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KING COUNTY  
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CASE NUMBER: 18-2-02238-0 SEA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

KING COUNTY,

Plaintiff,

v.

KING COUNTY WATER DISTRICTS Nos.  
20, 45, 49, 90, 111, 119, 125, CEDAR  
RIVER WATER AND SEWER DISTRICT,  
COAL CREEK UTILITY DISTRICT,  
COVINGTON WATER DISTRICT, FALL  
CITY WATER DISTRICT, HIGHLINE  
WATER DISTRICT, LAKEHAVEN  
WATER AND SEWER DISTRICT, ,  
MIDWAY SEWER DISTRICT, NE  
SAMMAMISH SEWER AND WATER  
DISTRICT, SAMMAMISH PLATEAU  
WATER AND SEWER DISTRICT,  
SKYWAY WATER AND SEWER  
DISTRICT, SOUTHWEST SUBURBAN  
SEWER DISTRICT, VALLEY VIEW  
SEWER DISTRICT, VASHON SEWER  
DISTRICT, and WOODINVILLE WATER  
DISTRICT,

Defendants.

No.

COMPLAINT FOR  
DECLARATORY JUDGMENT

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## I. INTRODUCTION

Throughout its jurisdiction, King County owns the controlling property rights in public rights of way (“ROW”). These ROW are valuable public assets that are used not only for roads and transit, but also as utility corridors by private corporations and public entities.

Under King County Ordinance 18403 (“the Ordinance”), adopted on November 7, 2016, electric, gas, water and sewer utilities are required to pay reasonable compensation, in the nature of rent, for their continued use of these public ROW. As the Ordinance found, through continued use of these ROW, utilities are allowed to benefit “in a manner not generally available to the public.” Ordinance 18403, sec. 1 (D) (findings). By requiring a reasonable rental payment for the use of this public asset, King County ensures compliance with state constitutional and statutory requirements prohibiting the uncompensated use of public property.

The named Defendants in this action are water and sewer districts located within King County who have stated unequivocally, in public settings, their firm intent to sue the County in an effort to invalidate Ordinance 18403 and its accompanying public rule. The Ordinance covers municipal special use districts and private corporations, which claim the right to use, for free, public ROW property for their own purposes. Having reached an apparent impasse on King County’s right to collect rent and the Defendants’ obligation to pay for its use of public ROW, King County believes that it is appropriate to submit this dispute to the court for full, fair, impartial and just resolution. Because King County has acted wholly within its rights by requiring private and public utilities to pay for their use of County ROW, and because it is in the County and the public’s interest to efficiently resolve the issues of law raised by the Defendants,

1 King County respectfully requests a declaratory judgment validating its authority to enact  
2 Ordinance 18403 and its accompanying public rule.

3 **II. PARTIES**

4 1. The Plaintiff in this matter is King County, Washington.

5 2. The Defendants in this matter are the following entities: King County Water  
6 Districts No. 20, No. 45, No. 49, No. 90, No. 111, No. 119, and No. 125; Coal Creek Utility  
7 District; Covington Water District; Cedar River Water and Sewer District; Fall City Water  
8 District; Highline Water District; Lakehaven Water and Sewer District; Midway Sewer District;  
9 NE Sammamish Sewer and Water District; Sammamish Plateau Water and Sewer District;  
10 Skyway Water and Sewer District; Southwest Suburban Sewer District; Valley View Sewer  
11 District; Vashon Sewer District, and Woodinville Water District (referred to herein collectively  
12 as the “Defendants”).  
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14 3. Upon information and belief, each of the Defendants conducts their business, and  
15 resides as a legal matter, in King County, Washington.  
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17 **III. JURISDICTION AND VENUE**

18 4. This Court has subject matter and jurisdiction over the parties pursuant to chapter  
19 7.24 RCW and chapter 2.08 RCW.

20 5. All ROW at issue in this action are located in King County, Washington. As  
21 such, venue is proper pursuant to RCW 4.12.010 and RCW 36.01.050.  
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**IV. RELEVANT FACTS**

**A. King County Owns Controlling Property Rights in Public Rights of Way.**

6. Since its inception, King County has acquired a system of roads and associated ROW that connect throughout the county in a consolidated system.

