

Ordinance No 88.

An ordinance granting to Charles A. Eaton and Boone F. Gordon, their successors and assigns, a franchise to construct, maintain and operate a street and electric railway upon Piccadilly Avenue and other Streets and avenues and places in the town of Kirkland.

Be it ordained by the council of the town of Kirkland,

Section 1.

That there be and hereby is granted to Charles A. Eaton and Boone F. Gordon, their successors and assigns, the right, privilege and authority to locate, lay down and maintain tracks, conduits, and all necessary equipment of every sort, and to erect poles and string wires for street railways, and to construct and maintain and operate and electric railway and street railway within the town of Kirkland, upon the route hereinafter designated, and to carry passengers and freight thereon and to collect and charge fares and freight therefor, subject to the right of the town council to regulate by ordinance on what portion of said route freight may be carried and to regulate the rate to be charged therefor and to enter upon any and all streets, alleys, and public places or parts thereof, comprised in the route hereinafter designated, and for the purpose of constructing, locating, maintaining and repairing all tracks, poles, wires, conduits, and equipments of every sort, and of operating said street and electric railway or any part thereof and for any and all purposes contemplated by this ordinance.

Section 2.

The route hereinbefore referred to is as follows; Commencing at a point where Piccadilly Avenue intersects with the East Corporate limits of the town of Kirkland and running thence West along and upon the said Piccadilly Avenue to the place where the same intersects with Market Street; Thence South upon and along said Market Street to a point where the said Market Street intersects with Lake Avenue; Thence upon and along said Lake Avenue in a Northeasterly direction to a point where the said Lake Avenue intersects with the said Piccadilly Avenue, Also commencing at a point where the said Market and Piccadilly streets intersect and running thence along and upon the said Market street in a Northerly direction to the place where said Market street intersects with the North boundry line of the town of Kirkland, and also in, upon and along the whole of Spring Street.

Section 3.

The Street and Electric railway hereby authorized shall be completed to the extent hereinafter stated and the operation thereof under this franchise be begun, in good faith, within the several times stated in this section, unless prevented by accident, act of God, strikes, acts of the town of Kirkland, inability to obtain material or legal proceedings in court. Unless prevented as aforesaid, the grantess, their successors or assigns, shall within ninety days from the acceptance of this franchise begin in good faith the construction of said Street and electric railway or some part thereof. Unless prevented as aforesaid at least a single track of said railway shall be completed upon the following route; Commencing at a point where the said Piccadilly Avenue intersects with the East corporate limits of the town of Kirkland and running thence along said avenue in a Westerly direction to a point where the said Piccadilly Avenue intersects with Market Street and running thence along said Market Street in a Southerly direction to a point where said Market Street intersects with Lake Avenue and thence along said Lake Avenue in a Northeasterly direction along said Lake Avenue to a point where the same intersects

with the said Piccadilly Avenue and in operation by the 31st day of January 1912. Unless prevented as aforesaid, at least a single tract of said street railway shall be completed over the remainder of the route for which this franchise is granted not later than January 31st. 1913. It is the intent hereof that in the event of any delay arising from any of the above mentioned causes, the grantee, its successors or assigns, shall be entitled to additional time equal to such delay.

Section 4.

