



## King County

# Metropolitan King County Council Budget and Fiscal Management Committee

### STAFF REPORT

<b>Agenda Item:</b>	4	<b>Name:</b>	Andrew Kim
<b>Proposed No.:</b>	2016-0476	<b>Date:</b>	October 25-27, 2016

### SUBJECT

A proposed ordinance to revise King County Code (KCC) to increase the annual use fees for use of County right-of-way (ROW) for wireless telecommunications facilities and to also allow the annual use fees to be adjusted for inflation, in accordance with the 2017-2018 Executive Proposed Biennium budget. The proposed fee increase will generate \$337,452 of additional estimated revenues for the General Fund for the upcoming biennium.

### SUMMARY

Proposed Ordinance 2016-0476 proposes to amend King County Code to change the following regarding the use of County ROW for wireless telecommunication facilities:

1. Increase the annual use fee for the “Antenna support structure for wireless antenna” tier from \$5,000 to \$10,000
2. Allow the three-tier fee structure to be adjusted for inflation
3. Provide clarity in allowing for only positive inflationary adjustments (a negative CPI-U will result in no adjustment to the fee for that year)
4. Technical changes which include Code clarifications and addition of definition language for “Wireless” and “Antenna support structure”

Changes to the annual use fee provisions were initially proposed in 2014 in accordance with the 2015-2016 Proposed Biennium budget, however, Council chose not to enact the Ordinance and instead issued a proviso through the 2015-2016 Biennial Budget requesting the Executive to provide a report relating to the impacts of, and options for updating the County’s wireless telecommunications facilities ROW use agreement fees. The report was adopted by Council through Motion 14560 in early 2016.

Staff analysis indicate that the current proposal may be a more amenable solution given the results of the Executive report provided through the proviso, minimize potential legal risks, and prior feedback from wireless communication companies. However, Council may wish to evaluate the Executive’s 2017-2018 Biennium budget proposal to use the additional \$337,542 of estimated revenue generated with the increase of the annual use fee, to fund 1 TLT to backfill work for current RES staff who are proposed to focus on implementing the findings from the RES Line of Business efforts.

## **BACKGROUND**

KCC 4A.675.060 sets the annual use fees for continued use of County ROW for wireless telecommunication facilities. Table 1 below provides the current three-tier fee structure based on type of equipment.

**Table 1: Annual Use Fee for Continued Use of County ROW for Wireless Telecommunication Facilities**

<b>TYPE OF EQUIPMENT/FACILITY WITHIN THE ROW</b>	<b>USE PAYMENT</b>
Separate support structure (such as a monopole or lattice) used solely for wireless antenna, with antenna/receiver transmitter and/or equipment cabinet	\$5,000
Antenna/receiver transmitter (on an existing or replacement pole) and equipment cabinet	\$3,000
Antenna/receiver transmitter (on an existing or replacement pole) or equipment cabinet, but not both	\$2,000

KCC 4A.675.060 also provisions that the annual use fees are increased by the most recent Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (commonly known as the "CPI-U") to account for inflation. The current fee structure and related provisions within KCC 4A.675.060 was established on March 6, 2000 by Ordinance 13734 and has not been updated since its establishment.

Under the current Code, the annual use payment remains static for any new use agreements and inflationary adjustments are only applied to existing use agreements. For example, an entity that established a ROW use agreement with the County in 2001, for a separate support structure, and continues their agreement until today, would have paid \$5,000 in 2001 and \$5,000 plus 15 years of inflationary adjustments for 2016. However, for an entity that established a ROW use agreement with the County in 2016, for a separate support structure, would pay an annual use fee of \$5,000. This creates a disparity in annual use fees for existing agreements and new agreements.

It should be noted that a separate provision, KCC 4A.675.050, sets additional fees for entities requesting County ROW use for wireless telecommunication facilities. This includes a \$500 initial application fee to establish an agreement and any surcharge assessed by the Real Estate Services (RES) section of the Facilities Management Division (FMD) to recover costs.

