

Ordinance No. 120263

Council Bill No. 113552

# The City of Seattle Council Bill/Ordinance

AN ORDINANCE related to cable television; amending Seattle Municipal Code Chapter 21.60 to establish transition rules for services in previously unfranchised areas.

CF No. \_\_\_\_\_

Date Introduced: <u>FEB - 5 2001</u>	
Date 1st Referred: <u>FEB - 5 2001</u>	To: (committee) <u>Public Safety &amp; Technology Committee</u>
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: <u>2-12-01</u>	Full Council Vote: <u>9-0</u>
Date Presented to Mayor: <u>2-13-01</u>	Date Approved: <u>2/13/01</u>
Date Returned to City Clerk: <u>2/13/01</u>	Date Published: <u>2/13/01</u>
Date Vetted by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

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2-13-01 Passed

This file is complete and ready

*Law Department*

Law Dept. Review

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by:

COMPTON

Councilmember

*[Handwritten signature]*

## Committee Action:

Duaga aye

Compton aye

Nicoastro aye

Steth Knosack aye

Licata aye

*WILL  
COUNSELLORS*

*[Handwritten initials in a circle]*

12-01 Passed 9-0

This file is complete and ready for presentation to Full Council. Committee:

(initial/date)

*Law Department*

Law Dept. Review

DMP  
Review

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City Clerk  
Review

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ORDINANCE 120263

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3 AN ORDINANCE related to cable television; amending Seattle Municipal Code Chapter 21.60 to establish transition rules for services in previously unfranchised areas.

4 WHEREAS, the granting of cable television franchises is the method provided by State and Federal law for assuring that citizens are provided cable television services that meet community needs and interests; and

5  
6 WHEREAS, the Telecommunications Act of 1996 established a national policy to promote competition in telecommunications and cable television services and encourage the deployment of advanced technology; and

7  
8 WHEREAS, the City Council required in Ordinance 120138 that a Transition Rule be approved with provisions to assure that consumers now served in any unfranchised area have appropriate transition opportunities; and

9 WHEREAS, federal law includes provisions which provide process protection to cable service providers to assure an opportunity to renew their ability to continue to provide service; Now, therefore,

10  
11 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

12 Section 1. A new Section is added to SMC 21.60 as follows:

13 Transition Rule:

14 A. Upon the issuance of a Franchise for the Central Business Franchise District (CBFD) the holders of street use permits issued subject to SMC 21.60.700 to provide cable television service in the CBFD shall be governed by this section. The Office of Cable Communications shall notify Permit holders of their right to seek a Franchise for the CBFD consistent with the provisions of 47 U.S.C. Section 546. Permit holders shall notify the Office of Cable Communications within ninety (90) days of this notice as to whether they will pursue a Franchise for the CBFD and if so, whether they wish to follow the procedure in 47 U.S.C. Sections 546(b) through (g), or the alternative procedure in 47 U.S.C. Section 546(h).

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16  
17 B. Once a Franchise is issued for the Central Business Franchise District (CBFD) or a Citywide Franchise District (CFD), the Director of Transportation may issue temporary and revocable street use (utility) permits for the provision of Cable Television Services within the CBFD, to other than the holder of a Franchise which covers the CBFD, only if the following conditions are met:

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19  
20 1. The applicant has previously obtained a permit pursuant to the provisions of SMC 21.60.700 to provide service in the CBFD;

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22 2. Within ninety (90) days of receipt of the notice from the Office of Cable Communications of its right to seek a Franchise for the CBFD as provided in Subsection A hereof, the applicant has notified the Office of Cable Communications that it will pursue a Franchise for the CBFD, and there is not a final determination, including judicial review under 47 U.S.C. Sections 546 and 555, on a Franchise application.

