## STAFF REPORT

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| **Agenda Item:** | 33 | **Name:** | Patrick Hamacher |
| **Proposed No**.: | 2016-0521 | **Date:** | November 1-3, 2016 |

**SUBJECT**

This ordinance would set the costs for a franchise application and authorize the Executive to charge reasonable compensation for use of the County’s Rights of Way (ROW) by utility companies.

**SUMMARY**

Proposed Ordinance 2016-0521 would authorize the Executive to begin charging utility companies for the right to construct its facilities and to remain in the ROW. These charges would be similar to rent in that they will be assessed based upon the value of the land and the portion of the ROW occupied by the utility.

This ordinance also increases the application fee and the construction permit fee for a franchise, as well as establishes an administrative fee in the same manner prescribed by Proposed Ordinance 2016-0495. **If this ordinance moves forward, Proposed Ordinance 2016-0495 would not be needed.**

**BACKGROUND**

Revised Code of Washington (RCW) 36.55.010 authorizes the county 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 lines sewers and other such facilities.”

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

King County currently grants franchises to public and private utility companies that authorize the utility companies to use the ROW of county roads to provide utility service within King County and elsewhere. The County charges an application fee for these franchise applicants, but does not currently charge any additional compensation for the value use of the ROW. This ordinance would authorize the Executive to begin charging a fee for that valuable use of the County’s ROW.

**ANALYSIS**

The County currently has 6.9 million linear feet of ROW. This equates to roughly 460 million square feet of space or 10,500 acres. The County incurs the costs of maintaining this area, which has an average width of 67 feet. The County is not currently compensated for use of this asset. The County also incurs the potential liability associated with accidents that may happen in the ROW if there is not an agreement in place to indemnify the County. Currently 73 franchise agreements are either expired or set to expire during the next biennium. The Proposed Ordinance would authorize the Executive to begin charging for reasonable compensation for use of this asset.

The specific provisions of the program are discussed below. There is also a striking amendment requested by the Budget Leadership Team. The highlights of this amendment are also included in the description and summarized at the end under the amendments section.

**Section1:** Findings

**Section 2:** Would increase the franchise application cost from $2500 to $10,000. This is the same change included in Proposed Ordinance 2016-0495.

**Section 3:** This section would increase the fee for construction permits in the ROW for expired franchisees from $200 to $500. This would provide an incentive for franchisees to keep their franchise agreements current. **Amendment:** the amendment would give all franchise applicants one year (until January 1, 2018) to get their franchise agreements current and incorporate the new program. If they do not have an active franchise agreement by January 1, 2018 then any application for a construction permit by that utility company would be denied unless the Executive certifies to the Council that the utility is involved in good faith bargaining likely to result in a franchise agreement or one of the code provisions related to emergencies applies. The construction permit fee under the amendment would remain at $200.

**Section 4:** This section, referencing RCW 36.55.010, adds a requirement that the utilities seek and maintain in good standing their franchise agreements. **Amendment**: would clarify the authority RCW 36.55.010 gives the County to grant franchises.

**Section 5:** updates a dated reference by using the correct and current name of the Facilities Management Division.

**Section 6:** This section gives FMD the option of requiring additional reimbursement for reviewing and processing the franchise applications should the costs exceed the amount covered by the application fee and authorizes FMD to develop fees associated with the ongoing maintenance of the program in subsequent years. **Amendment**: The introduced ordinance granted a credit against the rent the costs associated with processing the application. This actually provides an incentive for obstacles to be created during the negotiating process. This is eliminated in the amendment. Only the application fee is credited against the rent payment in the amendment.

**Section 7:** This section adds provisions to require that franchise agreements include terms requiring the utility franchisee to pay for use of the right of way and to relocate or address hazards associated with their use and access of the ROW. This section also requires the franchise agreement contain a provision that makes the water and sewer franchisees responsible for fire suppression facilities (hydrants) are included in the ROW. **Amendment**: The amendment also includes the requirements that the agreements include indemnification language protecting the county from liability associated with the utility’s use of the ROW.

