

## **BOARD OF MASON COUNTY COMMISSIONERS' PROCEEDINGS**

**January 18, 2011**

1. Call to Order – The Chairperson called the regular meeting to order at 9:01 a.m.
2. Pledge of Allegiance – Commissioner Sheldon led the flag salute.
3. Roll Call – Present: Commissioner District 1 - Lynda Ring Erickson; Commissioner District 2 – Tim Sheldon; Commissioner District 3 – Jerry Lingle.
4. Correspondence and Organizational Business
  - 4.1 Correspondence
    - 4.1.1 Mason County/City of Shelton Shoreline Technical Advisory Committee Applicants: Shannon Soto; Richard Brocksmith; and Cynthia Rossi.
    - 4.1.2 2011 budget/levies were received from Fire Protection District No. 11.
    - 4.1.3 Letter from Washington State Dept. of Health regarding Minerva Beach Resort Large On-Site Sewage System.
    - 4.1.4 Notice of New Liquor License Application for A Fresh Start Catering, Address: 2810 E. Spencer Lake Rd, Shelton, WA; Applicant names: Deborah & Donald Wallace; Privileges Applied For: beer and wine restaurant & catering.
    - 4.1.5 Notice of Washington State Liquor Control Board License Renewal Applications effective April 2011 for Happy Hollow Grocery; The Rice Bowl; Eagle Creek Saloon; B.P.O. Elks Shelton Lodge 2467; Spencer Lake Grocery; Summertide Store; Alderbrook Country Store; and Robin Hood Restaurant & Lounge.
    - 4.1.6 Received Shoreline Citizen Advisory Committee Applications for Monica Harle; Eric Schallon; Diane Cooper; Randy N. Lumper; James F. Hymer; and Judy G. Scott.
    - 4.1.7 The United States Dept. of the Interior Bureau of Indian Affairs Northwest Regional office gave notice of a decision to acquire in trust for the Squaxin Island Tribe a 240-acre tract known as the "Simpson 50" (Parcel #'s 31921-00-00000 & 31922-00-00000).
    - 4.1.8 A letter was received from the U.S. Dept. of Agriculture regarding the State's Family Forest Fish Passage Program in restoring critical fisheries habitat in the Pacific Northwest.
  - 4.2 News Release – Donation from Our Community Credit Union for an Automated External Defibrillator at MCRA Park.

John Keates read a news release regarding the donation of an Automated External Defibrillator (AED) for MCRA Park. The donation was received from Our Community Credit Union. Fire District #5 will be training staff to use the AED machine.

Cmmr. Lingle thanked the Credit Union for their generous donation and support.

Cmmr. Sheldon thanked the Board, staff and employees of the Credit Union for the contribution.

Emmett Dobey, Department of Utilities and Waste, made the announcement that Kerry Peterson had passed away after working for Mason County since 1993. He plans to make an announcement later in the week regarding funeral arrangements.

Cmmr. Ring Erickson announced that the Employees Group will be passing an envelope to help with the funding of the funeral.

5. Open Forum for Citizen Input –

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5.1 Kim Coon, Humane Investigator for Pasado's Safe Haven, reported on the animal cruelty case of four horses located on Little Egypt Road. There are still two horses alive on the property. She believes that the two deceased horses starved to death. Pasado's Safe Haven is asking Mason County Sheriff's Department to obtain a search warrant so that the two bodies can be exhumed and tested for cause of death. She asked the Board to review the case and for their support in the cause.

5.2 Debbie Justice commented that she has been concerned about the condition of the horses for the last few years, and is worried about the two remaining horses' welfare.

Cmmr. Ring Erickson suggested that concerned citizens should contact Sheriff's Office Chief Criminal Deputy, Chief Byrd, regarding the subject and what the options are.

5.3 Conley Watson had concerns about greenhouse gas emissions. He read a letter regarding the subject from the State Legislature.

Cmmr. Sheldon reported that he sat on the Olympic Region Clean Air Agency Board last week and learned through the press that Federal United States Environmental Protection Agency rejected the Tayloring Rule.

6. Adoption of Agenda - **Cmmr. Sheldon/Lingle moved and seconded to adopt the agenda as published. Motion carried unanimously. RE-aye; S-aye; L-aye.**

7. Approval of Minutes – January 3 briefing meeting minutes and January 4 regular meeting minutes.

**Cmmr. Lingle/Sheldon moved and seconded to approve. Motion carried unanimously. RE-aye; S-aye; L-aye.**

8. Approval of Action Agenda:

8.1 Approval of the Memorandum of Understanding between Mason County and the Mason County Sheriff's Office Employees Guild, Deputy Sheriff's bargaining unit. This was tabled from the January 4, 2011 meeting.

8.2 Approval of the Veterans Assistance Fund applications for: Dean M. Simono – Food \$200.00; Roy Oster (Rose) – Utilities \$200.00; Allan B. Brownawell – Utilities \$240.24; Dale Carrell – Utilities \$404.41; Kenneth G. Bopp – Utilities \$164.70; George Valent – Utilities \$140.08; Raymond Berry – Utilities \$255.22; Rodney Gorm – Housing \$600.00; Glen R. Johnson – Utilities \$404.11; Richard Parrish – Housing \$600.00; Anton M. Pugel, Jr. – Housing \$600.00; and Lawrence DeYoung – Housing \$600.00 for a total of \$4,408.76 as recommended by the Veterans Assistance Screening Committee.

