, 2000.

~~DEEMED ENACTED WITHOUT~~
COUNTY EXECUTIVE'S SIGNATURE

DATED: 3/6/2000

Ron Sims, County Executive

Attachments None.