The said grantee, its successors and assigns, shall within ninety days from the approval of this ordinance file with the town Clerk of the town of Kirkland, true and correct maps, drawn on a scale of two hundred feet to each inch, also profiles of its lines as granted hereby. It shall also file similar maps and profiles of any changes or additions thereafter made. The construction of said railway shall be of first quality. It shall be of either single or double track, or of partly single and partly double track, and single track may at any time be changed to double track, at the option of the said grantee, its successors or assigns. Said railway shall not be of greater than standard gauge, and the double tracks thereof shall be laid as nearly equal distant from the center of the street as is practicable. ~~SAID DISTANCE TO BE FIXED BY SAID TOWN COUNCIL OF KIRKLAND.~~ Single tracks shall be laid upon one side of the center of the street, with the inner rail not less than two and one half nor more than three ~~FIFTEEN~~ ^{FOURTEEN} feet from the center, provided that the town council of the town of Kirkland may in any case fix within said limits the exact distance which shall separate said tracks, and provided further that where, by reason of the contour of the ground or other physical conditions, or for the purpose of better construction or operation, said grantee, his successors or assigns, shall desire to lay the tracks outside of the limits herein defined, the town Council of the Town of Kirkland, shall have the power to designate a location for said tracks outside of said limits before said tracks shall be constructed. Switches, turnouts and cross overs may be located wherever necessary or convenient, subject to the approval of the town council of the town of Kirkland and said tracks shall be subject to the approval of the town Council as aforesaid, rails, switches, curvers and cross-overs shall be of such pattern as are in general use for similar purposes, or such as shall be approved by the board of public works and such rails shall be changed or renewed whenever such changes or renewals shall be demanded as a necessity by the said town council in its reasonable discretion. They shall be so laid that their upper surface conforms as nearly as practicable with the established grade of the street where it has been brought to grade, except as herein otherwise provided. The rails shall offer no more obstruction to the crossings of vehicles than can reasonably be avoided where the tracks herein provided for cross those of a railroad or another street railway, the rails of each shall be so cut or altered that the cars of each can pass without obstruction. Upon the completion of construction or repairs the street in which such construction or repairs has been made shall be left in as good condition for the public travel as they were before the commencement of such work. Upon all span wire poles such space shall be provided and reserved as the town council of the town of Kirkland may require for the town's use and the space reserved for or occupied by wires for municipal purposes shall be free. The location, material and height shall be subject to the approval of the said town council and shall be painted such color and to such height as said council may direct.

The town of Kirkland reserves the right to compel said grantee, its successors and assigns, at such time as the public convenience may require and when it may compel any other similar road so to do, to adopt a reasonably economical method in actual, practical and successful use, under similar circumstances and conditions, for conducting electrical current for the use of said railway through or beneath the streets of said town, and to remove the poles and wires from said streets when

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such plan shall have been adopted. The town of Kirkland reserves the right to compel said grantee, its successors and assigns, to attach its trolley wires upon wires suspended from any pole or series of poles within and upon the streets and avenues which said city may designate notwithstanding the fact that said poles may be used by other persons or corporations, and to require the removal of all idle poles.

The town of Kirkland shall have the right to attach any of its municipal wires to these poles. All electrical currents used by said grantee, its successors and assigns, must be so cared for as to insure sufficient returns of the same along its own metallic conductors, to prevent any damage or injury to any property of the city from such currents. The town of Kirkland reserves the right to compel said grantee, its successors and assigns to adopt a reasonable economical method in actual practical and successful use, under similar circumstances and conditions, for the operation of said line so as to insure such return of such current. All equipment of first quality and shall be so installed as to interfere as little as practicable with other public use of the streets. The cars used in operating such railway shall be of the most approved pattern and constructed for the comfort, convenience and safety of the passengers. They shall be provided with proper fenders and brakes, and other necessary appliance for the protection of life. The grantee, its successors and assigns may propel their cars either by electric cable traction, or partly by each, or subject to the approval of the city council, by any other motor or motive power, except horses and steam locomotives. Cars shall be run over the railway hereinbefore described for the transportation of the passengers and freight at such reasonable intervals as the said grantee shall find convenient and suited to the needs of their passengers, provided the town council may from time to time regulate the same by ordinance.

The town council of the town of Kirkland reserves the right to prescribe restrictions and regulations concerning the handling, loading and unloading, and transportation of freight thereon.

The said grantees, its successors and assigns shall be authorized to construct spurs, tracks from their track or tracks unto such freight yards as they shall establish after receiving proper permit for such spur, track or tracks from the town council of the town of Kirkland, which shall have the right to alter or amend any such permit and approve or disapprove any portion of any spur track or tracks permitted to be constructed, but the same shall not cross any streets other than those upon which the said grantee, its successors and assigns shall have a franchise. And in no case shall any wood be allowed to be loaded or un-loaded in any town street, unless the town council shall by ordinance grant authority therefor.