8.3 Approval of contract #E11-179 and the signature authorization form with the Washington State Military Department for the period of January 1, 2011 to September 15, 2011 in the amount of \$269,688 for State Enhanced 911 funds.

8.4 Approval of the resolution setting a public hearing on Tuesday, February 8, 2011 at 9:30 a.m. to consider the following 2011 budget amendments:  
\$25,000 supplemental appropriation to WSU Extension for a Department of Social & Health Services contract with Mason 4-H to continue the Youth in Action Program at the Mason Transit Community Center. There is no county match requirement and this addition was not anticipated in the 2011 budget year and adjustments will need to be made.



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\$10,000 supplemental appropriation to WSU Extension from the Ecology Stormwater grant through Mason Public Works.

\$15,100 budget transfer to Human Resources Department from the Current Expense Ending Fund Budgeted Balance for wages and benefits.

\$7,382 budget transfer to Commissioners' Office from Current Expense Ending Fund Budgeted Balance for Commissioner District 3 benefits. **Resolution 05-11 (exhibit A)**

8.5 Approval of Contract /Interagency Agreement Amendment IAA10138 between the Washington State Administrative Office of the Courts and Mason County Juvenile Court for services associated with the Court Appointed Special Advocates (CASA). This reduces the funding by \$2,945 based on the Governor's 9/13/10 executive order.

8.6 Approval of \$25,000 Department of Social & Health Service contract with Mason 4-H to continue the Youth in Action Program at the Mason Transit Community Center. There is no county match requirement. This addition was not anticipated in the 2011 budget year so a budget adjustment will need to be made if approved.

8.7 Approval to amend the resolution appointing the current Mason County representatives to the Washington Counties Risk Pool. Commissioner Jerry Lingle will be the county's representative and Commissioner Lynda Ring Erickson as the alternate representative. **Resolution 06-11 (Exhibit B)**

8.8 Approval for Mason County Public Works to sell the trees from the property adjacent to the Public Works Office site in an auction sale either as standing timber or decked logs and inform the Commission of the sale results.

Item 8.1

Cmmr. Ring Erickson clarified for the record on two slight recalculation to the contract. #1) The date of cashout for additional pay and #2) The floating holiday, neither of which are significant.

**Cmmr. Lingle/Sheldon moved and seconded to approve Action items 8.1 through 8.8. Motion carried unanimously. RE-aye; S-aye; L-aye.**

9. 9:30 a.m. Public Hearings and Items Set for a Certain Time – There are no Public Hearings set for this meeting.

10. Other Business (Department Heads and Elected Officials) –

Charlie Butros, Department of Public Works, made an announced that all weight restrictions on County roads were lifted affective Friday, January 14, 2011. No restrictions remain.

Cmmr. Ring Erickson asked if there was any damage reported due to the freezing.

Mr. Burtros responded that the only damage reported was some slide damage and a tree that undermined the roadway on North Shore Road at mile post 18.

Cmmr. Sheldon asked if both lanes of the North Shore Road were open to through traffic currently.

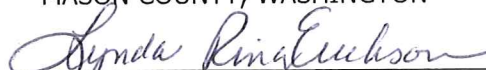
Mr. Butros explained that there may still be some slight shoulder damage on the North Shore Road but through traffic is still open. There have been ongoing communications with the schools regarding shortened bus routes. Public Works has followed up with all of the school districts and asked them to post updates on their websites.

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Bob Simons, Director of Mason County WSU Extension office, announced gardening workshops coming up. The workshops will be held on Saturday afternoons from 1:30-3:30 at Barnyard Gardens Nursery. Jan 29<sup>th</sup> is the first workshop. February, March and April also will have workshops. Classes cost \$10.00 each. Handouts are available at the Extension Office with dates and times and more information regarding the classes.

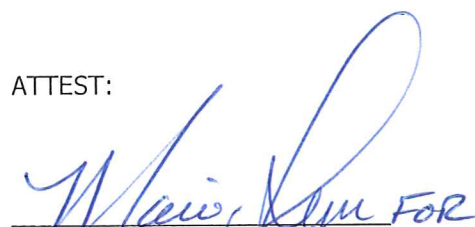
11. Board's Reports and Calendar - The Commissioners reported on meetings attended the past week and announced their upcoming weekly meetings.
12. Adjournment – The meeting adjourned at 9:48.

BOARD OF COUNTY COMMISSIONERS  
MASON COUNTY, WASHINGTON

  
Lynda Ring Erickson, Commissioner

  
Tim Sheldon, Commissioner

ATTEST:

  
Shannon Goudy, Clerk of the Board

  
Jerry K. Lingle, Commissioner



MASON COUNTY  
COMMISSIONERS RESOLUTION NO: 03-11  
COUNTY ROAD PROJECT NO. 1950

WHEREAS, on Mason County Road No. 70390, known locally as the North Shore Road, and more specifically located in Sec. 20, T22 N, R 3W, WM, at the approximate mile posts listed below; work defined as "construction" in the BARS Manual, Page II-63, et seq, is determined to be necessary and proper; and,

THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that it is their intention to:

Repair and stabilize slide area. Work to be performed at approximate mileposts: 18.04.

