

March 24, 1994  
jl/franord

Introduced by: LOUISE MILLER  
Sims, Barden

Proposed No.: 93-462

ORDINANCE NO. **11278**

AN ORDINANCE clarifying responsibility for removal, relocation or repair of water and sewer facilities in county road rights-of-way, amending Ordinance 1710, Sections 1 and 6, and K.C.C. 6.27.010 and K.C.C. 6.27.060.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

**SECTION 1. Findings.** Based on testimony received and other evidence reviewed by the King County council, the council makes the following findings of fact:

1. Though King County owns road rights-of-way primarily for the needs of transportation, road rights-of-way also are generally the most convenient location for utility lines that provide critical services to county residents and employers.

2. The county negotiates franchise agreements setting the conditions under which utilities may use its rights-of-way in specified areas.

3. An ambiguity in the relationship between the county and the utilities with which it has franchise agreements has arisen when a line within a utility's system is owned by a third party. This occurs most frequently with water and sewer utilities. Water utilities typically accept ownership of a service line only up to a customer's meter; the customer then owns the line beyond the meter. In numerous places throughout King County, water meters are located in county road right-of-way at a significant distance from property lines; the utility considers the service lines that connect these meters to customers to be privately owned. The policies of sewer utilities operating within unincorporated King County vary as to whether the utility or the customer is considered the owner of that portion of side sewers within county road rights-of-way.

4. It has long been the policy of the King County division of roads and engineering to hold franchised water and

1 sewer utilities responsible for all parts of the system serving  
2 their customers within county road rights-of-way, including  
3 service lines. The roads division has considered this  
4 necessary for the prompt, efficient and effective repair,  
5 removal or relocation of water and sewer facilities in county  
6 right-of-way.

7 5. The language of franchise agreements for sewer and  
8 water utilities concerning this responsibility has evolved over  
9 the years. All franchise agreements renewed since May 1988  
10 have stated that "The Grantee (of the franchise) hereby  
11 covenants, at its own expense, to install, repair, remove or  
12 relocate existing facilities, including all appurtenant  
13 facilities and service lines connecting its services to users  
14 within county Road Rights-of-Way, if such installation, repair,  
15 removal or relocation is required by the county for any  
16 purpose."

17 6. K.C.C. 14.44 allows only franchised utilities to  
18 perform work in county road rights-of-way under a right-of-way  
19 construction permit. Individuals are allowed to perform work  
20 in county road rights-of-way only under right-of-way use  
21 permits, which are not granted for the repair of utility  
22 service lines.

23 7. If a utility refuses to repair, remove or relocate a  
24 water or sewer facility in county road right-of-way and a  
25 citizen is unable to receive a right-of-way use permit for such  
26 work, the public health, safety and welfare may be endangered  
27 by resulting delay in performance of such work. In the case of  
28 damage to sewer lines resulting from work being performed  
29 within the county road rights-of-way, the health of employees  
30 performing such work may be endangered by exposure to the  
31 contents of the lines, towards which they are not necessarily  
32 trained or equipped to respond.

33 8. When the county, because of a project in its capital  
34 improvement program, requires a utility to remove or relocate a  
35 sewer or water facility other than a service line, the overall

1 cost to the public can often be lowered if a single contractor  
2 can be selected to perform both the public works project and  
3 the action required of the utility. Even if this proves  
4 infeasible, the public is better served when the sewer or water  
5 utility receives as much notice as is practicable that it may  
6 be required to remove or relocate a facility.

7 9. All of the county's franchise agreements with water  
8 and sewer utilities contain language allowing the county to  
9 alter or amend the agreements to conform with any county  
10 regulation relating to the public health, safety, welfare or  
11 right-of-way, given that notice has been provided to the  
12 grantee as specified in each agreement.