23 C. Ninety (90) days after the final determination in subsection B(2) hereof, that a holder of a permit to provide  
24



1 cable television service under Section 21.60.700 has failed to obtain a Franchise for the Cbfd pursuant to  
2 Section 1, the permit holder must terminate the provision of Cable Television Service within the Cbfd  
3 consistent with 47 U.S.C. Section 547.

4 Section 2. Any acts done consistent with the authority granted herein and prior to the effective date of this  
5 ordinance are hereby ratified and confirmed.

6 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the  
7 Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as  
8 provided by Municipal Code Section 1.04.020.

9 Passed by a majority vote of all the members of the City Council the 12<sup>th</sup> day of  
10 February, 2001, and signed by me in open session in authentication of its passage this  
11 12<sup>th</sup> day of February, 2001.

12  
13 Margaret Peters  
President of the City Council

14 Approved by me this 20<sup>th</sup> day of FEBRUARY, 2000.

15  
16 Paul Saly  
17 Mayor

18 Filed by me this 22<sup>nd</sup> day of February, 2000.

19  
20 Judith E. Reppin  
21 City Clerk

22 ref: Ordinance Agreement #1 (Fiber1)  
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# City of Seattle

Paul Schell, Mayor

## Department of Information Technology

Marty Chakoian, Director and Chief Technology Officer

January 24, 2001

**To:** The Honorable Margaret Pageler, President  
The Seattle City Council

**From:** Marty Chakoian, Director   
Department of Information Technology

**Subject:** AN ORDINANCE related to cable television; amending Seattle Municipal Code Chapter 21.60 to establish transition rules for services in previously unfranchised areas.

The Ordinance makes amendments the Cable Television chapter of the Seattle Municipal Code, Chapter 21.60. This Ordinance establishes transition regulation where a franchise is granted for a previously served, but unfranchised area, to minimize customer disruption.

The Council, in passing Ordinance 120138, required the development of a transition rule, to be adopted by the Council, to address how the existing permit based system would transition to a franchise based system, once a franchise was issued for the previously unfranchised Central Business Franchise District. The transition must carefully manage the transition process to:

- Provide a level playing field for the companies that are willing to take on the burden of the franchise obligation
- Assure that existing customers are not denied service because the franchise grantee(s) do not yet have the infrastructure to provide service to them
- Assure that residential buildings without service can acquire service during the transition period
- Minimize the potential that a decrease in competition would adversely impact existing customers as to rates or service
- Assure that cable companies rights under the Federal Cable Act are preserved.

Attached is a report discussing the issues associated with the regulation of this transition and proposed legislation to implement the transition.

There is no fiscal impact associated with this legislation.

If you have any questions, regarding this material, please contact Matt Lampe at 4-0504.

Department of Information Technology

Dexter Horton Bldg., 710 Second Ave., Room 450, Seattle, WA 98104

Tel (206) 684-0600, TDD: (206) 233-7810, Fax: (206) 684-0911, <http://www.cityofseattle.net>

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## Transition Rule for SMC 21.60.700

### **Background**

Section 21.60.700 of the Seattle Municipal Code established a method to provide cable television service in the Central Business Franchise District ("CBFD") during the period that there was no franchise awarded to serve the CBFD. The section as adopted allowed companies that were franchised in another district(s) to provide Cable Television Service in the CBFD under a Street Use Permit. Both Millenium and AT&T obtained permits and provide service in the CBFD using this mechanism. The permit approach was effective to the extent that it facilitated the provision of service to thousands of CBFD residents, and created the first effective competition between providers for cable customers. The approach had serious limitations, however, as infrastructure was not deployed throughout the CBFD, and some residential buildings were unable to acquire cable service without paying for the deployment of infrastructure to reach their locations at a cost that was prohibitive.

The issuance of a franchise(s) that includes the CBFD, with a requirement to build-out and serve the franchise area, would relieve this problem. Under a franchise, the provider would have absorb the cost of construction to the residential building. From a policy perspective, this is the preferred method for services to be arranged to protect consumers and continue to promote the CBFD as an area for residential development.