7. King County has acquired these ROW through various methods, including fee purchase, condemnation, adverse possession, and dedication.

8. King County owns controlling property rights in these ROW and holds these ROW as a valuable public asset.

9. Under RCW 36.75.020, King County has broad authority to establish and regulate the use of county roads.

10. Defendants currently use King County ROW to provide utility service for their customers. In providing such service, Defendants charge their customers and obtain substantial revenues. None of the Defendants pays rent to King County for the continued use of its ROW.

11. Under RCW 36.55.010, King County is authorized “to grant franchises . . . to use the right-of-way of county roads . . . for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities.”

Similarly, RCW 80.32.010 authorizes the County to establish the terms and conditions for the construction, maintenance and operation of electrical lines for the transmission of electrical power upon, over, along or across the county streets and roads.

12. Pursuant to this broad statutory authority, King County grants franchises to public and private utility companies (generally “utilities”) that authorize the utility companies to use the ROW of county roads to provide utility service within King County and elsewhere.

1           13.     In order to obtain a franchise to use County ROW, utility companies must apply  
2 under the process set forth in K.C.C. ch. 6.27. Franchises are to be memorialized in a franchise  
3 agreement that is negotiated by the parties and approved by the King County Council.

4                   **B. King County Ordinance 18403 Requires Utilities to Provide Reasonable**  
5                   **Compensation, In the Form of Rent, for Using County Rights of Way.**

6           14.     In exchange for the valuable property right to use King County ROW, the County  
7 has authority to require utility companies to provide reasonable compensation, in the nature of  
8 rent, as part of their franchise agreement. Pursuant to this authority, on November 7, 2016, the  
9 King County Council passed Ordinance 18403. The purpose of the Ordinance is to set “the  
10 reasonable compensation, fees and costs to be paid by a utility company applying for a franchise  
11 or using the right-of-way of county roads under a franchise...”

12           15.     Under the Ordinance, all franchises granted for electric, gas, water and sewer  
13 utilities shall include a requirement that the grantee provide the County with reasonable  
14 compensation (“Franchise Rental Compensation”) in return for the right to use ROW in  
15 unincorporated King County to construct, operate, maintain and repair utility franchises and  
16 related appurtenances.

17           16.     King County’s Facilities Management Division (“FMD”) is charged with  
18 implementing the Ordinance, including establishing policies that create a process for the  
19 determination of Franchise Rental Compensation.

20           17.     Consistent with this directive, FMD has issued a proposed public rule  
21 implementing the Ordinance, entitled Public Rule RPM 9-2 Rules for Determining Franchise  
22 Compensation under K.C.C. 6.27.080 (“Rule RPM 9-2”). Following extensive public comment  
23 and rule revisions, Rule RPM 9-2 goes into effect on January 29, 2018.  
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1           18.     The final proposed public rule includes a methodology for creating an estimate of  
2 Franchise Rental Compensation based on the information provided in a utility’s franchise  
3 application. This estimate is based on the land value of the County’s ROW within the utility’s  
4 franchise area and the approximate amount of area within the County’s ROW that will be  
5 available to accommodate the utility’s use.

6           19.     Under Rule RPM 9-2, after FMD calculates the estimate of Franchise Rental  
7 Compensation and provides it to the applicant, the franchise applicant thereafter has a reasonable  
8 opportunity to suggest amendments to the estimate in order to negotiate an agreement with King  
9 County as to the amount and type of Franchise Rental Compensation.

11          20.     Rule RPM 9-2 requires the utility and the County to at the same time negotiate  
12 other terms of the franchise agreement, if an existing franchise agreement is not already in place.  
13 Under the rule, a franchise will not be issued to a utility that fails to reach an agreement on  
14 Franchise Rental Compensation and the other terms of a franchise agreement with the County.

15          21.     A public meeting on Rule RPM 9-2 and an associated department policy was held  
16 on January 19, 2018 at the Maleng Regional Justice Center in Kent, WA.