SAID WORK is to be performed by Contract in accordance with Washington State Standard Specifications for Road and Bridge Construction as adopted by Mason County.

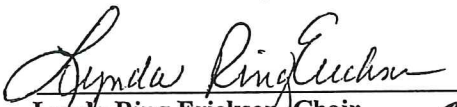
BE IT FURTHER RESOLVED that the described County Road Project is necessary and proper, and the estimated costs of said project are herewith set out as follows:

Engineering:	<u>\$ 25,000.</u>
Right of Way	<u>\$ 0.</u>
Construction	<u>\$ 175,000.</u>

The County Road project herein described in HEREBY DECLARED to be a public necessity, and the County Road Engineer is HEREBY ORDERED AND AUTHORIZED to report and proceed thereon as by law, provided and in accordance with RCW 36.77.020 et. seq.

ADOPTED this 11<sup>th</sup> day of January, 2011.


BOARD OF COUNTY COMMISSIONERS  
MASON COUNTY, WASHINGTON

  
Lynda Ring Erickson, Chair

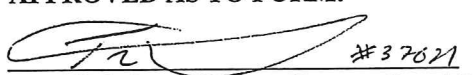
  
Jerry K. Lingle, Commissioner

  
Tim Sheldon, Commissioner

ATTEST:

  
Marie Ryon, FOR  
Clerk of the Board

APPROVED AS TO FORM:

 #37621  
Tim Whitehead, Deputy Prosecuting Attorney

cc: Co. Commissioners  
Engineer  
JOURNAL: Publ. 1t: 1/20/11

OfficeManager h:\wp\crp\1950-CRP-Res.doc

EXHIBIT A

ORDINANCE NO. 04-11

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**AN ORDINANCE OF MASON COUNTY, WASHINGTON,  
RELATING TO FRANCHISE REQUIREMENTS;  
REPEALING AND REENACTING CHAPTER 5.20 OF THE  
OFFICIAL CODE OF MASON COUNTY RELATING TO  
CABLE TELEVISION USE OF THE ROAD RIGHT-OF-  
WAY; AMENDING CHAPTER 12.24 REGULATING  
UTILITY OCCUPANCY AND USE OF THE ROAD RIGHT-  
OF-WAY; PROVIDING FOR SEVERABILITY; AND  
ESTABLISHING AN EFFECTIVE DATE**

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WHEREAS, the County has authority pursuant to the Cable Communications Policy Act of 1984 (the "Cable Act") and RCW 36.55.010 to grant franchises to cable operators for the use of the public rights of way to construct, operate, maintain and repair Cable Television Systems within the unincorporated boundaries of the County, and

WHEREAS, the Board of County Commissioners (the "Board") finds that County road rights-of-way are critical to the travel of persons and the transport of goods and other tangibles; are used by the County to provide critical services to its citizens, including services to protect public safety; and that such rights-of-way are intended for public uses and must be managed and controlled consistent with that intent such that the installation, maintenance, and operation of cable operator facilities does not interfere with or incommode such public uses; and

WHEREAS, the Board finds that the development of Cable Television Systems has the potential of having great benefit and impact upon the residents of the County and that because of the complex and rapidly changing technology associated with cable television, the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the County or such persons as the County shall designate, and

WHEREAS on December 20, 2006, the Federal Communications Commission ("FCC") adopted a new rule, set forth in a Report and Order and Further Notice of Proposed Rulemaking that was released March 5, 2007 (the "Competitive Franchise Application Rule" or "CFAR"), that among other things, provides a separate, nonexclusive process for the issuance of cable franchises for areas currently served by another cable operator (the "Incumbent Cable Operator"); and

**EXHIBIT B**



franchise or master road use permit shall be on forms provided by the Mason County engineer which application forms shall, at a minimum, contain and require the following:

(1) Identity of Authorized Parties. The names and addresses of persons authorized to act on behalf of the operator with respect to the application and those person(s) who are authorized to receive all notices regarding action taken pursuant to an application.

(2) Nonrefundable Application Fee. An initial nonrefundable application fee in the amount of:

Four hundred dollars for a new franchise or new master road use permit;

Two hundred dollars for a new private line utility occupancy permit;

Three hundred dollars for a renewal of a franchise or master road use permit;

Two hundred fifty dollars for an amendment of a franchise or master road use permit;

One hundred dollars for amendment of a private line utility occupancy permit;

One hundred dollars for a transfer of a franchise or master road use permit; and

One hundred dollars for a transfer of a private line utility occupancy permit.

The purpose of the nonrefundable application fee is to reimburse the county for the costs incurred to review and issue or deny a franchise, master road use permit, or private line utility occupancy permit, or issue an amendment thereto, or a renewal, or a transfer. In addition to the nonrefundable application fee, the applicant shall, as a condition of action being taken, reimburse the county for the direct costs of third parties retained by the county when deemed by the county engineer to be reasonable and necessary to assist the county in reviewing or responding to the application. The County Engineer shall, at the request of the applicant, provide an itemized accounting for the services provided that become a cost of the applicant as provided herein.

