



King County Water District No. 90
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January 2020

URGENT CUSTOMER NOTICE

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 charged by the County. The specific impact to King County Water District No. 90 (The District) rates are 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 them to charge water, sewer, gas, and electric utilities a rental fee for the use of County rights-of-way. On December 29, 2017, the County issued Rules RPM 9-2 (Rules) that provide a methodology to determine the rent utilities are required to pay the County as a condition of being allowed to use County rights-of-way.

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 provided verbal and written comments to the County objecting to the Ordinance and the Rules for a variety of legal grounds, including the rent was an illegal tax, and the districts were already authorized by statute to locate their water and sewer facilities in public rights-of-way without payment of rent.

The districts’ objections to the County’s actions resulted in the County filing a lawsuit against the districts in January 2018. The districts asserted and filed their counterclaims against the County seeking to invalidate the Ordinance and the Rules. 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. On December 5, 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. It should be noted that the County only implemented this revenue scheme after years of unsuccessful efforts to obtain specific utility tax authority from the Legislature.

What happens next. Based on a written compensation notice issued by King County to the District, the County seeks to require the District to pay approximately \$175,000 per year in rent for the use of County rights-of-way. Whatever the final rent amount is, it will be passed through to the District's customers. Based on the County's compensation notice, your water rates could be increased by as much as \$3.00 per month (\$6.00 per billing cycle).

Starting in January 2020, if you live in unincorporated King County, you will see a separate line item on your bill for the "King County Right-of-Way Rental Fee." This will initially be set at \$3.00 per month pending additional negotiations with the County. If the District is successful in negotiating this rate down, we will refund or reduce future rental fees to compensate for the reduction. Also, the County is requiring the District to pay 14 months of back rent. We estimate this equals a total assessment of \$40 per household. The District will know more about this assessment in the coming months as we negotiate with the County.

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@kingcountry.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)

REFERENCES

- The Court's decision can be reviewed at <http://www.courts.wa.gov/opinions> (*King County v. King County Water Dists.*, Case No. 96360-6).
- The Rules may be reviewed at <https://www.kingcounty.gov/about/policies/rules/property/rpm92pr.aspx>.

This tax applies to customers living in unincorporated King County only. If you received this notice and live within the City of Renton boundaries, please let us know. If you have any questions, please contact the District General Manager, Darcey Peterson, at 425-255-9600 or darceyp@kcwd90.com.

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