However, the existence of the permit mechanism under 21.60.700 requires that the transition be carefully managed to:

- Provide a level playing field for the companies that are willing to take on the burden of the franchise obligation
- Assure that existing customers are not denied service because the franchise grantee(s) do not yet have the infrastructure to provide service to them
- Assure that residential buildings without service can acquire service during the transition period
- Minimize the potential that a decrease in competition would adversely impact existing customers as to rates or service
- Assure that cable companies rights under the Federal Cable Act are preserved.

The City Council, in Ordinance 120138, required a transition be adopted prior to the approval of a cable franchise that covered the CFBD.



## Approach

The critical differentiation between the permit system and the franchise system is the build out requirement; the permit-based provider can serve a customer at their discretion and may charge for the construction of the infra-structure to reach the customer premise. The franchise holder has an obligation to "build-out" infrastructure throughout the franchise district and once the customer location is considered "built-out", both has an obligation to serve the customer and can only charge for the "service drop" to the customer and any customer requested inside wiring. There are therefore two stages of transition:

- The period from when a franchise is granted, until the grantee has the infrastructure sufficiently deployed to consider the location "built-out".

During this stage, the key concern is that existing customers can retain service and that any residential units without service are not precluded from obtaining service from a permit based provider. During the initial deployment of the infrastructure, the new grantee may deploy "backbone" rings to establish the key elements of their distribution system. This level of infrastructure may not be sufficient to provide cost-effective services under the franchise terms; the grantee may have to construct additional infrastructure to bring the connection point closer to customers. A grantee during this period should be able to compete with permit-based providers for new buildings under conditions competitively neutral to those of the permit-based provider (including deciding not to provide service at that time or imposing a competitive charge, if they wish, for the extension of the infra-structure to the building). Given that the grantee has to meet annual progress goals of dwelling units passed, there is a strong incentive have the areas served by the grantee's investment in the CFBF determined as 'built-out'.

- The period after the location is classified as "built-out"

Once the location is considered as having met the build-out requirement by any grantee, there are policy questions regarding the ability of the permit-based providers to continue to offer service to new customers and to continue service to their existing customers, without also obtaining a franchise for the CFBF.



The implementation of these policy choices has to be consistent with Federal Law which provides process protection for cable providers who have made investments to serve communities. The Municipal Code provision (21.60.700) predates the 1984 Federal Cable Act. The 1984 Federal Cable Act<sup>1</sup> explicitly provided for a franchise renewal process, and for this purpose considers a franchise as

“an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 546), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system” .

Thus the cable operators have the protection of the franchise renewal process during the transition. This protection allows for continued operation of the cable system during the period for obtaining the new City franchise for the CFBD.

The Municipal Code provision as it exists today would not allow permit-based providers to continue to offer service to new customers, essentially raising the bar for providers to equal the obligations of the franchise holder. The permit holders today do meet general franchise obligations, such as franchise fees for their permit based customers, achieving reasonable parity with the franchise holders. Permit holders do not have the same investment obligations or requirement to universally serve in the area; it is this lower burden that led to the policy choice embodied in the Ordinance. As the burden to obtain a franchise is not significant, the Department does not recommend a policy change; the permit holders should obtain a franchise to continue to offer new service once a franchise holder has the area classified as “built-out”. This transition rule must square that policy choice with the Federal Cable Act provision. There may be some argument as to whether the federal protection extends to the ability of the franchise holders to obtain additional permits after the City has granted a franchise in the CBFD. The Department believes that as long as the permit holder is actively pursuing a CBFD franchise, allowing permit holders to continue to extend their infrastructure to serve additional customers, with those additional investments at risk of a renewal decision, will continue the vibrant competition in the CBFD and be consistent with the intent of the Federal Law. Similarly, there is a policy question as to whether permit-based providers should be allowed to continue to offer service to existing customers. The Municipal Code provision as it exists today allows for revocation of the permits, and states that the permits should not “affect the privileges or immunities of any such franchise grantee”; however, it does not imply or state that the permit holder should expect that their ability to serve would be abrogated by a grant of franchise. Immediate abrogation would be a severe hardship for customers of the permit holder who may have limited time or options to secure new service. It would also be a severe hardship for the cable television provider, and would not appear consistent with the renewal process protections of the Federal Act. The Department recommends that the City start the clock on the Federal renewal process, and on termination of the ability of the permit based provider to continue to provide service in the CFBD unless they also obtain a City franchise that includes the CFBD.