The County Engineer is directed to review the application fees on a biennial basis and make a recommendation to the board for adjustment of the application fees. The board may adjust the application fees from time to time by a duly adopted resolution.

(3) Identity of Applicant. Identity of the operator, the persons who exercise working control over the operator, and the persons who control those persons to the ultimate parent.

(4) Certificate Verifying Status as Exempt Operator. If applicable, a certification of the authorized officer of the operator stating that the operator is exempt and the reasons therefore; provided that, if such utility facilities will be used to provide services other than those qualifying it as an exempt operator, the applicant shall state what other services will be provided and under what authority the applicant will be utilizing facilities located within the public rights-of-way to provide such services.



I. Enable the County to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

J. Minimize unnecessary local regulation of operators and services;

K. Permit and manage reasonable access to the road rights-of-way of the county on a competitively neutral basis;

L. Assure that the County's current and ongoing costs of granting and regulating access to and use of the road rights-of-way are fully paid for by the persons seeking such access and causing such costs;

#### **5.20.020 POLICY GUIDELINES.**

The administration of this chapter shall be governed by the following video programming policy guidelines:

A. Mason County supports efforts to establish an open, competitive marketplace for video programming services. The County promotes and encourages competition for video and video programming services that make the latest and best technology available and keep service prices affordable for all County residents and businesses. An integral component of this open marketplace is the consistent application of regulations to all video programming providers and the preservation of local authority over matters of local impact.

B. The following policy guidelines express the commitment of the County to support video programming services and to manage its road rights-of-way proactively, while balancing the interests and needs of the community:

1. The County will manage access to its road rights-of-way for video programming purposes in a non-discriminatory, competitively neutral, and non-exclusive way to the extent required by applicable law and, to the extent allowed by applicable law, to receive fair compensation. The public interest will be protected by collecting fair, reasonable, and lawful compensation, associated fees, taxes, administrative costs, and construction costs for use of the Public Rights-of-Way.

2. Investments by video programming providers will be encouraged in order to enhance economic development programs and provide jobs, opportunities, and choices for its citizens.

3. Universal access to video programming services is encouraged for all residents and businesses.

#### **5.20.030 DEFINITIONS.**

For the purposes of this chapter 5.20 of the Mason County Code ("MCC"), the following terms, phrases, words, and abbreviations shall have the meanings given herein unless otherwise

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any Road Rights-of-Way;

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with 47 U.S.C. § 573; or

5. Any facilities of any electric utility used solely for operating its electric utility systems.

H. "County" means Mason County and all departments, divisions, and agencies thereof.

I. "County Engineer" means the County Engineer or the County Engineer's designee.

J. "Franchise" refers to the authorization granted by the County to an Operator of a Cable System, or an Open Video System under this chapter giving the Operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over any Road Rights-of-Way in the in-incorporated areas of the County, to provide a Cable Service within a Franchise Area. Any Franchise shall be issued in the form of an ordinance, and must be accepted by the Franchisee to become effective in the time and manner specified in the Mason County Code, or the Franchise ordinance. Such Franchise shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the County required by the lawful ordinances of the County, for the unincorporated areas of the County

2. Any permit, agreement, or authorization required in connection with operations on or in Road Rights-of-Way or property, including, by way of example and not limitation, street cut permits; or

3. Any permits or agreements for occupying any other property of the County or private entities to which access is not specifically granted by the Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the County, or a private entity. Therefore, any Person who desires to use such property must obtain additional approvals, Franchises, or agreements for that purpose, as may be lawfully required by the County.

K. "Franchise Area" means the area of the County that a Franchisee is authorized to serve by the terms of its Franchise or by operation of law.

L. "Franchisee" refers to a Person holding a Franchise granted by County ordinance.



V. "Subscriber" means the County, any government entity, or any Person who legally receives any Cable Service from a Cable Operator delivered over that Cable Operator's Cable System.

W. "Chapter," when used in the context of referring to this chapter of the Mason County Code, shall mean this chapter 5.20 of the Mason County Code and each section and subsection thereof.

X. "Transfer" means any transaction in which:

1. All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Public Rights-of-Way);

2. There is any change, acquisition, or direct or indirect Transfer of control of the Franchisee;

3. The rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or

4. The transfer of stock in a corporation so as to create a new controlling interest constitutes a Transfer. The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

In succeeding provisions of this chapter, all these activities are referred to as Franchise Transfers.

#### **5.20.040 FRANCHISE REQUIRED.**

A. No Franchise shall be exclusive. The issuance of a Franchise shall not affect the County's right to itself construct, operate, or repair any County owned communications facility, with or without a Franchise.

B. Franchise requirement. An Operator of a Cable System must obtain a Franchise prior to providing Cable Service; an Operator of an Open Video System must obtain a Franchise before providing services via an Open Video System. No Franchise shall become effective without the Franchisee signing an acceptance of the ordinance which grants it the Franchise.

