

COMMISSIONERS:

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GENERAL MANAGER:

Thomas Keown, P.E.



TO CUSTOMERS

Washington Supreme Court rules that King County can charge “rent” to utilities using County rights-of-way; increased utility rates expected.

On December 5, 2019, the Washington Supreme Court issued its decision reversing the trial court’s order in favor of the utilities, ruling that King County has the authority to charge “rent” to water, sewer, gas and electric utilities as a condition of using County rights-of-way. The Court’s ruling will result in increases in your utility rates to cover the rent amounts being sought by the County. The Court’s decision can be reviewed at: <http://www.courts.wa.gov/opinions> (*King County v. King County Water Districts*, Case No. 96360-6). The specific impact to your Covington Water District rates is not known at this time because the amount of the rent required to be paid to the County is still undetermined and will be the subject of future legal proceedings and/or negotiations.

Background. On November 7, 2016, King County enacted Ordinance 18403 authorizing its Facilities Management Division (FMD) to charge water, sewer, gas and electric utilities a rental fee for the use of County rights-of-way. The Rules may be reviewed at: <https://www.kingcounty.gov/about/policies/rules/property/rpm92pr.aspx>. Over 20 water-sewer districts located throughout King County joined forces and objected to the County’s efforts to impose rent on the utilities.

The districts’ objections to the County’s actions resulted in the County filing a lawsuit against the districts in January 2018 in King County Superior Court. The districts asserted and filed their counter-claims against the County seeking to invalidate the Ordinance and the Rules. Pursuant to cross motions for summary judgment, on September 4, 2018, the trial court ruled in favor of the districts and an order was entered invalidating portions of the County’s Ordinance and the entirety of the Rules.

King County appealed the decision directly to the Washington Supreme Court which accepted review. On December 9, 2019, the Supreme Court issued its decision reversing the trial court’s order in favor of the utilities and ruled that the County has the authority to charge rent to water, sewer, gas and electric utilities as a condition of using County rights-of-way. The District is extremely disappointed that its efforts to prevent the County from imposing rent were unsuccessful because it will lead to increased utility rates for its customers. The County has acknowledged that rent revenue will be deposited into the County’s general fund and will be used to fund the County’s general governmental services and programs.

Based on a written compensation notice issued by King County to the District, the County seeks to require the District to pay approximately \$137,656 per year in rent for the use of County rights-of-way. Whatever the final rent amount is, it will have to be passed through to the District's customers in the form of increased utility rates. Based on the County's compensation notice, your Covington Water District rates could be increased by as much as \$5.00 per month.

What you can do. The districts are currently evaluating their options. In the meantime, if you have concerns about the County's Ordinance and Rules and the impact on your utility rates, you may want to contact the King County councilmembers who have constituents located in unincorporated King County. Listed below are the email addresses and telephone numbers for the councilmembers representing unincorporated areas of the County:

- District 1. rod.dembowski@kingcounty.gov; 206-477-1001 (A sponsor of the Ordinance)
- District 3. kathy.lambert@kingcounty.gov; 206-477-1003 (A sponsor of the Ordinance)
- District 4. jeanne.kohl-welles@kingcounty.gov; 206-477-1004 (Supported the Ordinance)
- District 5. dave.upthegrove@kingcounty.gov; 206-477-1005 (A sponsor of the Ordinance)
- District 7. peter.vonReichbauer@kingcounty.gov; 206-477-1007 (Opposed the Ordinance)
- District 8. joe.mcdermott@kingcounty.gov; 206-477-1008 (Supported the Ordinance)
- District 9. reagan.dunn@kingcounty.gov; 206-477-1009 (Opposed the Ordinance)

If you have any questions, you may contact the District General Manager, Thomas Keown at 253.631.0565 or thomas.keown@covingtonwater.com.

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