The rate of speed at which cars may be run within the corporate limits of the town of Kirkland shall not exceed twelve miles per hour and shall be subject to regulation and control by the town council by ordinance. In case of wilful violation of any ordinance passed in pursuance thereof, the owner or owners of this grant shall be subject to a penalty of \$100.00 for each violation. Said penalty to be recovered by the city of Kirkland in a civil action. Before any railway track shall be laid on any street or portion of a street, in any location where any person or corporation is entitled to compensation for damages occasioned thereby, all injuries or damages to be occasioned thereby shall be ascertained and settled by the grantee, its successors or assigns, according to law.

The owner of this grant shall, within and between all tracks thereof and for one and one half feet on each side said tracks, from time to time pave and re-pave, plank and re-plank, macadamize and re-macadamize, grade and re-grade, any and all streets over which the line hereby authorized shall extend, in like manner and to the same level and with the same material and at the same time as the town of Kirkland may provided for the improvement of said street where the line of said

grantee is located and to unite with the improvements so made or provided by the town,

On those streets or portion of streets which are not paved, planked or macadamized the owners of said railway shall maintain a plank crossing over their tracks at all street intersections which are actually used for the crossing of teams, and at other locations where teaming is customarily carried on across such tracks. Such crossings shall consist of planking within and between the tracks and for one and one half feet on each side thereof and to extend such reasonable distance lengthwise of their tracks as shall make a reasonable crossing.

Whenever and to whatever extent the grade of the street over which the line of said tracks shall extend shall be changed by said city, said tracks shall be so adjusted and changed as to conform to said grade so established said adjustment and change in all things to be made at the cost and expense of the owner or owners of said track. The owner or owners of said track shall from time to time, as directed by the town council connect the various conduits, rail, grooves and other channels with sumps, town catch basens sewers and drains.

The grantee, its successors and assigns, may establish and take a passenger toll or fare, which shall not exceed the sum of five cents for a single continuous ride one way over any line or lines owned or controlled by the grantee its successors or assigns between points situated within the town limits of the town of Kirkland as the same now are or may be hereafter established, although a transference or transferences shall be necessary but no such transferences shall be good except upon the first connecting car at the point of transference. Any passenger who has paid fare shall, on request, be furnished with a transference to any line of street railway, crossing or connecting or hereafter crossing or connecting with the line of grantee provided that this provision respecting transferences to ~~any other line~~ shall be in force only in case and so long as said other line shall give and receive transference to and from the line of said grantee, his successors and assigns on the basis of a cash remittance by each line of ~~trans~~ transferences issued by it and used on the other line at the rate of two and one half cents for ordinary transferences and one and one fourth cents for school children transferences and passengers from said other lines so long as it may give and receive transferences on the basis aforesaid to and from the line of grantee its successors and assigns, presenting a transference from such other line on which they have paid a fare not less than the fare charged on this line, shall be entitled to passage on the cars of this line, any such transference, however, shall be issued and be good only at and for such an hour and time and at such place as shall render the entire trip of the passenger practically continuous, and no passenger whose ride on any of such other lines begins outside of the city limits shall be entitled to a transference over this line, and transferences used by this line shall not be good on any such other lines beyond the city limits, provided, further, that said grantee, its successors and assigns, shall not be liable in any event to any passenger or other person beyond their own line, and said grantee its successors and assigns may make reasonable rules and regulations not in conflict herewith, respecting and giving and receiving of transferences for the prevention of fraud.

Policemen and firemen shall be carried free over said line free of charge, provided they shall exhibit such badge of other evidence of official character as may be furnished by said grantee.

The grantee, its successors and assigns, shall keep on sale at such places as may be designated by the city council computation tickets entitling the purchaser to twenty five rides for one dollar. Such tickets shall not be transferable to entitle the owner to a transference and the company may make such reasonable regulations in regard to the issue and use of the same as to enforce these provisions.