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<sup>1</sup> Amended and codified as CFR Title 47



The Department proposes that the granting of a franchise for the Cbfd include a notice to the permit holders. The notice will trigger the federal "renewal" process, indicate that they may continue to serve the Cbfd during the renewal period as they are today, and provide the specifics for renewing their rights to serve in the Cbfd through obtaining a cable television franchise.

Finally the rule must consider how to protect customers from the potential impact of a reduction in competition. Consistency with the renewal provisions of the Federal Cable Act will assure that there is no reduction in competition from the grant of franchise, unless one of the permit providers is unwilling or unable to complete the process to obtain a franchise for the Cbfd. Given the degree of investment made by the permit holders, this is unlikely. Rather the existence of a franchise grantee can be expected to assure additional competition to all the areas of the Cbfd already served.



ORDINANCE \_\_\_\_\_

AN ORDINANCE related to cable television; amending Seattle Municipal Code Chapter 21.60 to establish transition rules for services in previously unfranchised areas.

WHEREAS, the granting of cable television franchises is the method provided by State and Federal law for assuring that citizens are provided cable television services that meet community needs and interests; and

WHEREAS, the Telecommunications Act of 1996 established a national policy to promote competition in telecommunications and cable television services and encourage the deployment of advanced technology; and

WHEREAS, the City Council required that a Transition Rule be approved with provisions to assure that consumers now served in any unfranchised area have appropriate transition opportunities; and

WHEREAS, federal law includes provisions which provide process protection to cable service providers to assure an opportunity to renew their ability to continue to provide service; Now, therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section is added to SMC 21.60 as follows:

**Transition Rule:**

- A. Upon the issuance of a Franchise for the Central Business Franchise District (CBFD) the holders of street use permits issued subject to SMC 21.60.700 to provide cable television service in the CBFD shall be governed by this section. The Office of Cable Communications shall notify Permit holders of their right to seek a Franchise for the CBFD consistent with the provisions of in CFR Title 47, Section 546. Permit holders shall notify the Office of Cable Communications within ninety (90) days of this notice as to whether they will pursue a Franchise for the CFBD and if so, whether they wish to follow the procedure in CFR Title 47, Section 546 (b) through (g), or the alternative procedure in CFR Title 47, Section 546 (h).
- B. Once a Franchise is issued for the Central Business Franchise District (CBFD) or a Citywide Franchise District (CFD), the Director of Transportation may issue temporary and revocable street use (utility) permits for the provision of Cable Television Services within the CBFD, to other than the holder of a Franchise which covers the CBFD, only if the following conditions are met:



- 1 1. The applicant has previously obtained a permit pursuant to the provisions of SMC 21.60.700 to  
2 provide service in the Cbfd;
- 3 2. The Office of Cable Communications has determined the permit applicant has met any  
4 applicable deadlines in the process to obtain a Franchise that includes the Cbfd and that there is  
5 not a final determination, including judicial review under CFR Title 47, on a Franchise  
6 application.

7 C. Ninety (90) days after the final determination, including judicial review under CFR Title 47, that a  
8 holder of a permit to provide cable television service under Section 21.60.700 has failed to obtain  
9 a Franchise for the Cbfd pursuant to Section 1, the permit holder must terminate the provision of  
10 Cable Television Service within the Cbfd.

11 Section 2. Any acts done consistent with the authority granted herein and prior to the effective  
12 date of this ordinance are hereby ratified and confirmed.

