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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 08 - 103

RELATING TO THE REQUIREMENTS FOR FRANCHISES;
AMENDING TITLE 13 SNOHOMISH COUNTY CODE

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Snohomish County Code Section 13.10.090, last amended by Ordinance No. 96-028 § 16, on June 12, 1996, is amended to read:

13.10.090 ~~((Hold harmless, indemnification, and defense.))~~
Defense, hold harmless, and indemnification.

Any permit, agreement, or franchise shall provide that the applicant/permittee/franchisee shall defend the county and its elected and appointed officials, officers and employees against any claim, and hold harmless and indemnify the county and its elected and appointed officials, officers and employees for any loss arising out of the applicant's/permittee's/franchisee's use of the right-of-the-way. The defense, hold harmless, and indemnification provisions in any permit, agreement, or franchise shall be prepared by the department in consultation with the prosecuting attorney and the risk manager. ~~((contain the following:~~

~~—(1)—The applicant/permittee/franchisee shall assume the risk of, be liable for, and pay all damage, loss, cost and expense of any party arising out of the applicant's/permittee's/franchisee's use of the right of way, to the extent of their negligent actions, errors, omissions, or breach of any obligations.~~

~~—(2)—The applicant/permittee/franchisee shall hold harmless from and indemnify Snohomish County, its elected and appointed officials, officers and employees, against all claims, demands, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to any property or business and/or any death, injury or disability to or of any person or party of any nature arising out of or suffered, directly or indirectly, in whole or in part, from the actions, errors, omissions, or breach of any common law, statutory, regulatory or contractual obligations in connection with the activities of the applicant/permittee/franchisee, its sub-contractors, assigns, agents,~~

~~contractors, or employees, under any agreement/permit/franchise of this title or in connection with the use of the right-of-way;~~

~~PROVIDED that nothing herein shall require an applicant/permittee/franchisee to hold harmless from and indemnify Snohomish County, its elected and appointed officials, officers and employees, against claims, demands, or suits based solely upon the negligence of Snohomish County, its elected and appointed officials, officers and employees; and~~

~~PROVIDED FURTHER, that if the claims, demands, or suits are caused by or result from the concurrent negligence of (a) Snohomish County, its elected and appointed officials, officers and employees and (b) the applicant/permittee/franchisee, its sub-contractors, assigns, agents, contractors, or employees, and involve those actions covered by RCW 4.24.115, this indemnity provision, with respect to liability for damages arising out of bodily injury to persons or damage to property based upon such concurrent negligence, shall be valid and enforceable only to the extent of applicant's/permittee's/franchisee's negligence or the negligence of their sub-contractors, assigns, agents, contractors, or employees, except as limited below.~~

~~—(3)—Applicant/permittee/franchisee further agrees to process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the actions, errors, omissions, or breach of any obligations of the applicant/permittee/franchisee, its sub-contractors, assigns, agents, contractors, or employees, arising out of or in connection with any activities related to the agreement/permit/franchise or use of the right-of-way. The applicant's/permittee's/ franchisee's duty to assume the defense and to pay all expenses thereof shall apply to all claims or allegations of negligence where any duty to provide indemnification in whole or in part potentially applies, whether or not the injuries or damages are ultimately found to be due to the negligence of the applicant/permittee/franchisee arising out of the agreement/permit/franchise or use of the right-of-way.))~~

Section 2. Snohomish County Code Section 13.10.100, last amended by Ordinance No. 96-028 § 17 on June 12, 1996, is amended to read:

13.10.100 Insurance.

~~((1)—If the engineer determines that there is a risk of potential liability to the county arising out of any proposed use of any right-of-~~

~~way, he/she may require the permittee or franchisee to obtain, and maintain continuously for the term of the permit or franchise, Commercial General Liability Insurance with endorsements and/or other insurance to indemnify for the activities and services of the permit or franchise, with a carrier subject to the approval of the county. Minimum limit of coverage shall be \$1,000,000 combined single limit, each occurrence.~~

~~—(2)— Such insurance shall be endorsed to include Snohomish County, its elected and appointed officers, officials, employees and agents as an additional insured, and shall not be reduced or canceled without thirty (30) days written prior notice to the county.~~

~~—(3)— Such insurance shall be endorsed to include a "cross liability," "severability of interests," or "separation of insureds" indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought."~~

~~—(4)— If coverage is on a claims made form, the retroactive date shall be prior to or coincident with the date of the permit or franchise, and the policy shall state that coverage is claims made, and state the retroactive date. Claims made form coverage shall be maintained by the permittee or franchisee for a minimum of three years following the termination of the permit or franchise. The permittee or franchisee shall annually provide the county with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically unavailable (i.e. premiums quoted exceed ten percent (10%) of the limits of liability) the permittee or franchisee shall execute a form of guarantee acceptable to the county to assure financial responsibility for the liability of services performance.~~

~~—(5)— Proof of coverage shall be provided to the county in the form of a duplicate of the declarations pages of the insurance policy. A duplicate of a binder of insurance, signed by an authorized broker, is acceptable as proof of coverage until a copy of the policy can be provided. The complete policy with all endorsements must be made available if requested, as evidence of coverage. Proof of coverage may be provided in another form only where specifically approved by the director of finance. Approval of required insurance is a condition precedent to issuance of the permit or franchise))~~

The engineer shall determine in consultation with the county risk manager whether there is a risk of potential liability to the county

arising out of any proposed use of any right of way. If the engineer determines that there is such a risk, he/she may require the permittee or franchisee to obtain insurance and maintain such insurance for the term of the permit or the franchise. The engineer will determine the nature and extent of any required insurance in consultation with the risk manager.

Section 3. Snohomish County Code Section 13.80.095, added by Ordinance No. 96-028 § 59, on June 12, 1996, is amended to read:

13.80.095 Cable television--Other conditions

(1) All cable television franchises shall be subject to all federal laws and regulations, which shall control over sections of this chapter.

(2) ~~((In addition to the other conditions, a franchise for cable television operations))~~ A cable television franchisee shall ~~((require the franchisee to))~~ ensure that:

(a) ~~((That the safety, functioning, and appearance of the property and the convenience and safety of the other persons not adversely affected by the installation or construction of facilities necessary for a cable system;))~~ Its cable television system operates safely and effectively;

(b) ~~((That the))~~ The cost of the installation, construction, operation, or removal of its cable television facilities ~~((be))~~ is borne by the franchisee or, to the extent permitted by law, its subscribers ~~((, or a combination of both));~~

(c) ~~((That the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator;))~~ It provides just compensation to the owner of any property damaged by the franchisee's installation, construction, operation, or removal its facilities; and

(d) ~~((That access))~~ Access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(3) All cable television franchises shall be subject to all applicable fees under Section 13.110 SCC.

Section 4. Snohomish County Code Section 13.80.130, added by Ordinance No. 96-028 § 63, on June 12, 1996, is repealed.

Section 5. This ordinance does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this ordinance, nor does it affect any franchise approved prior to the effective date of this ordinance.

PASSED this 27th day of August, 2008.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Vice Walter Coop
Chairperson

ATTEST:

Barbara Dilworth

Clerk of the Council, *Asst.*

APPROVED

EMERGENCY

VETOED

DATE:

Peter B. Campbell
PETER B. CAMPBELL
Executive Director

8/27/08

County Executive

ATTEST:

Sam D. Vucago

Approved as to form only:

Thomas P. Rowan

Thomas P. Rowan
Deputy Prosecuting Attorney