Every passenger car run and operated by the grantee, its successors and assigns on said line shall be provided with a motorman or gripman and with a conductor, who shall collect fares and attend to the convenience and comfort of the passengers upon each car.

2 1/2 cents for school children and in all other cases

That the right, privilege, and franchise herein granted shall not be deemed exclusive and the right is hereby reserved to the town of Kirkland to grant to any other person or persons, company or companies, or to any commission appointed under the then existing laws of the State of Washington, or any charter of the town of Kirkland, or to itself exercising the right and privilege to to construct, lay down, maintain and operate a line or lines of railway through, along and over the streets herein mentioned.

Nothing in this ordinance shall be so construed as to prevent the authorities of the town of Kirkland from sewerage, planking, paving, grading, repairing, altering or otherwise improving or re-improving any of the streets herein named, and the town shall not be liable for any damage to the owner or owners of said road that may occur by reason of the performance of such work, or by the exercise of any right provided or reserved in this section.

This ordinance shall not be so construed as to deprive the town of Kirkland of any rights, powers or privileges which it now has or which may hereafter be conferred upon it to regulate the use of and control of the streets and alleys of said town.

The grantee, its successors and assigns, shall have the right at any and all times to make reasonable rules and regulations for the management and operation of the railway lines herein provided for, provided that such rules and regulations shall not conflict with the laws of the State of Washington and ordinances of the town of Kirkland.

Any person wilfully or unlawfully obstructing or interfering with either the construction, maintenance or operation of the Street railway herein provided for, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than five dollars nor more than one hundred dollars, or by imprisonment in the town jail for not more than twenty days or by both such fine and imprisonment.

That whenever any person shall have obtained permission to use any street of the town for the purpose of removing a building, the said grantee, his successors and assigns, upon forty eight hours written notice from the town council shall raise or remove any of its wires which may obstruct the removal of such building so as to allow the passage of such building across but not along, any street on which the trolley wires of said grantee, its successors or assigns, may be erected, provided that such crossing shall be done at such reasonable hours of the night and in such reasonable manner as shall cause least interference with the traffic on the lines of the grantee, its successors and assigns.

Section 5. after December 1st, 1913

The grantee, its successors and assigns, shall pay annually to the town of Kirkland, 2 per cent per annum of the gross receipts derived within the corporate limits of the town of Kirkland from and after the date of the acceptance of this franchise until its expiration, and in addition thereto shall pay annually to the town of Kirkland from and after the 1st day of January 1920 and until the expiration of this franchise, an additional percentage of 1 per cent per annum of the gross receipts derived within the corporate limits of the town of Kirkland from the operation of said railway from and after the 1st day of January 1920. Said payment shall be made on the 15th day of January of each and every year for the year preceeding and any accredited officer of the town shall, upon demand, have the right to examine and inspect the books of the grantee, its successors or assigns, for the purpose of ascertaining the gross receipts of said railway for any year. The payment of these percentages to be in addition to other taxes and assessments, and to be no part thereof but no license tax shall be imposed upon said grantee, its successors or assigns.

Section 6.

That the said grantee, its successor or assigns, by their acceptance

of this franchise, does agree for itself, its successors and assigns, to protect and save harmless the town of Kirkland from all claims, actions or damages of every kind and description which may occur to or be suffered by any person or persons by reason of any defective construction or maintenance improper occupation of the said right-of-way or by reason of the negligent operation by said grantee, its successors or assigns, of their cars over the right-of-way hereinbefore described, and in case suit or action is commenced against said city for damages arising out of or by reason of such defective construction or maintenance or improper occupation or negligent operation, said grantee, his successors or assigns, will upon notice to them or either of them, of the commencement of said action, defend the same at their sole cost and expense, and in case judgment shall be rendered against the town of Kirkland in such suit or action, will fully satisfy said judgment within ninety days after the said suit or action shall have been finally determined, if determined adversely to said Town of Kirkland.

The grantee, its successors or assigns, shall at all times during the period of this franchise keep on deposit, when required by ten days written notice from the town council at any time, in the town treasury, to the credit of the said town council of the town of Kirkland, the sum of two hundred dollars to be designated as an emergency fund.