C. Nature of grant. A Franchise shall not convey title, equitable or legal, in the Public Rights-of-Way. The right granted is only the right to occupy those portions of the Road Rights-of-Way to which the County has the right to grant access, for the purposes and for the period stated in the Franchise, and, subject to the limitations in this section and elsewhere in this chapter, the right may not be subdivided or subleased. Every Franchise shall be:

1. Deemed to include all the provisions that are required to be in a Franchise under chapter 5.20 of the Mason County Code, as if fully set forth in the Franchise; and

2. Deemed to provide for forfeiture under the circumstances set forth under the provisions of this chapter and any Franchise ordinance thereunder; and



E. Application to Persons that provide different types of services. The fact that a fee is paid on one type of service provided over a Cable System, does not excuse an Operator from its duty to pay lawful fees on other types of services provided over that facility as required by MMC chapter 12.24. As an example, and not as a limitation of the foregoing, the operator of a telecommunications system must pay a franchise fee under Chapter 5.20 to the extent it provides Cable Services to Subscribers via a Cable System

F. General rules for payment of fees and assessments.

1. Unless otherwise specified in a Franchise, Franchise fees shall be paid to the County quarterly, and not later than 45 days after the end of the quarter for which the fee or assessment is owed.

2. No acceptance by the County of any Franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Franchise fee payment be construed as a release of any claim the County may have for additional sums payable.

3. The Franchise fee payment is not a payment in lieu of any tax, fee, or other assessment, except as specifically provided in this chapter or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable.

4. If payments are late, in addition to paying any applicable penalties or damages, the Person that owes the fee shall pay interest on the amount owed at the rate of 1 percent per month or fraction thereof compounded monthly.

5. The County may, from time to time and upon reasonable advance written notice, inspect and audit any and all books and records reasonably necessary to determine whether fees have been accurately computed and paid. The Operator must make available the books and records, or copies thereof, to the County, as provided in the Franchise agreement.

6. Notwithstanding the foregoing, in the event that a Person that is obligated to pay a fee ceases to provide service for any reason (including as a result of a Transfer), such Person shall make a final payment of any amounts owed to the County within ten business days of the date its operations in the County cease, and shall provide a statement of gross revenues for the calendar year through the date operations ceased.

#### **5.20.060 GENERAL CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY.**

A Franchisee shall be responsible to comply with all lawful provisions of the Mason County Code, as amended, any administrative regulations promulgated thereunder, and any other generally applicable laws related to the use of the Road Rights-of-Way.

### **5.20.090 MINIMUM CONTENTS OF EVERY CABLE FRANCHISE.**

A. In addition to satisfying the other applicable requirements of this chapter and MCC Ch 12.24, every Franchise for a Cable System shall contain the following provisions:

1. The Franchise shall provide that neither the granting of any Franchise, or any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the County as may exist at the time the Franchise is issued or thereafter be obtained.

2. The Franchise shall only authorize occupancy of the Public Rights-of-Way to provide the services and for the purposes described in the Franchise.

3. A Franchise shall be a privilege that is held in the public trust and personal to the original Franchisee. The Franchise shall ensure that no Transfer of the Franchise may occur, directly or indirectly, without the prior consent of the County; except as contemplated by MCC section 5.20.280, or as otherwise expressly provided in this chapter.

4. The Franchise shall ensure that any Person placing a Cable System in the Road Rights-of-Way will not unlawfully discriminate in hiring, in contracting, or in the provision of services.

5. The Franchise shall be for a specified term set forth in the Franchise. No Franchise issued under this chapter shall be for a term of longer than ten years, unless the County Board of Commissioners determines that a longer period would be in the County's interest.

6. Such other terms as are required by law.

### **5.20.100 REVOCATION, REDUCTION OF TERM, OR FORFEITURE OF FRANCHISE.**

A. Revocation. In addition to all other rights of the County under MCC section 12.24.120(a) or under a cable Franchise, the County shall have the right to revoke the Franchise: (1) for violations of material provisions of this chapter; (2) for defrauding or attempting to defraud the County or Subscribers; (3) if the Franchisee willfully refuses to provide service to the County or any part of the County in accordance with its Franchise.

B. Reduction of term. Where, after notice and providing the Franchisee an opportunity to be heard, if such opportunity is timely requested by Franchisee, the County finds that any conditions exist that would support Franchise revocation or reduction in term, the County may make an appropriate reduction in the remaining term of the Franchise or revoke the Franchise. The County Engineer is authorized to make a recommended decision to the County Board of Commissioners, but any final decision to reduce the term of a franchise or to revoke the franchise shall be made by the County Board of Commissioners.

C. Notwithstanding the foregoing, the franchise may only be revoked or reduced in term if the Franchisee (1) was given notice of the default; and (2) 30 days to cure the default; and (3) the Franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to



books and records. The Operator's obligation includes the obligation to reasonably produce all books and records related to revenues derived from the operation of the Cable System to the extent that system revenues are in connection with the fees or taxes charged or burdens imposed on the Operator under a Franchise. An Operator is responsible for obtaining or maintaining the necessary possession or control of all such books and records related to the construction, operation, or repair of the Cable System, so that it can produce the documents upon request. Books and records must be maintained for a period of six years, except that: (1) any record that is a public record must be maintained for no less than the period required by state law; and (2) a Franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials.