13 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its  
14 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after  
15 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

16 Passed by a majority vote of all the members of the City Council the \_\_\_\_\_ day of  
17 \_\_\_\_\_, 2001, and signed by me in open session in authentication of its passage  
18 this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

19 \_\_\_\_\_  
20 President of the City Council

21 Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2000.  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_



Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
City Clerk

ref: Ordinance Agreement #1 (Fiber1)

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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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128497  
City of Seattle, Clerk's Office

No. FULL ORDINANCE

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:120263 ORDINANCE

was published on

03/08/01

*Charles Valley*

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Subscribed and sworn to before me on

03/08/01

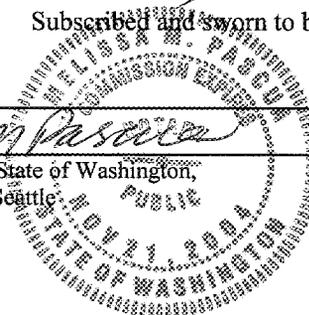
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*Melissa M. Pascoe*

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Notary public for the State of Washington,  
residing in Seattle.

Affidavit of Publication



# State of Washington, King County

## City of Seattle

### ORDINANCE 222233

AN ORDINANCE related to cable television; amending Seattle Municipal Code Chapter 21.60 to establish transition rules for services in previously unfranchised areas.

WHEREAS, the granting of cable television franchises is the method provided by State and Federal law for assuring that citizens are provided cable television services that meet community needs and interests; and

WHEREAS, the Telecommunications Act of 1996 established a national policy to promote competition in telecommunications and cable television services and encourage the deployment of advanced technology; and

WHEREAS, the City Council required in Ordinance 120138 that a Transition Rule be approved with provisions to assure that consumers now served in any unfranchised area have appropriate transition opportunities; and

WHEREAS, federal law includes provisions which provide process protection to cable service providers to assure an opportunity to renew their ability to continue to provide service; Now, therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section is added to SMC 21.60 as follows:

#### Transition Rule:

A. Upon the issuance of a Franchise for the Central Business Franchise District (CBFD) the holders of street use permits issued subject to SMC 21.60.700 to provide cable television service in the CBFD shall be governed by this section. The Office of Cable Communications shall notify Permit holders of their right to seek a Franchise for the CBFD consistent with the provisions of 47 U.S.C. Section 546. Permit holders shall notify the Office of Cable Communications within ninety (90) days of this notice as to whether they will pursue a Franchise for the CBFD and if so, whether they wish to follow the procedure in 47 U.S.C. Sections 546(b) through (g), or the alternative procedure in 47 U.S.C. Section 546(h).

B. Once a Franchise is issued for the Central Business Franchise District (CBFD) or a Citywide Franchise District (CFD), the Director of Transportation may issue temporary and revocable street use (utility) permits for the provision of Cable Television Services within the CBFD, to other than the holder of a Franchise which covers the CBFD, only if the following conditions are met:

1. The applicant has previously obtained a permit pursuant to the provisions of SMC 21.60.700 to provide service in the CBFD;

2. Within ninety (90) days of receipt of the notice from the Office of Cable Communications of its right to seek a Franchise for the CBFD as provided in Subsection A hereof, the applicant has notified the Office of Cable Communications that it will pursue a Franchise for the CBFD, and there is not a final determination, including judicial review under 47 U.S.C. Sections 546 and 555, on a Franchise application.

C. Ninety (90) days after the final determination in subsection B(2) hereof, that a holder of a permit to provide cable television service under Section 21.60.700 has failed to obtain a Franchise for the CBFD pursuant to Section 1, the permit holder must terminate the provision of Cable Television Service within the CBFD consistent with 47 U.S.C. Section 547.

Section 2. Any acts done consistent with the authority granted herein and prior to the effective date of this ordinance are hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force thirty (30) days from