Whenever in the opinion of the said town council of the town of Kirkland and emergency arises for the immediate repair of any dangerous defect found to exist in that part of any street alle, avenue or public place, required by this franchise to be kept in repair by said grantee, its successors or assigns and the said grantee, its successors and assigns, have failed on notice to immediately repair the same, the said town council shall cause said repair to be made at once and if said grantee its successors and assigns, shall not promptly the bill for the cost of such repairs, when made out and presented of said grantee its successors or assigns, in said town of Kirkland, then said council may on the order of the town council of the town of Kirkland, draw the amount of such bill from said emergency fund, which fund shall be reimbursed by said grantee, its successors or assigns without delay and kept up to the said amount of two hundred dollars as aforesaid.

This provision as to an emergency fund is in addition to all other provisions herein contained on the subject of repairing streets, and is not intended to modify or change any other provision or penalty of this franchise concerning the same.

Section 7.

That if any dispute shall at any time arise between said grantee, its successors or assigns, and its employes as to any matter of employment or wages, such dispute shall be submitted by arbitration. the grantee, its successors and assigns, and their employes shall be parties to any submission and shall be entitled to be heard by the arbitrators, and any award when made shall be binding and conclusive for the period of one year from its date, upon the grantee its successors and assigns and upon their employes.

Section 8.

That the said grantee, its successors and assigns, shall forfeit and shall be deemed to have forfeited and abandoned all rights, privileges and franchises, conferred by this ordinance unless within thirty days after receiving written notice from the town council of the town of Kirkland so to do, the said grantee, its successors or assigns, files in the office of the town treasurer its written acceptance of the rights and privileges hereby conferred, subject to the terms and conditions and restraints hereby imposed, and in case of its failure so to do, this ordinance shall be null and void and of no force or effect whatever. In any case, this grant cease and determine at twelve O'clock midnight. December 31st. A.D. 1934. And within ninety days thereafter the said grantee, its successors or assigns, shall have removed from all streets, avenues, and public places all parts and portions of their said road bed and appurtenances and shall have put the surface of said streets, avenues and public places in as good condition for public travel and durability as the abutting portions thereof.

Section 9.

This in addition to the security otherwise provided by this ordinance, the said grantee, its successors and assigns, shall within ten days after receiving written notice so to do, deposit with the town treasurer the sum of one thousand dollars; said sum of one thousand dollars; the said sum of one thousand dollars to be held by the said Town of Kirkland as a forfeit guaranteeing that said grantee, its successors or assigns, shall construct and put in operation in good faith at least a single track of said line of railway for which a franchise is hereby granted, within the time and on the conditions prescribed in this ordinance. In case of failure so to do, said full sum of one thousand dollars shall be forfeited to and become the sole property of the town of Kirkland; provided that it shall be the duty of the town council to pass an ordinance requiring the town treasurer to return said money when it shall have been established that at least a single track of said railway line shall have been constructed and the operation thereof begun in good faith within the time and in accordance with the requirements of this ordinance.

Section 10.

That none of the tracks hereinabove described shall be used as dead tracks nor for the standing of cars thereon, but shall be used only and wholly for the operation of cars.

Section 11.

This franchise and the rights herein granted may be assigned or mortgaged but no such assignment or mortgage hereafter executed shall be valid until a copy thereof has been filed in the office of the town clerk.

Section 12

This grant is subject to the right of the town of Kirkland to at any time hereafter repeal, change or modify this ordinance if the franchise hereby granted is not operated in accordance with the provisions of this ordinance or at all, and the town of Kirkland reserves the right at any time hereafter to so repeal, change or modify this grant, and at any time during the existence of this grant, the town shall have the right to acquire by purchase or condemnation for the use of the city itself all the property of the grantee, its successors or assigns, within the limits of the public streets covered by this grant at a fair and just value, which shall not include any valuation of the franchise itself, and at said time this grant shall terminate.

Section 13.