B. For purposes of this chapter, the terms "books and records" shall be read expansively to include information in whatever format stored. Books and records requested shall be produced to the County in accordance with the provisions of a Franchise agreement.

C. Without limiting the foregoing, the Operator of a Cable System shall make available to the County the following within ten days of their receipt or (in the case of documents created by the Operator or its Affiliate) filing:

1. Notices of deficiency or forfeiture related to the operation of the Cable System; and
2. Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee, directly or indirectly.

D. Each Cable Operator shall take all reasonable steps required, if any, to ensure that it is able to provide the County all information which must be provided or may be requested under this chapter, a Franchise, or applicable law, including by providing appropriate Subscriber privacy notices. Each Operator shall be responsible for redacting any data that applicable law prevents it from providing to the County. Nothing in this section shall be read to require an Operator to violate state or federal law protecting Subscriber privacy.

#### **5.20.120 COMPLIANCE WITH LAWS/RESERVATION OF RIGHTS.**

A. General. Each Franchisee shall comply with all applicable laws related to use of the Road Right-of-Way and all other applicable laws heretofore and hereafter adopted or established during the entire term of its Franchise.

B. Reservation of authority. The County may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter.

C. No waiver. The failure of the County to insist on timely performance or compliance with this chapter by any Person holding a Franchise shall not constitute a waiver of the County's right to later insist on timely performance or compliance by that Person or any other Person holding such a Franchise.



obligation on the County which it would not otherwise have under such federal laws. The County may adopt procedures for conducting any proceedings required under federal law, including, without limitation, procedures for presentation of evidence; and may also specify the person or entity that will conduct any administrative hearing that may be required by federal law, should the County Board of Commissioners decide that it does not wish to conduct the proceeding itself. In any case, however, the final decision to deny or grant renewal shall remain with the County Board of Commissioners.

#### **5.20.150 APPLICATIONS FOR GRANT OF AN INITIAL FRANCHISE.**

##### **A. Written application.**

1. A written application shall be filed with the County Engineer for the grant of an initial Franchise. Each entity that is required to hold a Franchise must submit an application therefore to the County Engineer in accordance with the requirements of MCC chapter 5.20. To be accepted for filing, an applicant must file an original and three copies of a complete application for a Franchise. An application may be filed by any Person on that Person's own initiative or in response to a request for proposals. The County Engineer is authorized to issue requests for proposals from time to time.

2. The County Engineer shall accept and review only those applications that include complete responses to every requirement of MCC section 5.20.150. Submission of an application that does not include the requisite information set forth in MCC section 5.20.150 and the Application Fee shall not commence the time period for granting or denying any application governed by 47 C.F.R. §76.41(d). The applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the County's review of the application.

**B. Contents of applications.** Except as expressly modified by the County for good cause or when determined by the County Engineer to be unnecessary to the consideration of the application, a request for proposals for a cable Franchise shall be deemed to require, and any application submitted pursuant to this MCC section 5.20.150 shall contain, at a minimum, the following information:

1. Identity of the applicant, including the name, address, telephone number, and web site (if applicable); the name, address, telephone number, and e-mail address of all individual(s) authorized to represent the applicant before the County during its consideration of the Franchise(s) requested; management/organizational information, showing the management structure of the applicant. A similar chart shall also be provided identifying the relationship of the applicant to all general partners, parent corporations, subsidiaries, Affiliates, and all other subsidiaries of parent corporations, including a brief description of each entity's relationship to the applicant.

2. An applicant shall list all Cable Systems in which it or any Affiliate owns more than 5 percent of the system.

of-Way usage, including information on the ability of the Road Rights-of-Way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities. In addition, applicant shall provide a description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities.

(g) The applicant shall describe its plan to ensure that the safety, functioning, and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation, or removal of the facilities.

(h) The applicant shall describe its plan to comply with the Subscriber privacy protections set forth in 47 U.S.C. §551, and the privacy protections of any state or local statutes, ordinances, or regulations.

5. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, as reasonably determined or established by the County.

6. A demonstration of the financial qualifications of the applicant, including at a minimum, a statement regarding the applicant's financial ability to complete the construction to meet the time frame proposed and to operate the Cable System proposed certified by the applicant's chief financial officer.

7. A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System.

8. A demonstration that the applicant is legally qualified, which proof must include a statement from the applicant:

(a) Whether it has received, or is in a position to receive, necessary authorizations from state and federal authorities;

(b) Whether it has not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows County to conclude the applicant cannot be relied upon to comply with requirements of Franchise, or provisions of this chapter;

(c) Whether it or any Affiliate has been found in violation by a regulatory authority or franchising authority of any Franchise ordinance or agreement, contract or regulation governing a Cable System. If so, the applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal, and result or disposition of that proceeding;



ordinance, and taking action to grant or deny a Franchise. Any unexpended amounts shall be reimbursed to the applicant. In the event that the deposit is depleted, the applicant shall replenish the deposit.

B. Publication expenses. In addition, an applicant that is awarded a Franchise, shall pay to the County a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a Franchise, pursuant to the provisions this chapter. Such payment shall be made by delivery of payment to the County Treasurer within 30 days after the County furnishes the Franchisee with a written statement of such expenses.

