

## **Questions and Answers January 25, 2018**

The Facilities Management Division ("FMD") opened an additional public comment period from January 12 through 22, 2018 to receive comments about the final proposed public rule for determining franchise compensation. The additional public comment period was advertised through the Seattle Times, FMD's franchise website, the County's electronic calendar and social media, email and US mail to the approximately 1500 citizens and utility providers that submitted a comment and contact information during the initial 45 day comment period. Throughout the public rulemaking process, FMD received many questions about Ordinance 18403 ("ordinance") and how the public rule would be implemented. In an effort to provide clarification, FMD has determined that the following FAQ is the best vehicle for responding to additional comments and questions that were related to the public rule.

### **Frequently Asked Questions**

- **What is the purpose of the public rule?**

The public rule describes the process for estimating and negotiating franchise compensation, as directed by Ordinance 18403, which was adopted by the King County Council in November 2016. Franchise compensation is an annual form of rent payment by utility providers that the ordinance requires for water, gas, sewer, and electric utilities using unincorporated King County rights-of-way ("ROW").

- **Who is affected by the public rule?**

All water, sewer, electric and gas utility providers that place infrastructure under, over, within, or across ROW in unincorporated King County are subject to franchise compensation. The public rule does not affect utility providers operating within incorporated areas (cities) because King County does not have authority over ROW in incorporated areas.

Some people have asked why other businesses, such as cable and wireless, are not included in this rule. Cable and wireless companies are also subject to annual payments and other requirements in different sections of the King County Code (K.C.C. 4A.675.060, K.C.C. ch. 14.45 and K.C.C. ch. 6.27A) for using the ROW.

- **What right does King County have to charge rent for the use of the ROW by private and public utilities?**

Municipalities can raise revenues in a number of ways, including taxes, fees and rents. The requirement of a franchise payment for use of King County ROW by private and public utilities is a classic example of a "rent." Rent is appropriately charged because the county owns an asset, the controlling property rights in public ROW, and the utility uses that asset to provide utility services and generate revenue for itself or its shareholders.

- **Can King County charge rent for King County ROW in areas where the ROW was acquired through a dedication for public use?**

King County owns a range of property interests in our county roadways and the associated rights of way. As the general government for unincorporated portions of King County, the County has the responsibility and authority to grant franchises for use of ROW and receive payment in return, regardless of the particular method by which the ROW was acquired.

- **What is the "inflationary adjustment" and "full adjustment" in Section 1.3?**  
The terms "inflationary adjustment" and "full adjustment" in Section 1.3 refer to methods for periodically adjusting rent to correspond with changes in regional inflation and real estate values. Inflationary adjustments are tied to the consumer price index (CPI). For full adjustments, the County will use the methodology outlined in the public rule every five years to update the franchise compensation amount, using the most recent assessed land values. Specific terms for inflationary and full adjustments are negotiated between the County and utility, along with franchise compensation and the other terms of the franchise agreement.
- **How will franchise compensation affect my utility rates as a customer?**  
The County does not have the authority to set or direct utility rates. Utility providers will establish rates that will determine whether the utility will pass on all, some or none of the franchise compensation through to the customers.
- **How does the financial impact limiting factor in Section 2.4 work?**  
The financial impact limiting factor does not limit, restrict or set utility rates in any way. Nor does it prescribe what utility providers decide to pass through to customers. It is used only to measure the reasonableness of the initial estimate of franchise compensation, and may result in a reduction of a portion of the estimate under certain circumstances.

Examples:

- The estimate for Utility A, when divided on a monthly basis for the 20 customers served, is \$3.50 per customer. In this case, the financial impact limiting factor does not apply to the estimate of reasonable franchise compensation because the calculated monthly amount per customer is less than \$5, and the estimate does not need to be reduced.
  - The estimate for Utility B, when divided on a monthly basis for the 20 customers, is \$7.00 per customer. Of those 20 customers, 18 are residential customers. In this case, the financial impact limiting factor applies to reduce the estimate of reasonable franchise compensation to an amount equivalent to \$5.00 on a monthly basis per residential customer plus \$7.00 on a monthly basis per non-residential customer.
- **When does franchise compensation start accruing, and will the County send an invoice to utility providers?**

Once the public rule becomes effective, FMD will apply the process described in the rule to produce an estimate of franchise compensation for each utility with an expired franchise agreement. The utility provider will have an opportunity to negotiate the amount, type, and terms of franchise compensation, along with the other terms of a franchise agreement. Once the utility provider and FMD have agreed on the terms, the King County Council must also approve the agreement before it can be fully executed between the utility provider and the County. Compensation under the ordinance will begin accruing upon the effective date of the public rule or as agreed to between the parties. A utility will not be required to remit payment for franchise compensation until after the franchise agreement has been fully executed by both parties.

Franchise compensation for utility providers with current franchise agreements will be addressed in accord with the terms of the particular franchise agreement.