

Ordinance No. 00261

[Council Meeting Minutes 01/04/02](#)

ORDINANCE NO. 261

AN ORDINANCE of the City Council of the City of Lakewood, Washington, granting to the Lakewood Water District, a municipal corporation of the State of Washington, its successors and assigns, the right, privilege, authority and nonexclusive franchise, for the period ending December 31, 2001, to construct, maintain, operate, replace and repair water systems, in, across, over, along, under, through and below the public rights--of-way of the City

WHEREAS, The Lakewood Water District, ("District"), a special purpose municipal corporation, owns and operates a water supply system located partially within the City of Lakewood ("City"), a municipal corporation; and

WHEREAS, the District has requested the City Council grant it a franchise to install, operate and maintain its water supply system in the public rights of way of the City; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties (RCW 35A.47.040).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Franchise Granted. Subject to the terms and conditions hereinafter set forth, the City grants to the District a franchise for a water supply system. The initial term of the franchise shall be for the period ending December 31, 2001.

Subject to the terms and conditions hereinafter set forth, the City grants to the District a franchise for a water supply system. The initial term of the franchise shall be for the period ending December 31, 2001.

This franchise grants to the District the right, privilege and authority to construct, operate, maintain, remove, replace, and repair all necessary Facilities for a water delivery system, in, under, on, across, over, through, along or below the public rights-of-way located in the City, as approved under City permits issued pursuant to applicable City codes and regulations. Public "rights-of-way" means all public streets, roads, alleys, highways, and easements of the City as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-Exclusive Franchise. This franchise is non-exclusive and the City reserves the right to grant other or further franchises in, along, over, through, under, below or across any of its public rights-of-way. This franchise shall in no way prevent or prohibit the City from using any of its public rights-of-way or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same, including the dedication, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares and other public properties of every type and description.

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Section 3. Franchise Fee - City Consideration. The District shall pay to the City for its costs associated with administering this franchise an annual administrative fee of \$2000.00.

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Section 4. Cooperative Planning. The District and the City each recognize their respective obligation to plan in accordance with the laws of the State. In furtherance of that obligation, the District will prepare its comprehensive plan(s) consistent with the Washington State Growth Management Act, both substantively and procedurally, so that it is compatible with City planning documents and the planning documents of other jurisdictions that are served by, or are adjacent to, the District.

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Section 5. Relocation of Water System Facilities.

5.1 The District shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate or remove from any public right-of-way any of its installations when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, storm drainage construction, street vacations, freeway construction, change or establishment of street grade, provided that, with City approval, the District may temporarily bypass, in the authorized portion of the same street, any section of main required to be temporarily disconnected or removed.

5.2 Any condition or requirement imposed by the City upon any person or entity which reasonably necessitates the relocation of the District's facilities within the franchise area shall be a required relocation under subsection 5. 1, subject to the District's right to establish terms for such utility relocation; provided such arrangements do not unduly delay a City construction project.

5.3 If the City determines that a project necessitates the relocation of District facilities, the City shall:

A. At least ninety (90) days before commencement of the improvement project provide the District with written notice requiring a utility relocation; provided that, the City shall notify the District of a relocation required by a City capital improvement project as soon as the City acting with reasonable diligence learns that relocation of utilities are required; and

B. Provide the District with copies of pertinent portions of thirty percent plans for such improvement project and a proposed location for District facilities so that the District may relocate its facilities in other City rights-of-way in order to accommodate such improvement project.

C. After receipt of such notice and such plans, the District shall complete relocation of its facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the City's project. The District shall not be considered in breach of this Section if it is delayed by the time required

(i) to comply with state bid law requirements for contracting out any of the relocation work and the District has diligently pursued the award of the necessary contract; or

(ii) to obtain or comply with any pen-nits necessitated by environmental or endangered species requirements,

5.4 The District may submit to the City written alternatives to any requested relocation. The City shall give each alternative proposed by the District full and fair consideration. The District shall submit additional information requested by the City to aid its evaluation. The City shall advise the District in writing if one or more of the alternatives is acceptable. If the City determines that no other reasonable or feasible alternative exists, the District shall relocate its facilities as otherwise provided in this Section.

5.5 The District may establish terms for any utility relocation that is requested by a third party if the utility is not being relocated at the direction of the City; provided such arrangements do not delay a City construction project.

Section 6. Maps and Records. After construction of new Facilities in the City rights--of-way, the District shall provide to the City upon request and at no cost, a copy of all as-built plans, maps and records detailing the location and condition of its facilities within the public right-of-ways and public places.

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Section 7. Excavations. All work performed by the District or its contractors shall be accomplished in a safe and workmanlike manner, and in a manner that will minimize interference with traffic and the use of adjoining property. The District shall post and maintain proper barricades and comply with all applicable safety regulations during construction as required by the ordinances of the City or the laws of the State of Washington.

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Except as otherwise provided herein, the District shall secure City permit(s) to work in the public rights-of-way and, in addition, shall give the City at least five (5) working days notice of its intent to commence work in the public rights-of-way.

If either party plans to excavate in the public rights-of-way, then upon a written request from the other, that party may share such excavation upon mutually agreed terms and conditions.

Section 8. Restoration. After completion of work in a public right-of-way, the District shall restore the surface of the right-of-way to the same a condition as good as or better than existed immediately prior to the work and to the standards established on the approved plans, or permit conditions, whichever is greater. The Public Works Director shall have final approval of the condition of such streets and public places after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. The District shall complete all restoration work promptly and promptly repair any damage caused by such work.