C. Failure to remit fees. No Franchise shall become effective until all required fees and costs are paid.

#### **5.20.170 OPEN RECORDS/CONFIDENTIALITY.**

Unless otherwise provided by law, information submitted as part of a Franchise application is open to public inspection and subject to the Washington Public Records Act (Chapter 42.56 RCW). It is the applicant's responsibility to be familiar with the Washington Public Records Act. An applicant may specifically identify any information it considers proprietary by providing said information to County in a separate envelope marked "Proprietary Information." In the event that: (A) the County receives a request from another party to disclose any information which the applicant has deemed proprietary, and if the County Prosecuting Attorney determines that said information may be subject to being disclosed; or (B) the County determines that the information should be disclosed in connection with its enforcement of any provision of this chapter, or in the exercise of its police or regulatory powers, then the County shall notify the applicant of the applicant's opportunity to seek a protective order from a court with appropriate jurisdiction. In the event an action is not commenced within ten business days, the County may disclose said information. By submitting information which the applicant deems proprietary or otherwise exempt from disclosure, the applicant agrees to defend and hold harmless the County from any claim for disclosure, including, but not limited to, any expenses including out-of-pocket costs and attorneys' fees, as well as any judgment entered against the County for the attorney fees of the party requesting disclosure.

#### **5.20.180 REVIEW PROCESS.**

A. Acceptance of application. Within ten business days of receipt of an application for an initial Franchise, the County shall review the application to ensure all requisite information is included in the application. If the application is not complete, the County will notify the applicant in writing, listing the requisite information that is required to complete the application. Such notification will also inform the applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will not begin to run until such information is received. If the application is complete, the County will notify the applicant in writing that all requisite information has been received.

B. Staff Review. The County staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff reasonably requires



proposal may be submitted at any time and the County may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings have been commenced in accordance with 47 U.S.C. § 546(a)).

#### **5.20.200 APPLICATIONS FOR MODIFICATION OF FRANCHISE.**

A. An application for modification of a Franchise shall include, at minimum, the following information:

1. The specific modification requested;
2. A statement indicating whether the modification is sought, pursuant to Section 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;
3. Any other information that the applicant believes is necessary for the County to make an informed determination on the application for modification; and
4. A declaration of the applicant or applicant's authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with the requirements of applicable law.

B. A request for modification submitted pursuant to 47 U.S.C. § 545 shall be considered in accordance with the requirements of that section.

C. Public hearings. An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given a reasonable opportunity to be heard. In addition, prior to the issuance of a Franchise, the County shall provide for the holding of a public hearing within the proposed Franchise Area, following notice to the public, at which each applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

#### **5.20.210 ADDITIONAL RULES APPLICABLE TO CABLE SYSTEMS**

A Franchisee may not require a Subscriber or a building owner or manager to enter into an exclusive contract for the provision of Cable Service as a condition of providing or continuing service.

#### **5.20.220 CONSTRUCTION PROVISIONS AND TECHNICAL STANDARDS.**

A. System construction schedule. Every Franchise shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System. The schedule shall provide for prompt completion of the project, considering the amount and type of construction required.

D. System maintenance and Technical Quality. Scheduled maintenance shall be performed so as to minimize the effect of any necessary interruptions of Cable Service and a Cable Operator shall maintain all transmission equipment as necessary to carry a quality signal from the access facilities provided under this section or any Franchise to Subscribers. A Cable Operator shall maintain all access channels, interconnects, and return lines at the same or better level of technical quality and reliability required by a Franchise and all other applicable laws, rules, and regulations for other channels, services, and interconnects.

E. Emergency alert capability. A Cable Operator shall provide an Emergency Alert System ("EAS") and comply with all applicable federal, state, and regional emergency alert and notification statutes, regulations, and plans, and any other requirements that may be contained within a cable Franchise. The County may use the EAS, under procedures established between the County and the Cable Operator, which are consistent with a Cable Operator's state and federal EAS requirements, to transmit an emergency alert signal, including the ability to override the audio and video on all channels throughout the County from the County's Emergency Operations Center or other location as may be designated by the County. A Cable Operator shall test the EAS, as required by the FCC. Upon request, the County shall be permitted to participate in and/or witness the EAS testing, up to twice a year, on a schedule formed in consultation with a Cable Operator. If the test indicates that the EAS is not performing properly, a Cable Operator shall make any necessary adjustment to the EAS, and the EAS shall be retested. The County shall permit only appropriately trained and authorized persons to operate the EAS equipment provided, pursuant to this subsection.

F. Continuity of service. Each Franchisee shall, during the term of the Franchise, ensure that Subscribers are able to receive continuous service. In the event the Franchise is revoked or terminated, the Franchisee may be required to continue to provide service for a reasonable period to assure an orderly transition of service from the Franchisee to another entity. A Franchise may establish more particular requirements under which these obligations will be satisfied.

