

CITY OF GIG HARBOR

ORDINANCE NO. 591

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO PENINSULA LIGHT COMPANY, INC., A WASHINGTON CORPORATION, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN ELECTRICAL POWER LINES AND CABLES FOR THE PURPOSE OF MAINTAINING AND OPERATING AN ELECTRICAL TRANSMISSION AND DISTRIBUTION SYSTEM ON, UNDER, ALONG, OVER, AND ACROSS THE PUBLIC STREETS AND ALLEYS OF THE CITY OF GIG HARBOR, WASHINGTON.

WHEREAS, RCW 35A.47.040 authorizes code cities to issue non-exclusive franchises for use of public streets and rights-of-way; and

WHEREAS, this ordinance has been introduced more than five (5) days prior to its passage by the City Council; and

WHEREAS, this ordinance has been submitted to the City Attorney and has received at least a majority vote of the entire City Council;

NOW, THEREFORE, the City Council of the City of Gig Harbor, Washington, ORDAINS as follows:

Section 1. Franchise Approval.

Peninsula Light Company, Inc., a Washington corporation (hereafter referred to as "Peninsula Light"), its successors or assigns, are hereby given and granted by the City of Gig Harbor (hereinafter referred to as "City") the non-exclusive right and franchise to construct, operate, and maintain aerial and underground electrical transmission and distribution power lines, cables, and appurtenances for an electrical system under, along, across, and over all of the City streets and alleys as now existing or whether hereafter constructed, dedicated, or incorporated.

Such franchise encompasses all existing electrical lines, including those serving the City's traffic signals and street lights, and authorizes construction and maintenance of such new overhead electrical power lines and underground electric cables as may hereafter be constructed by Peninsula Light for electric power transmission to substations and for

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electric distribution to provide electrical service to private citizens, public bodies, or any other entities.

Section 2. General Construction Limitations and Conditions.

- A. Peninsula Light's facilities shall be so located or relocated and so erected so as not to unreasonably interfere with traffic or with such streets, avenues, highways, bridges, and other public places and egress, ingress to abutting property; provided, however, Peninsula Light shall not break up, block or disturb any streets or other public thoroughfare without prior written permission from the City. All such construction and installation work, whenever such work crosses any of the public properties, shall be done under the supervision of and upon the inspection of the City, and Peninsula Light shall timely submit to the City, prior to any such work, detailed plans and specifications of any proposed work. The location of any franchise property in a street or other public area shall be subject to the approval of the City and approval shall be given in writing, and Peninsula Light shall be subject to all applicable ordinances, regulations, permits, or licenses as provided by the ordinances of the City as they now exist or as they are amended.
- B. During any period of construction, all surface structures, if any, shall be erected and used in such places and positions within the public right-of-way and other public properties so as not to unreasonably interfere with the free passage of traffic and the free use of adjoining property, and Peninsula Light shall at all times post and maintain proper barricades during any period of construction as is required by the laws and statutes of the State of Washington and the City of Gig Harbor. Any portion of the streets so excavated shall within a reasonable time as quickly as possible after said excavation be restored and replaced by Peninsula Light at its sole cost and expense in at least as good condition as it was immediately prior to the time of such excavation and to be performed in accordance with the applicable rules and regulations of the City.

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Section 3. Temporary Removal and Relocations by Peninsula Light.

Peninsula Light agrees and covenants, at its sole cost and expense, to temporarily protect, support, disconnect, relocate or remove from any street or other public property any of its installation when so required by the City by reason of traffic condition, public safety, street vacation, dedications of new rights-of-way and the establishment or improvement thereof, including widening, freeway construction, change or establishment of street grade or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity. Peninsula Light shall in all such cases have the privilege to temporarily bypass or permanently relocate, in the authorized portion of the same street or right-of-way upon approval by the City, any section of its lines or appurtenances to be so temporarily disconnected or removed.

Section 4. Raising and Moving Wires.

If the raising or moving of wires is required by any party other than the City, at any time to enable use of the streets, or other public rights-of-way or properties, such party shall make written application at least five days in advance of such required use, and Peninsula Light shall raise or move said cable, wires and/or other equipment at the expense of the applicant, payable in advance. If the request is made by and for the benefit of the City, Peninsula Light shall raise or move the same at no charge to the City.

Section 5. Non-waiver of Rights.

The City of Gig Harbor, in the granting of this franchise, does not waive any rights which it now holds or hereafter may acquire to regulate the use and control of the City streets and alleys covered by this franchise.

Section 6. Hold Harmless, Indemnify.