17          22.     At this public meeting and in written comments, multiple representatives of the  
18 Defendants objected to Rule RPM 9-2 and contested King County’s authority to enact the  
19 Ordinance and Rule RPM 9-2. In public testimony and written correspondence, Defendants  
20 unequivocally announced their intention to sue the County to invalidate the Ordinance and Rule  
21 RPM 9-2 as soon as the rule takes effect. There is no likelihood that King County and the  
22 Defendants will be able to resolve their legal dispute related to King County’s authority to  
23 collect Franchise Rental Compensation absent adjudication by the courts.  
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1                   **V.       FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT -- RCW 7.24**

2                   23.       King County re-alleges and incorporates the preceding paragraphs as though fully  
3 set forth herein.

4                   24.       King County has acted wholly within its rights by requiring private and public  
5 utilities to pay for their use of County ROW. The Defendants dispute the County's authority to  
6 do so.

7                   25.       For reasons including but not limited to those stated herein, an actual dispute  
8 exists between King County and the Defendants regarding the County's authority to enforce the  
9 Franchise Rental Compensation provisions of Ordinance 18403 and Rule RPM 9-2, which  
10 parties have genuine and opposing interests, which interests are direct and substantial, and of  
11 which a judicial determination will be final and conclusive.

12                   26.       It is in the County and the public's interest to efficiently and fairly resolve the  
13 issues of law raised by the Defendants. The County stands ready to work with the Defendants to  
14 arrange for a cooperative process to obtain timely court rulings on the key issues to which  
15 Defendant objects, and to work with the Defendants to mitigate any prejudice to them during the  
16 pendency of judicial review.

17                   27.       King County therefore is entitled to a declaration that: 1) Ordinance 18403 and  
18 Rule RPM 9-2 are within the scope of King County's authority, including its authority to  
19 establish and regulate the use of County ROW; and 2) The Franchise Rental Compensation  
20 required by Ordinance 18403 and calculated through the means detailed in Rule RPM 9-2 is a  
21 lawful exercise of the County's authority to charge reasonable compensation for the use of a  
22 valuable property right; and 3) It is lawful to require a utility granted a franchise allowing use of  
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1 County ROW to provide reasonable compensation to the County in return for its use of this  
2 public asset.

3 **VI. PRAYER FOR RELIEF**

4 King County respectfully requests the following relief:

5 A. A declaratory judgment stating:

6 1) Ordinance 18403 and Rule RPM 9-2 are within the scope of King County's authority,  
7 including its authority to establish and regulate the use of County ROW;

8 2) The Franchise Rental Compensation required by Ordinance 18403 and calculated  
9 through the means detailed in Rule RPM 9-2, is a lawful exercise of King County's  
10 authority to charge reasonable compensation for the use of a valuable property right; and  
11 3) It is lawful to require a utility granted a franchise allowing use of King County ROW  
12 to provide reasonable compensation to the County in return for its use of this public asset.

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14 B. Such other relief as may flow from the entry of a declaratory judgment, including but not  
15 limited to injunctive relief; and

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17 C. Such further relief as this Court deems necessary and proper.

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1 DATED this 25<sup>th</sup> day of January, 2018.

2 DANIEL T. SATTERBERG  
3 King County Prosecuting Attorney  
4 By: s/ David J. Hackett  
5 DAVID HACKETT, WSBA #21236  
6 Senior Deputy Prosecuting Attorney  
7 MACKENZIE BROWN, WSBA # 49598  
8 Deputy Prosecuting Attorney  
9 King County Prosecuting Attorney's Office  
10 500 Fourth Ave., 9th Floor  
11 Seattle, WA 98104  
12 Telephone: (206) 477-9483 / Fax: (206) 296-8819  
13 Email: [david.hackett@kingcounty.gov](mailto:david.hackett@kingcounty.gov)  
14 [Mackenzie.brown@kingcounty.gov](mailto:Mackenzie.brown@kingcounty.gov)

15 PACIFICA LAW GROUP LLP

16 By /s/ Matthew J. Segal  
17 Matthew J. Segal, WSBA # 29797  
18 Kymberly K. Evanson, WSBA #39973  
19 *Special Deputy Prosecuting Attorneys*

20 *Attorneys for Plaintiff King County*