13 10. It is in the interest of the public health, safety  
14 and welfare for the county to amend its franchise agreements to  
15 clarify responsibility for the repair, removal, location or  
16 relocation of water or sewer facilities in county road rights-  
17 of-way as described in this ordinance. This will result in  
18 more prompt, efficient and effective work in the right-of-way  
19 and allow for a clearer assignment of future liability should  
20 there be any defect in such work.

21 SECTION 2. Ordinance 1710, Section 1, and K.C.C. 6.27.010  
22 are hereby amended to read as follows:

23 Purpose. The purpose of this chapter is to regulate the  
24 granting of county right-of-way franchises for public and  
25 private utilities to insure consistency of such franchises with  
26 the applicable district comprehensive plan, the county  
27 comprehensive plan, sound engineering and design standards,  
28 health and sanitation regulations and county standards for  
29 water mains and fire hydrants and to protect against damage to  
30 the county rights-of-way or threats to the public health,  
31 safety and welfare that may result from the presence of such  
32 utilities in such rights-of-way.

33 SECTION 3. Ordinance 1710, Section 6, and K.C.C. 6.27.060  
34 are hereby amended to read as follows:

1           **Criteria for approval.** A. All franchises granted for  
2 county rights-of-way shall be consistent with the following  
3 criteria:

4           1. A previously approved comprehensive plan for the  
5 applicant;

6           2. The county comprehensive plan;

7           3. The standards of good practice regarding  
8 accommodation of utilities on county road right-of-way as  
9 ~~((published by the county road administration board in the))~~  
10 stated in the King County Road Standards, pursuant to  
11 Washington Administrative Code, Chapter 136-40 ~~((, which has~~  
12 ~~been adopted by King County as policy for the accommodation of~~  
13 ~~utilities on all county roads))~~.

14           B. In addition, all franchises granted for water and sewer  
15 districts and water distributors shall be consistent with the  
16 following criteria:

17           1. Health and sanitation regulations of the Seattle-  
18 King County health department and the state;

19           2. County standards for water mains and fire  
20 hydrants ~~((-))~~;

21           3. The grantee of the franchise shall, at no expense to  
22 the county, repair all existing facilities that it owns within  
23 county road rights-of-way, including all appurtenant facilities  
24 and service lines connecting its system to users, if such  
25 repair is required by the county for any reasonable purpose;

26           4. The grantee of the franchise shall, at no expense to  
27 the county, adjust, remove or relocate existing facilities  
28 within county road rights-of-way, including all appurtenant  
29 facilities and service lines connecting its system to users, if  
30 the county determines such adjustment, removal or relocation is  
31 reasonably necessary to allow for an improvement or alteration  
32 planned by the county in such road right-of-way. The county  
33 shall give the grantee written notice of such requirement as  
34 soon as practicable, at the beginning of the pre-design stage  
35 for projects that are part of the county's capital improvement

1 program, including such available information as is reasonably  
2 necessary for the grantee to plan for such adjustment, removal  
3 or relocation;

4 5. For projects that are a part of the county's capital  
5 improvement program, in addition to any other notice given to  
6 the grantee of the franchise, the county shall provide a  
7 vertical and horizontal profile of the roadway and drainage  
8 facilities within it, both existing and as proposed by the  
9 county, and the proposed construction schedule; notwithstanding  
10 any permit conditions that may later be applied to the county  
11 project, this initial design information shall be given at  
12 least 180 days before construction is scheduled to begin,  
13 except in cases of urgent construction or emergencies. The  
14 grantee shall respond to this notice, and to any later notices  
15 of revised designs based on permit conditions, within no more  
16 than 30 days by providing to the county the best available  
17 information as to the location of all of the grantee's  
18 facilities, including all appurtenant facilities and service  
19 lines connecting its system to users and all facilities that it  
20 has abandoned, within the area proposed for the public works  
21 project. The county shall offer the grantee the opportunity to  
22 participate in the preparation of bid documents for the  
23 selection of a contractor to perform the public works project  
24 as well as all required adjustments, removals or relocations of  
25 the grantee's facilities. Such bid documents shall provide for  
26 an appropriate cost allocation between the parties. The county  
27 shall have sole authority to choose the contractor to perform  
28 such work. The grantee and the county may negotiate an  
29 agreement for the grantee to pay the county for its allocation  
30 of costs, but neither party shall be bound to enter into such  
31 an agreement. Under such an agreement, in addition to the  
32 grantee's allocation of contractor costs, the grantee shall  
33 reimburse the county for costs, such as for inspections or  
34 soils testing, related to the grantee's work and reasonably  
35 incurred by the county in the administration of such joint

