

Proposed King County Franchise Ordinance

On November 7, 2016, the King County Council passed Ordinance 18403, by a vote of 7 to 2, creating New Section 6.27.080 of King County Code. This new code section requires franchise utilities (electric, gas, water and sewer) to pay a fee to the County in return for the right to use the right of way. Over the following year or so, King County Facilities Management Division developed administrative rules and began to implement the ordinance. Following imposition of the new fees, King County filed a preemptive suit against numerous sewer and water districts in King County Superior Court seeking a court declaration that the ordinance and implementing rules were proper and enforceable. Tanner Electric Co-op, Ames Lake Water Association and others intervened in the suit to join forces with the sewer and water districts. The case was heard and decided by Judge Samuel Chung last summer and he struck down the County's ordinance and rules by ruling they were invalid.

King County appealed the decision to the Washington Supreme Court and in February 2019 filed its 221 page brief to the Supreme Court. Responsive briefs are underway from the sewer and water districts and associations, which will be submitted over the next few months. In addition, utility organizations across the state may be filing "friend of the Court" briefs to provide context as to why this new revenue generating attempt by King County would be so detrimental to Washington utilities and costly to ratepayers.

The rule adopted by the Facilities Management Division indicates that rent begins to accrue as of January 29, 2018 and will be assessed according to a new or amended franchise. Presently, Sallal's franchise expires in 2020. No rental amount has been calculated or charged to Sallal as of this date. If the County prevails in the litigation, Sallal may be forced to pay backdated rent to January 29, 2018, along with rent amounts going forward. Sallal's Board will evaluate the situation after the court rules and determine whether water rate adjustments or surcharges are necessary. The initial estimate from the County indicates that this may cost Sallal membership as much as 60k per year.

Information regarding the new rule can be found on the internet at this weblink:

<https://www.kingcounty.gov/depts/facilities-managment/rea-estate-services/public-rule-proposal.aspx>