#### **5.20.230 OPERATION AND REPORTING PROVISIONS.**

A. Communication with regulatory agencies. If requested by the County, a Cable Operator shall file with the County all reports required by the FCC including, without limitation, any proof of performance tests and results; Equal Employment Opportunity ("EEO") reports; and all petitions, applications, and communications of all types directly related to the Cable System, or a group of Cable Systems of which the Cable Operator's Cable System in the County is a part, submitted or received by the Cable Operator, an Affiliate, or any other Person on the behalf of the Operator, either to or from the FCC, the Security and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Cable System; provided, that nothing herein requires a Franchisee to produce regulatory or court filings that are treated by the agency or court as confidential, such as Hart-Scott-Rodino Act filings. If any such documents are available on line, in lieu of filing hard copies with the County, the Cable Operator may direct the County to the on-line location of the information. Nothing in this Section 5.20.240.A affects any rights the County may have to obtain books and records under this chapter.



(h) A report showing the nature and type of complaints and corrective action taken to address the complaint and

(i) Once the information required by MCC sections 5.20.240.B.2(d)-(e) has been filed, it need be re-filed only if it changes.

C. Records required. A Cable Operator shall at all times maintain:

1. Records of all complaints received with information sufficient to allow the Operator to prepare the reports required in this MCC section 5.20.240. The term "complaints" as used herein and throughout this ordinance refers to complaints about any aspect of the Cable System or Franchisee's operations, including, without limitation, complaints requiring service calls, and complaints about employee courtesy, billing, prices, programming, outages and signal quality;

2. Records of outages known to the Cable Operator, with information sufficient to allow a Franchisee to prepare the reports required in this MCC section 5.20.240;

3. Records of service calls for repair and maintenance indicating the date and time service was requested; the date of acknowledgment; date and time service was scheduled, if it was scheduled; the date and time service was provided; and, if different, the date and time the problem was solved; and

4. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

#### **5.20.240 CONSUMER PROTECTION.**

A. Rate discrimination prohibited. Except to the extent permissible by law a Cable Operator is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the Franchise Area. A Franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A Cable Operator shall comply at all times with all applicable federal, state, and County laws, and all executive and administrative orders relating to non-discrimination.

B. Redlining prohibited. A Cable System Operator shall not deny access or charge different rates to any group of Subscribers or potential Subscribers because of the income of the residents of the local area in which such group resides.

C. Cable customer service standards. The County retains the continuing authority to enforce provisions of federally-adopted customer service standards in accordance with applicable law or to adopt local customer service standards, in its discretion.



C. Determination by County. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise under this MCC section 5.20.260.C, the County shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the County. The County's consent to a Transfer shall not be unreasonably withheld.

D. Transferee's agreement. No application for a Transfer of a Franchise, subject to this MCC section 5.20.260, shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this chapter and the Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this chapter and the Franchise for all purposes, including renewal, unless the County, in its sole discretion, expressly waives this requirement in whole or in part.

E. Approval does not constitute waiver. Approval by the County of a Transfer of a Franchise, pursuant to this MCC section 5.20.260, does not constitute a waiver or release of any of the rights of the County under this chapter or a Franchise, whether arising before or after the date of the Transfer.

F. Exception for intra-company Transfers. Notwithstanding the foregoing, a Franchise may provide that Transfers to Affiliates of a Franchisee shall be excepted from the requirements of MCC section 5.20.260.A-B where (1) the Affiliate is wholly owned and managed by an entity that will guarantee the performance under a Franchise or provide other adequate assurance acceptable to the County Engineer; and (2) the transferee Affiliate:

1. Notifies the County Engineer of the Transfer at least 60 days before it occurs and, at that time provides the agreements and warranties required by this MCC section 5.20.260, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Cable System after the Transfer;

2. Warrants that it has read, accepts, and agrees to be bound by each and every term of the Franchise and related amendment, regulations, ordinances, and resolutions then in effect;

3. Agrees to assume all responsibility for all liabilities, acts, and omissions known and unknown, of its predecessor Franchisees for all purposes, including renewal;

4. Agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisees;

5. Warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;

## 5.20.290 MISCELLANEOUS

A. Captions. The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

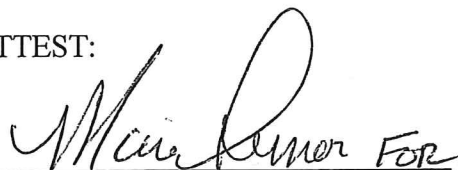
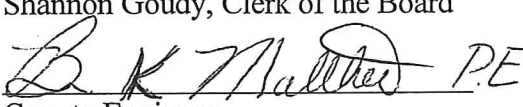
B. Calculation of time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any Franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.



C. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Dated this 11 day of JANUARY, 2011.

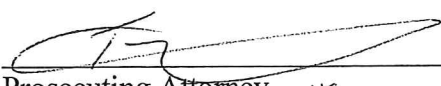
### BOARD OF COUNTY COMMISSIONERS MASON COUNTY, WASHINGTON

ATTEST:

  
Shannon Goudy, Clerk of the Board  
  
County Engineer

By:   
Lynda Ring Erickson, Chair  
By:   
Tim Sheldon, Commissioner  
By:   
Jerry K. Lingle, Commissioner

Approved as to form:

  
Prosecuting Attorney #37821  
DPA Mason County  
✓