**Section 8:** This section set the compensation for use of the ROW. It establishes criteria for how the Executive will determine the value of the rent, including:

1. the land value of right-of-way within the franchise applicant's service area,
2. the approximate amount of area within the right-of-way that will be needed to accommodate the franchise applicant's use,
3. a reasonable rate of return to King County for the franchise applicant's use of the right-of-way,
4. the business opportunity made available to the franchise applicant and density of households served,
5. a reasonable annual adjustment and other factors that are reasonably related to the value of the franchise or the cost to King County of negotiating the franchise

**Section 9:** Authorizes an alternative type of agreement called a forbearance agreement. Because the County has the legal authority to provide public utilities, it may also receive compensation for the County to not exercise those rights. This may be a less burdensome way to reach an agreement for compensation with the utilities and may also provide increased certainty to utilities as to their long-term customer base, and therefore is included in the ordinance. **Amendment**: The amendment eliminates the “cap” on the rate that was blank in the proposed ordinance, this would allow the Executive to negotiate and set the rates based upon the value to the utility.

**Section 10:** This Section grants the Executive the authority to enforce the agreements through use of the courts up to and including ejecting the utility from the ROW if an agreement cannot be reached.

**Section 11:** This section grants the Executive the authority to enforce the agreement through issuance of fines for lack of an agreement of compliance with an existing agreement. The fines are set between $250 and $1,000 per occurrence.

**Section 12:** Clarifies how the County can recover its cost of reviewing and approving the franchise agreement when those costs exceed the application fee.

**Section 13:** This section is added in the amendment. **Amendment**: As also set forth with regard to Section 3, the amendment would give all franchise applicants one year (until January 1, 2018) to get their franchise agreements current and incorporate the new program. If they do not have an active franchise agreement by January 1, 2018 then any application for a the construction permit by that utility company would be denied unless the Executive certifies to the Council that the utility is involved in good faith bargaining likely to result in a franchise or one of the code provisions related to emergencies applies. These emergency provisions are also modified to require greater specificity as to the hazards that need to be addressed. The construction permit fee under the amendment would remain at $200.

**Potential Financial Benefit to the County:**

The Executive branch has evaluated the potential revenue from reasonable franchise compensation. A conservative estimate for the potential revenue from the program (once it is fully operational) is $10 million per year or $20 million per biennium. This revenue would accrue to the County General Fund. This assumes a full year collection beginning in 2018, as it is likely that it will take time to complete franchise agreement negotiations. It is expected that over the biennium revenue will slowly increase until a full year of collections is reached with all franchisees. That projection is roughly estimated as follows:

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| Utility | 2018 Est |
| Electricity | 5,070,000 |
| Gas | 1,570,000 |
| Water | 1,570,000 |
| Sewer | 1,570,000 |
| Total | **$9,780,000** |

The ability to estimate how much of these fees will impact the individual rate payers is speculative for a number of reasons. First, some utilities are subject to needing state approval for setting their utility rates, so it is not known whether these increased operating costs will be passed along in full, in part, or not at all. Staff have attempted to estimate a potential annual and monthly cost to rate payers. It should be noted that this is likely to be a worst-case scenario because it assumes that all of the revenue will be passed on and will be passed on equally to all payers.

**Type #of Customer Est. Revenue[[1]](#footnote-1) Per Year Per Month**

Electric 1,900,000[[2]](#footnote-2) $5,070,000 $2.67 $0.22

Gas 800,000[[3]](#footnote-3) $1,570,000 $1.96 $0.16

Water/Sewer 90,000[[4]](#footnote-4) $3,140,000 $34.89 $2.90

Total Costs $39.52 $3.29

**AMENDMENT**

The Striking Amendment has been described throughout the staff report. The changes made in the amendment include:

1. Granting a one year grace period for applying franchises to reach an agreement, after which subsequent construction permits would be denied except under emergency circumstances as required by state law.
2. Clarification that only the application fee is credited against the franchise payments.
3. Adding a requirement that the agreements include indemnification language.
4. Removal of policy direction on rates associated with the forbearance agreements.

**ATTACHMENTS**

1. Proposed Ordinance 2016-0521
2. Striking Amendment S1
3. Title Amendment T1

**INVITED**

1. Dwight Dively, Director, Office of Performance, Strategy and Budget

1. Assumes all franchisees are under agreement and making payments for a full year. [↑](#footnote-ref-1)
2. Total from PSE and Seattle City Light Websites, does not distinguish between residential and commercial, assumes equal usage and billing. [↑](#footnote-ref-2)
3. From PSE website, does not distinguish between residential and commercial. Assumes equal usage and billing. [↑](#footnote-ref-3)
4. Based upon Households estimated by the King County Office of Economic and Financial Analysis, Does not distinguish between residential and commercial. Assumes equal usage and billing. [↑](#footnote-ref-4)