The grantee, its successors or assigns, shall not permit interurban railways owned by others to operate over the right-of-way of the grantee as described herein, unless said grantee shall first obtain the consent and sanction of the city council of the town of Kirkland.

Section 14.

That the town of Kirkland or any person or persons or street railway Company hereafter obtaining a franchise from the town of Kirkland authorizing the operation of the Street cars for the purpose of carrying passengers or freight upon the route covered by the franchise granted by this ordinance, shall have the right to common use with the grantee, its successors or assigns for the running of the cars of said town of Kirkland, or of such other person or persons or company or commission, as the case may be, on all or any part of the tracks to be constructed by the grantee, its successors or assigns, on the route for which a franchise is granted by this ordinance, upon paying to the grantee herein, its successors or assigns such monthly or annual rental or compensation as may be just and reasonable, no value being assigned to any franchise right, and the terms and regulations governing operations shall be such as will recognize, as far as consistent with law, the prior rights of the grantee herein, its successors or assigns, in such operations and shall not unnecessarily interfere with or impede the convenient operation of the cars of said grantee, its successors or assigns.

In case the town of Kirkland or such other person or persons or company or commission cannot agree with the grantee herein, its successors or assigns upon the proper amount of the rental or compensation to be paid for the use of such tracks as aforesaid, any controversy between them respecting the proper amount of such rental or compensation shall be submitted to arbitration in conformity to the laws of the State of Washington in that regard, and such submission

shall have the same force and effect upon the parties hereto as shall be provided by such laws in other cases of arbitration. Provided, that in such arbitration, the number of arbitrators shall be three one of whom shall be designated by the grantees herein, its successors or assigns, one of whom by the town of Kirkland, or other applicant, as the case may be, the third to be selected by those two. In case these two cannot agree upon a third party so that such third party shall accept such position and qualify as such arbitrator within ten days after formal notice shall have been give to the first two arbitrators, then in such case the third arbitrator may be named by any one of the then acting judges of the Supreme Court of the State of Washington, at request of either the town of Kirkland, or other applicant as the case may be, or of the grantee, its successors or assigns.

Pending a settlement of the amount of rental to be paid such party shall be allowed to operate their cars over the tracks of grantees herein, its successors or assigns, on an equal footing with the grantee herein, its successors or assigns, as soon as they have filed with the town clerk a surety Company Bond fully guaranteeing the full payment to the grantee herein, its successors and assigns, or all rentals or damages which may accrue prior to such settlement. Such payment shall be made within sixty days after the determination of the rate or amount to be paid. The amount of such bond shall be fixed by the Mayor and town council of the town of Kirkland and the approval of such bond to be as provided by law. In determining this compensation to be paid for such use, the said arbitrators shall not assign any value to the franchise herein granted. In no case shall any value be assigned to the franchise herein granted.

Section 15.

The grantee, its successors or assigns, shall bear a proportionate part of the cost of any bridge used by grantee its successors or assigns across waterways which may be hereinafter projected.

Section 16.

The grantee herein, its successors, or assigns shall upon demand of the town council of the town of Kirkland, free of charge, dedicate as public streets the interest of grantee in and to any private right of way used by grantee in the operation of the electric railway provided for herein.

Section 17.

That the power in this Ordinance granted unto the Town Council of the Town of Kirkland may be by charter of the Town of Kirkland or by Ordinance of said town, vested in a board of public works or other legally constituted body created by Ordinance or charter of said town.

18th Passed by the town council of the Town of Kirkland this day of December 1911.

J. Scourtygh
Town Clerk of Kirkland
A. B. Newell
Mayor

I, *J. Scourtygh* Clerk of town of Kirkland do hereby certify that the above ordinance is a true and correct copy of Ordinance No 88 entitled and Ordinance granting to *Chas. A. Eaton + Boone + Gordon* a franchise to construct, maintain and operate a street and electric railway upon *Piccadilly Ave + other* streets + avenues in town of Kirkland as passed by Council of town of Kirkland Dec 18 1911
Signed *J. Scourtygh*
Clerk of Town of Kirkland.