In 2014, Proposed Ordinance 2014-0401, in accordance with the Executive's 2015-2016 Proposed Biennium budget, was transmitted from the Executive to eliminate the current three-tier fee structure and instead charge a uniform amount of \$10,000 regardless of type of equipment installed with an automatic compounded escalation rate of 4 percent per year. The Executive's rationale for the proposed ordinance was to eliminate disparity under the existing payment structure between existing and new agreements, bring the fees to comparable market rates, and establish an equipment agnostic fee to eliminate burden on RES resources to determine the appropriate fee for a particular equipment.

The Council chose not to enact PO 2014-0401 and instead required a proviso through the 2015-2016 Biennial Budget Ordinance (Ordinance 17941, Section 28, Proviso P1, as amended)<sup>1</sup> requesting the Executive to provide a report relating to the impacts of, and options for updating the County's wireless telecommunications facilities ROW use agreement fees. The Council was briefed on the report at the Budget and Fiscal Committee Meeting on January 27, 2016 and approved the report by Motion 14560 on February 8, 2016.

The transmitted report responded to the proviso requirements by providing a detailed description of the results of a fee comparability analysis with 23 other municipalities across the country. The following highlights the report's key findings:

- For those municipalities without a ROW use fee, other mechanisms were used to assess use of ROW (i.e. utility taxes, telecommunications franchise agreements and general siting permits)
- For those municipalities with a ROW use fee, the County's current fee structure is below the starting rate charged by most other municipalities
- Other municipalities also consider "types of equipment" when assessing fees, however, sufficient evidence does not yet exist of a preferred alternative use fee that accommodates lighter technology for wireless communications
- An incentive-based use fee (i.e. lower fees for more ROW usage) would be problematic to administer, potentially unfair to smaller carriers, and would not recover all the costs County
- Wireless service appears to be generally available in the County's rural areas, only lacking in hard-to-reach spots in forested areas far outside of any areas where services are concentrated

Executive staff did not transmit a new fee ordinance during the 2015-2016 biennium and alluded at that time that a new fee ordinance would be transmitted as part of the 2017-2018 Proposed Biennium budget.

The Executive staff have indicated that the County is currently entered into 42 agreements for wireless telecommunications facilities ROW use and the average annual use payment is approximately \$6,034.

## **ANALYSIS**

As anticipated, the Executive has transmitted Proposed Ordinance 2016-0476, in accordance with the 2017-2018 Proposed Biennium budget. The proposed ordinance proposes the following regarding the use of County ROW for wireless telecommunication facilities:

1. Increase the annual use fee for the "Antenna support structure for wireless antenna" tier from \$5,000 to \$10,000
2. Allow the three-tier fee structure to be adjusted for inflation
3. Provide clarity in allowing for only positive inflationary adjustments (a negative CPI-U will result in no adjustment to the fee for that year)

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<sup>1</sup> Adopted November 18, 2014.

4. Technical changes which include Code clarifications and addition of definition language for “Wireless” and “Antenna support structure”

Executive staff have stated that the rationale for the proposed changes are as follows: (1) establishes a market comparable annual use fee for antenna support structure as evidenced by the comparability report, and (2) minimizes legal risk by establishing equity between existing and new use agreements by modifying the inflationary adjustment language.

The proposed ordinance does not eliminate the three-tier fee structure as originally proposed in the last biennium (Propose Ordinance 2014-0401). Executive staff have stated that the three-tier fee structure was not eliminated since the Comparability Analysis Report indicated that there is insufficient evidence to determine the appropriate fee levels that accommodate lighter technology for wireless communications at this time. Executive staff have also stated that wireless telecommunication companies have provided feedback that the industry is trending towards using lighter technologies and the companies were unopposed to the County’s current fee structure to accommodate these lighter technologies. For now, Executive staff concludes that the proposed three-tier fee structure fairly represents the cost to use the County’s ROW for wireless telecommunication equipment.

Staff agree that the current proposal may be a more amenable solution given the negative feedback from wireless telecommunication companies back in 2014 when the Executive proposed a uniform rate of \$10,000 for all equipment types.

### **AMENDMENT**

Amendment 1 specifies granting fee-setting authority as per K.C.C.299.030, formats fee-table to more closely match Code, and corrects redundant language.

### **ATTACHMENTS**

1. Proposed Ordinance 2016-0476
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