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Section 9. Emergency Work -- Permit Waiver. If a District facility located in a right-of-way is, or if a District construction area presents a condition that endangers property, health or safety, the District shall immediately take proper emergency measures, without first obtaining a permit as required by this franchise. However, the District shall notify the City of the work not later than the next succeeding business day and apply for a right-of-way permit within forty eight (48) hours.

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Section 10. Dangerous Conditions, Authority for City to Abate. If work related to facilities authorized by this franchise endangers property or the public's health and safety, the Public Works Director may direct the District, at the District's own expense, to take appropriate protective action, including compliance within a prescribed time. Unless otherwise notified in writing by the District, the City shall notify the District as follows: name: _____ phone number: _____; cell/pager number: _____.

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If the District does not comply with such directions, or if immediate action is required to protect property or the public's health and safety, the City may take reasonable emergency measures, and the District shall be liable to the City for the costs thereof.

Section 11. Indemnification. The District shall release, indemnify, and defend the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of the District, its agents, servants, officers or employees, performed under authority of this franchise; provided, that for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the District and the City, its officers, employees and agents, the District's obligation shall be only to the extent of the District's negligence. This indemnification includes claims by the District's own employees for which the District might otherwise be immune under Title 51 RCW, and the District waives its immunity under Title 31 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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Inspection or acceptance by the City of any work performed by the District at the time of completion of construction shall not relieve the District of any of its obligations under this Section.

If a court or other tribunal agreed upon by the parties determines that the District wrongfully refused the tender of defense in any suit or any claim made pursuant to this indemnification provision, the District shall pay all of the City's costs for defense of

the action, including all expert witness fees, costs, and attorney's fees, including costs and fees incurred in recovering under this indemnification provision.

Section 12. Insurance. The District shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the District, its agents, representatives or employees. The District shall provide a insurance endorsement, naming the City as an additional insured, to the City for its inspection prior to the adoption of this franchise ordinance, and such endorsement shall evidence a policy of insurance that includes:

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A. Automobile Liability insurance with limits no less than \$ 1,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and

B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

The District may satisfy the requirements of this section by a self-insurance program or membership in an insurance pool providing coverage substantially the same as set forth above.

Section 13. Modification. The terms and conditions of this franchise may be modified upon written agreement of the parties.

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Section 14. Forfeiture and Revocation. If the District willfully fails to comply with any provision of this franchise, or through willful misconduct or gross negligence fails to comply with any notice given the District by the City under the provisions of this franchise, then this franchise may be revoked by the City Council after a hearing held upon notice to the District.

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Section 15. Remedies to Enforce Compliance. In addition to any other remedy, the City may obtain a superior court order compelling the District to comply with the provisions of this Ordinance and seek to recover damages and costs incurred by the City by reason of the District's failure to comply. The pursuit of any right or remedy by the City shall not prevent the City from acting under Section 13.

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Section 16. City Ordinances and Regulations. This franchise shall not prevent the City from adopting and enforcing all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any

valid ordinance made in the exercise of its police powers. The City retains its authority to control by reasonable regulations the location, elevation, manner of construction and maintenance of District water delivery facilities in the public rights-of-way, and the District shall conform with all such regulations, unless compliance would cause the District to violate other requirements of law. In the event of a conflict between the provisions of this franchise and any other ordinance(s) enacted under the City's police power, such other ordinance(s) shall take precedence, unless otherwise specifically provided.

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Section 17. Cost of Publication. The cost of the publication of this Ordinance shall be born by the District.

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Section 18. Acceptance. Unless extended by Ordinance, the District shall have sixty days after the passage and approval of this Ordinance to file with the City Clerk its unconditional written acceptance of this franchise; otherwise, the District shall be deemed to have rejected this franchise.

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Section 19. Survival. Sections 3, Relocation of Water Facilities; 4, Excavation; 7, Restoration after Construction; 9, Dangerous Conditions; and 11, Indemnification shall be in addition to any and all other obligations and liabilities the District may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to the District for the use of the City rights of way. This franchise Ordinance is binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the District and all privileges, as well as all obligations and liabilities of the District shall inure to its heirs, successors and assigns.

Sections 3, Relocation of Water Facilities; 4, Excavation; 7, Restoration after Construction; 9, Dangerous Conditions; and 11, Indemnification shall be in addition to any and all other obligations and liabilities the District may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to the District for the use of the City rights of way. This franchise Ordinance is binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the District and all privileges, as well as all obligations and liabilities of the District shall inure to its heirs, successors and assigns.

Section 20. Assignment. This franchise may not be assigned or transferred without the written approval of the City, which shall not be unreasonably withheld.

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Section 21. Notice. Any notice required or permitted by this franchise may be sent to the following addresses unless otherwise specified in writing:

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To City: To District:

City of Lakewood Lakewood Water District

Assistant City Manager General Manager

10510 Gravelly Lake Drive, S.W. #206 11900 Gravelly Lake Drive, S.W.

Lakewood, WA 98499-5013 Lakewood, WA 98499-0729

Section 22. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court, the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance shall not be affected, unless the rights, privileges, duties, or obligations hereunder are materially altered, whereupon either party may request renegotiation of those remaining terms.

If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court, the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance shall not be affected, unless the rights, privileges, duties, or obligations hereunder are materially altered, whereupon either party may request renegotiation of those remaining terms.

Section 23. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

ADOPTED by the City Council this 2nd day of April, 2001.

CITY OF LAKEWOOD

Bill Harrison, Mayor

Attest:

Alice M. Bush, CMC/AAE, City Clerk

Approved as to Form:

Daniel B. Heid, City Attorney

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