



## WOODINVILLE WATER DISTRICT

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### **Court Rules King County Cannot Charge District Rent to use County Right-of-Way**

On September 4, 2018, King County Superior Court Judge Samuel Chung issued a written ruling granting summary judgment to Woodinville Water District and other affected utilities that King County cannot charge the utilities rent for the use of county roads and rights-of-way. On **November 7, 2016**, the King County Council quickly and quietly adopted Ordinance 18403 authorizing the imposition and collection of “rent” from water, sewer, gas and electric utilities using county right-of-way. The County anticipated the Ordinance would generate \$10,000,000 per year for the County’s general fund. On **December 29, 2017**, King County’s Facilities Management Division issued a “rule” to determine the amount of rent each utility would pay as part of a County “franchise” to use County right-of-way. The Rule went into effect on **January 29, 2018**.

However, on **January 25, 2018**, King County filed a lawsuit in King County Superior Court against 21 water-sewer districts, including Woodinville Water District, which opposed the Ordinance, the Rule, and the right-of-way rental charge. The County sought a declaratory judgment that the rental charge was valid.

Woodinville, and the other utility districts, filed counter-claims against the County challenging the legal validity of the rental charge. The districts asserted the County lacked legal authority to charge rent from the utilities to use the right-of-way because (1) the County did not have any statutory authority to impose the rental charge, (2) the districts had express statutory authority to locate, operate and maintain their facilities in public highways, roads and streets, (3) the rental charge was really a tax because its primary purpose was to raise revenue for the County’s general fund, and the County lacked statutory authority to impose such a tax, and (4) the County cannot compel utilities to enter into a franchise (a contract) to use County right-of-way which included the rental charge.

The Court granted summary judgment in favor of Woodinville and the other districts in ruling (a) the districts were authorized by statute to locate, operate and maintain their facilities in public highways, roads and streets, (b) the County lacked legal authority to charge Woodinville and the districts rent to use County right-of-way, and (c) the County cannot require the districts to pay rent as a condition of obtaining a franchise from the County to maintain utilities in County right-of-way. You may read more about the Court’s ruling finding the County rental charge unlawful in a Seattle Times article published on September 6, 2018 at <https://www.seattletimes.com/seattle-news/judge-rejects-king-county-plan-to-charge-utilities-rent-for-use-of-roads/>

We are pleased the Court ruled that King County’s rental charge was unlawful. King County had notified the District by letter in March, 2018, that the District would have to pay the County the amount of **\$489,115** per year to maintain its **water facilities** in County right-of-way. That amount would have resulted in an increase of \$5.04 per month in the District’s water rates ( $\$489,115 \div 12 \text{ months} \div 8,084 \text{ customers/connections in unincorporated areas} = \$5.04$ ). The \$5.04 charge added to existing District water rates would represent a **23.7%** increase in monthly water rates for a residential customer in unincorporated King County.

Similarly, King County would have required the District to pay the County the amount of **\$118,191** per year to maintain its **sewer facilities** in County right-of-way. That amount would

have resulted in an increase of \$12.13 per month in the District's sewer rates ( $\$118,191 \div 12$  months  $\div 812$  customers/connections in unincorporated areas = \$12.13). The \$12.13 charge added to existing District sewer rates would represent a **44.7%** increase in monthly sewer rates for a residential customer in unincorporated King County.

**Why are we telling you this? Here's what's wrong:**

- As stewards of your utilities, we work hard to keep your water and sewer rates as low as possible, and we feel you should be aware King County attempted to impose this additional cost. The District would have been required by law to recover this new cost from its customers as cost of service.
- If the Ordinance and the rental charge was held to be lawful, it would set a dangerous precedent for counties and cities throughout the state to allow similar charges on utility right-of-way users.

**Who gets hurt:**

- Any new charge or tax on utilities must be passed on to utility customers – in this case, likely the many District customers in unincorporated King County – typically lower income residents, as opposed to more affluent urban neighborhoods. Alternatively, the District could have passed the tax on to all District customers because some District utility facilities benefit both unincorporated and incorporated areas within the District.
- The District has worked hard to manage and limit water and sewer utility rate increases. The District has not increased sewer rates since 2013, and increases in water rates have been less than 2% per year for the last five years. As a pass-thru, using the County's estimated charges, your monthly District utility rates would be increased by 23.7% for water, and 44.7% for sewer.
- The County charge would be a regressive tax, hurting the lowest income residents the most.

**What's next? The County Appeals the Court Ruling that the Rental Charge is Unlawful:**

On September 24, 2018, King County appealed the trial court's ruling that the County's rental charge is unlawful to the Washington Supreme Court. The Supreme Court will now decide whether to consider the appeal, or remand the appeal to the Division I Court of Appeals (Seattle). In the meantime, the County rental charge/tax will not be enforced. Regrettably, the County appeal may not be resolved for another year or so. But rest assured the District will continue to strongly oppose the County's rental charge/tax on the District and its ratepayers.

**What you can do now:**

Email comments regarding the right-of-way rental charge to the King County Council members:

District 1 - [rod.dembowski@kingcountry.gov](mailto:rod.dembowski@kingcountry.gov) (A sponsor of the Ordinance)

District 2 - [larry.gossett@kingcountry.gov](mailto:larry.gossett@kingcountry.gov) (voted for the Ordinance)

District 3 - [kathy.lambert@kingcountry.gov](mailto:kathy.lambert@kingcountry.gov) (A sponsor of the Ordinance)

District 4 - [jeanne.kohl-welles@kingcountry.gov](mailto:jeanne.kohl-welles@kingcountry.gov) (voted for the Ordinance)

District 5 - [dave.upthegrove@kingcountry.gov](mailto:dave.upthegrove@kingcountry.gov) (A sponsor of the Ordinance)

District 6 - [claudia.balducci@kingcountry.gov](mailto:claudia.balducci@kingcountry.gov) (A sponsor of the Ordinance)

District 7 - [peter.vonReichbauer@kingcountry.gov](mailto:peter.vonReichbauer@kingcountry.gov) (**Opposed** the Ordinance)

District 8 - [joe.mcdermott@kingcountry.gov](mailto:joe.mcdermott@kingcountry.gov) (voted for the Ordinance)

District 9 - [reagan.dunn@kingcountry.gov](mailto:reagan.dunn@kingcountry.gov) (**Opposed** the Ordinance)