King County

Metropolitan King County Council
Budget and Fiscal Management Committee

STAFF REPORT

Agenda Item:	16	**Name:**	Andrew Kim
Proposed No.:	2016-0495	**Date:**	October 25-27, 2016

SUBJECT

A proposed ordinance to revise King County Code (KCC) to increase the application fee for Right-Of-Way (ROW) franchises with utilities and also revise related provisions to establish enforcement mechanisms, in accordance with the 2017-2018 Executive Proposed Biennium budget. The fee increase is proposed to generate $308,323 in additional estimated revenues for the General Fund for the upcoming biennium.

SUMMARY

Proposed Ordinance 2016-0495 proposes to amend KCC sections 4A.675, 6.27 and 14.44 to modify the County's franchise program. A franchise is a grant by King County to permit public and private utilities to use and occupy County ROW for the construction and maintenance of utilities infrastructure. The proposed changes include increasing the franchise application fee from $2,500 to $10,000 and other fiscal provisions that may increase the cost for utilities. The proposed changes also include enforcement provisions that support the compliance of franchises.

The Executive has indicated that the primary impetus for the proposed ordinance was to protect the County from potential liability by attempting to work with utilities to update all expired franchises and stay current with franchises that will expire in the upcoming biennium. The application fee increase would generate $308,323 in additional estimated revenues for the General Fund for the upcoming biennium.

BACKGROUND

A franchise is a grant by King County, authorized by Revised Code of Washington (RCW) Chapter 36.55 and KCC Chapter 6.27, to permit public and private utilities to use and occupy the right-of-way of county roads for the construction and maintenance of waterworks, gas pipes, telephone, telegraph and electric lines, sewers, cable television, petroleum products, and other such public and private utilities[1]. Primarily, franchises set parameters for construction permits (which is a separate application process) and

[1] Definition was sourced from King County Real Estate Services (RES) website: http://www.kingcounty.gov/property/RealEstateServices/PermitsAndRightofWay/UtilityFranchiseApplication.aspx.

protect the County from liability. Franchises are usually long term agreements but according to the Real Estate Services (RES) guidelines, it should not exceed 50 years.

According to KCC 6.27.054.A, any new, amended, renewal, extension, or transfer agreement requires the payment of the full franchise application fee of $2,500. In addition, RES may require applicants to provide additional reimbursement for the actual cost of issuing the franchise. The application process is administered by the RES section of the Facilities Management Divisions (FMD). Franchise applications must be first reviewed by the County's Department of Transportation (DOT) and Department of Executive Services (DES) before being approved by Council through an ordinance. One of the criteria for approval is to be consistent with the County's Comprehensive Plan. Cable television utilities are excluded from the franchise provisions for all utilities and governed separately by KCC Chapter 6.27A.

The current franchise application fee was last updated in 2008[2] in accordance with the adoption of the 2009 Annual Budget[3]. At that time, the Executive staff determined the fee level by evaluating the County's full cost to issue a franchise and the franchise fees of comparable jurisdictions. The franchise fee was increased from $1,400 to $2,500, an increase of 78%. Franchise related provisional changes were last updated in 1994[4], to clarify ambiguity for ROW ownership for mostly water and sewer utilities.

Lastly, according to KCC 6.27.054.C all franchise related payments are revenues to the General Fund.

ANALYSIS

Executive Rationale for Proposed Ordinance

Executive staff have indicated that the primary impetus for the proposed ordinance was to protect the County from potential liability by attempting to work with utilities to update all expired franchises and stay current with franchises that will expire in the upcoming biennium. Currently, the County has 73 franchises that have either expired or will expire in the 2017-2018 biennium. The Executive staff have stated that even though the expired agreements are currently in holdover, the terms of most of those expired agreements are outdated and provide little indemnity for the County. The Executive's PAO representatives have stated that some of the utility poles that currently occupy the County ROW are high liability risks. PAO have provided examples of pending litigation against other counties related to these types of risks.

Executive staff have proposed to increase the franchise application fee from $2,500 to $10,000 (300% increase) for the upcoming biennium. They have stated that the proposed fee increase was determined by calculating the total operating cost of attempting to update all expired and expiring agreements for the upcoming biennium. This includes adding one FTE to the RES section to negotiate and manage the agreements. Executive staff have stated that the administration of franchises has not been sufficiently staffed and the administrative costs are not currently fully recoverable due to limitations in County Code. Approximately 6 to 8 agreements are updated each

[2] Ordinance 16295 adopted November 17, 2008.
[3] Ordinance 16312 adopted November 24, 2008.
[4] Ordinance 11278 adopted March 24, 1994.

year. Therefore, for the 2017-2018 biennium, the Executive proposes that the increased application fee will generate $308,323[5] of additional estimated revenue for the General Fund, and all of it will be used to recover the cost of updating and managing the agreements. This revenue estimate is a combination of the increase in the application fee and the enforcement mechanisms discussed below.

In addition to the lack of County resources, Executive staff have stated that it has been challenging to have utilities work with the County to update expired agreements. Therefore, the proposed ordinance revises County Code to add enforcement provisions to support the efforts of updating all franchises.

Proposed Revisions

The proposed ordinance revises the following three KCC sections related to franchises:

1. KCC Section 4A.675 – Sets franchise application and construction permit fees
2. KCC Section 6.27 – Provides guideline of the franchise program
3. KCC Section 14.44 – Provides guideline for utilities on County ROW

The following provide a summary of the amendments proposed by Proposed Ordinance 2016-0495 grouped by fiscal provisions and enforcement mechanisms:

Fiscal Provisions

- Increase the franchise application fee from $2,500 to $10,000
- Increase the construction permit application fee from $200 to $500 for those utilities with no franchises or expired franchises
- Remove the $2,000 ceiling of total charges the County may assess for issuing construction permits
- Add clarifying details of the County's authorization to reimburse utilities for all costs incurred to issue and administer the franchise
- Define water mains and fire hydrants as reimbursable County costs and establish indemnification provisions for the County
- Add provision that franchise include requirements to remove/relocate objects in the County ROW that pose harm to the public

Enforcement Mechanisms

- Add authority for Executive to initiate legal proceedings to enforce the franchise provisions which may include ejection and revocation
- Adds authority for the Directors of DOT and DES to issue citations ($250 to $1,000 depending on the amount of ROW occupied) to utilities for violating KCC franchise provisions

Legal analysis by Council Legal Counsel is on-going.

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[5] The proposed ordinance also includes an increase in construction permit fees for utilities without a current franchise. Executive staff have stated that this increase is proposed to provide a financial incentive for utilities to renew agreements in a timely manner. They have stated that while this may have a fiscal impact for the upcoming biennium, the volume of permits is unknown and additional revenue is not assumed in the 2017-2018 proposed budget.

AMENDMENT

Amendment 1 establishes an effective date as per K.C.C. 2.99.030 and corrects a non-substantive word use error in the recitals.

ATTACHMENTS

1. Proposed Ordinance 2016-0495
2. Amendment 1
3. Transmittal Letter
4. Fiscal Note

INVITED

1. Dwight Dively, Director, Office of Performance, Strategy and Budget
2. Anthony Wright, Director, Facilities Management Division