1 construction contracts. Such costs shall be calculated as the  
2 direct salary cost of the time of county professional and  
3 technical personnel spent productively engaged in such work,  
4 plus overhead costs at the standard rate charged by the county  
5 on other similar projects, including joint projects with other  
6 county agencies.

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

12 a. The grantee shall apply for, upon request and on  
13 behalf of the owner of the facilities, a county right-of-way  
14 construction permit for any repairs required for such  
15 facilities; provided such owner agrees to reimburse the grantee  
16 for all costs incurred by the grantee and any other reasonable  
17 conditions the grantee requires as a precondition to applying  
18 for the permit. All work to be performed in the county right-  
19 of-way shall comply with all conditions of the county permit  
20 and all applicable county requirements. The grantee may at its  
21 option perform any part of the repair with its own forces or  
22 require the owner to employ a contractor for that purpose,  
23 provided such contractor is approved by the county;

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

32 c. When the county or its contractor provides notice  
33 to the grantee, pursuant to R.C.W. 19.122, of its intent to  
34 excavate within county road rights-of-way, the grantee shall  
35 provide to the county or its contractor the best information

1 available from the grantee's records or, where reasonable, from  
2 the use of locating equipment as to the location of such  
3 facilities, including surface markings where these would  
4 reasonably be of use in the excavation. If the grantee fails  
5 to make good faith efforts to provide the above information  
6 within the deadlines provided by R.C.W. 19.122, the grantee  
7 shall hold the county harmless for all reasonable costs that  
8 result from damage to such facilities if such damage occurs as  
9 a result of the failure to provide such information. Nothing  
10 in this subsection is intended or shall be construed to create  
11 any rights in any third party or to form the basis for any  
12 obligation or liability on the part of the county or the  
13 grantee toward any third party, nor is anything in this  
14 subsection intended or to be construed to alter the rights and  
15 responsibilities of the parties under R.C.W. 19.122, as  
16 amended.

17       SECTION 4. The county executive is hereby directed to  
18 notify all grantees of water and sewer franchises, consistent  
19 with the requirement for notice in their franchise agreements,  
20 that their agreements have been amended to include the language  
21 in Section 3, Subsection B., Paragraphs 3, 4, 5 and 6 of this  
22 ordinance, which shall take precedence over any existing  
23 language in their agreements. If the grantee, its successors  
24 or assigns shall violate or fail to comply with these  
25 amendments after they become effective, King County may notify  
26 the grantee of the county's intent to revoke the franchise.  
27 The county shall schedule a public hearing within 45 days of  
28 such notification. The decision to revoke shall become  
29 effective 90 days following the public hearing if the county  
30 finds the revocation to be in the public interest.

1        SECTION 5. Severability. If any provision of this  
2 ordinance or its application to any person or circumstance is  
3 held invalid, the remainder of the ordinance or the application  
4 of the provision to other persons or circumstances is not  
5 affected.

6        INTRODUCED AND READ for the first time this 14<sup>th</sup> day  
7 of June, 1993.

8        PASSED this 4<sup>th</sup> day of April, 1994.

9        Passed by a vote of 10 to 0.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Kent Pullen  
Chair

13        ATTEST:

14        Gerald A. Peterson  
15        Clerk of the Council

16        APPROVED this 14<sup>th</sup> day of April, 1994.

Ray Locke  
King County Executive

19        Attachments:  
20        None