Peninsula Light shall indemnify, defend, and hold harmless the City of Gig Harbor, its officers, agents, and employees from any and all claims, suits, demands, and judgments for damages, costs, and reasonable attorney's fees incurred or alleged to have been incurred by any person, including Peninsula Light's own employees, and alleged to have arisen

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directly or indirectly, in whole or in part, from any act or omission on the part of Peninsula Light, its officers, agents, contractors, and employees related to Peninsula Light's electrical facilities, including, without limitation, the placement, maintenance, repair of electrical poles, appurtenances, wires, and other equipment, regardless of whether it is also alleged the City of Gig Harbor, its officers, agents, and employees caused or contributed to the placement, maintenance, repair of electrical poles, appurtenances, wires, and other equipment; provided, however, this indemnity shall not apply if said damages result from the sole negligence of the City of Gig Harbor, its officers, agents, and employees.

Section 7. Relocation of Facilities.

If at any time the City of Gig Harbor shall change the width, grade, or location of its streets and alleys, or install or change its underground utilities or install or change its open drainage facilities, Peninsula Light shall upon request of the City, upon thirty (30) days written notice, or longer if needed, due to the nature of the work as agreed to by the City, at its sole expense relocate its facilities maintained pursuant to this franchise in the manner and at the location as directed by the City.

Section 8. Non-exclusive Franchise.

This franchise is non-exclusive and does not divest the City of Gig Harbor of the power to grant other franchises for the same or other purposes upon the streets and alleys of the City.

Section 9. Public Liability Insurance.

Peninsula Light shall maintain in full force and effect during the life of this franchise issued pursuant to this ordinance public liability insurance naming the City, its officials, employees, and agents as additional insureds, and requiring thirty (30) days written notice to the City of any cancellation thereof, with an insurance company authorized to do business in the State of Washington, in amounts to be mutually agreed upon by the City and Peninsula Light Company.

A certificate or certificates evidencing the effectiveness of such policy(s), authenticated by the insurance carrier or carriers shall be filed with the City Clerk and likewise

authenticated proof of renewals shall be filed showing the mutually agreed upon coverage for the duration of the franchise.

Section 10. Utilities Placement, Clearance Standards.

Where new electrical power poles are placed upon the streets and alleys of the City, they shall be placed and located, unless otherwise permitted by the City authority, centered six feet from the right-of-way line. And unless otherwise permitted by such authority the minimum vertical clearance for new or rebuilt overhead electrical power lines upon said streets and alleys shall be as follows:

<u>Voltage of Power Line</u>	<u>Electric Power Lines Crossing Streets & Alleys</u>	<u>Electric Power Lines Not Crossing Streets & Alleys</u>
0 to 750 Volts & Guy Wires	18 feet	18 feet
751 to 15,000 Volts	20 feet	20 feet
15,001 to 50,000 Volts	21 feet	21 feet
50,001 to 115,000 Volts	24 feet	24 feet

The measurement to be from the high point of the street or alley for crossing lines and from ground level on non-crossing lines.

Section 11. Underground Utilities.

Where underground cables and appurtenances are installed or constructed by Peninsula Light under the streets and alleys of the City, Peninsula Light shall, unless otherwise permitted by the authority of the City, install and construct the same as follows:

- A. Underground electric cables shall cross said streets or alleys at a minimum depth of 48 inches below the surface of the finished roadway. Said cables shall be in metal or schedule 80 PVC conduit under said finished roadway. When trenches are cut for placement of above, the cut roadway shall be patched with a like roadway surface material.
- B. Underground electric cables placed longitudinally on the streets or alleys shall be confined on a five foot wide strip abutting the right-of-way line. Said cables shall be buried a minimum depth

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of 30 inches below the ground (street) line, except where physical protection for the cables occurs, the minimum depth may be reduced according to the Washington Electrical Construction Code or the National Electrical Safety Code, whichever is more stringent at the time of installation.

Section 12. Franchise Term.

The term of this franchise shall be for twenty-five (25) years, commencing the 22nd day of October, 1990, and ending the 22nd day of October, 2015, conditioned upon the acceptance in writing thirty (30) days by Peninsula Light of the terms and conditions herein imposed.

Section 13. Revocation. Peninsula Light covenants and agrees, for itself, its successors and assigns, that in the event of any neglect, failure, refusal or omission to comply with any of the terms, conditions, and regulations of any franchise and the rules and ordinances of the City, that the City may give notice of such default, and if such default has not been corrected or the conditions of the franchise have not be complied with within thirty (30) days after receipt of such a notice, then any franchise and all rights accruing thereunder shall be immediately subject to forfeiture and termination, at the option of the City subject to public hearing.

Section 14. Validity.

If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

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Section 15. Effective Date.

This ordinance shall take effect and be in full force five (5) days after publication of the attached summary which is hereby approved.

Gretchen A. Wilbert
Gretchen A. Wilbert, Mayor

ATTEST:

Michael R. Wilson
Michael R. Wilson
City Administrator/Clerk

Filed with city clerk: 9/7/90
Passed by city council: 10/8/90
Date published: 10/17/90
Date effective: 10/22/90