

Document Code No.: RPM-9-2-PR

Title: Rules For Determining Franchise Compensation under K.C.C 6.27.080

Effective Date: January 29, 2018

Authorities: King County Code 6.27; Ordinance 18403

Keywords: Franchise Compensation; Utilities; Right-of-Way Franchises

Sponsoring Agency: Facilities Management Division



**King County**

Signature: \_\_\_\_\_

Date signed: 12/29/2017

**I. Purpose**

K.C.C. 6.27.080 requires that each electric, gas, water, and sewer utility operating under a franchise provide the county reasonable compensation in return for the right to use the right-of-way for the purposes of constructing, operating, maintaining, and repairing utility facilities and related appurtenances. This rule describes a standardized approach for determining franchise compensation.

**II. Applicability and Audience**

This rule applies to the Facilities Management Division when determining franchise compensation for electric, gas, water and sewer utilities.

**III. Definitions**

1. "Assessor" means the King County Assessor.
2. "Assessed Land Value" means the land value of parcels in the Franchise Area, as established by the Assessor, using parcels that are not exempt from property tax.
3. "Facilities Management Division" or "FMD" means the division within the Department of Executive Services responsible for issuing Utility franchises.
4. "Franchise Area" means the area in unincorporated King County for which the Utility requests a franchise.
5. "Franchise Compensation" shall be in the nature of rent and shall be paid annually. Franchise Compensation may be in the form of money, in-kind services or other nonmonetary benefits, accruing to King County. Franchise Compensation shall be provided in return for the valuable property right to use the right-of-way for the purposes of construction, operating, maintaining and repairing utility facilities and related appurtenances.
6. "Franchise Use Area" means the approximate amount of area within the ROW that will be available to accommodate the Utility's use.
7. "Geographic Information System" or "GIS" means the King County system which captures, stores, manipulates, and presents certain spatial and geographic data.
8. "Right-of-Way" or "ROW" means County road rights-of-way within unincorporated King County, whether maintained, unmaintained, opened, or unopened.
9. "Utility" means any organization that places electric, gas, water, or sewer infrastructure under, over, within, or across the ROW.

## IV. Policy

### 1. Determination of Franchise Compensation

1.1 FMD shall make an estimate of Franchise Compensation for each Utility and provide that estimate to the Utility. The estimate will be provided after FMD has gathered sufficient information from the Utility, through its franchise application, to perform the basic estimation steps described below. The Utility shall thereafter have a reasonable opportunity to suggest adjustments to the estimate in order to negotiate and reach agreement with King County on the amount and type of Franchise Compensation. The Utility and King County shall at the same time negotiate the other terms of the franchise agreement if the Utility does not have an existing franchise agreement. A franchise will not be issued to a Utility that fails to reach an agreement on Franchise Compensation and the other terms of a franchise agreement with the County.

1.2 King County owns the ROW, which is a substantial public asset. A franchise agreement grants a valuable property right to a Utility to use the ROW. Due to the nature of a Utility, use of the ROW is continuous and extends even after the expiration of a prior franchise agreement. In order to reflect the value to the Utility for this continued use and provide appropriate compensation to the public, Franchise Compensation will accrue as of the effective date of this rule unless otherwise required by an existing franchise agreement or agreed to by the parties.

1.3 The agreed upon Franchise Compensation will be included in the franchise agreement, and shall be subject to an annual inflationary adjustment and to a full adjustment every five years, as agreed upon by the parties. The full adjustment will be consistent with the process set forth in this rule for determining franchise compensation.

### 2. Methodology to Estimate Franchise Compensation

The estimate of Franchise Compensation for each Utility is based on the land value of the ROW within the Utility's Franchise Area and the approximate amount of area within the ROW that will be available to accommodate the Utility's use. FMD shall perform the following basic steps to estimate Franchise Compensation for each Utility:

2.1. Establish the per-square-foot value of the land adjacent to the ROW in the Franchise Area by dividing the total Assessed Land Value of parcels adjacent to the ROW in the Franchise Area by the total square feet of such parcels, as provided by GIS.

2.2. Establish the value of the Franchise Use Area for the Utility through the following steps:

2.2.1. Calculate the Franchise Use Area by multiplying the approximate number of linear feet of the ROW available to be occupied by the Utility by the width of a typical Utility easement.

- 2.2.2. Reduce the Franchise Use Area by multiplying the Franchise Use Area by a factor that accounts for facility location (aerial or underground).
- 2.2.3. Multiply the reduced Franchise Use Area by the per square foot value of land adjacent to the ROW calculated in Section 2.1, above. This is the value of the Franchise Use Area.
- 2.2.4. When performing the calculations in Section 2.2, the following criteria will be applied:
  - 2.2.4.1. The approximate number of linear feet of the ROW available to be occupied by the Utility will be the length of the ROW in the Franchise Area as determined by GIS. If the Utility provides verifiable information specifying the location of its facilities under, over, within or across the ROW, then the County will reduce the number of linear feet used in the calculation to the number of linear feet of the ROW occupied by the Utility.
  - 2.2.4.2. The width of a typical Utility easement and the adjustment for aerial or underground facility locations will allow for:
    - a. Reasonable clearances from other utilities;
    - b. Modest and varied appurtenant uses in the ROW, such as sewer access facilities, water and sewer lines connecting to customers, meters, hydrants, power poles, and transformers; and
    - c. Reasonable access for construction, maintenance and repair.
  - 2.2.4.3. FMD will determine the width it assigns for a typical Utility easement and the reduction for aerial or underground facility locations and post these determinations on the FMD website. FMD may periodically reassess these determinations, and will post updates on the FMD website.
    - 2.2.4.3.1 FMD may, on a case-by-case basis, adjust the assigned width of a typical Utility easement and/or the reduction for aerial or underground facility location if the size and location of the Utility's facilities are significantly different than those contemplated in the development of this rule.

- 2.3. Calculate the estimated annual Franchise Compensation for the Utility by applying a rate of return to the value of the Franchise Use Area calculated in Section 2.2.3, above.
  - 2.3.1. FMD will determine the rate of return and post this determination on the FMD website. FMD may periodically reassess this determination and will post updates on the FMD website.
- 2.4. Financial impact limiting factor.
  - 2.4.1. In order to ensure that the estimate of annual Franchise Compensation is reasonable, FMD will evaluate whether the methodology produces an estimate of annual Franchise Compensation that exceeds the monthly financial impact limiting factor established by FMD.
  - 2.4.2. In order to determine if the financial impact limiting factor is exceeded, FMD will divide the estimated annual Franchise Compensation amount by twelve to obtain the estimated monthly Franchise Compensation amount. FMD will then divide the estimated monthly Franchise Compensation amount by the total number of Utility customers. If the resulting number exceeds the monthly financial impact limiting factor, then FMD will recalculate the estimate of the annual Franchise Compensation.
  - 2.4.3. Where necessary under Section 2.4.2, FMD will recalculate the estimate of the annual Franchise Compensation by adding the product of the number of residential customers multiplied by the monthly financial impact limiting factor to the product of the number of non-residential customers multiplied by the estimated monthly Franchise Compensation amount, and will then multiply the resulting number by twelve. The resulting amount will be the estimate of the annual Franchise Compensation.
  - 2.4.4. FMD will determine the monthly financial impact limiting factor and will post this determination on the FMD website. FMD may periodically reassess this determination, and will post updates on the FMD website.
- 2.5. Crossings. Some Utilities may occupy the ROW via only one or more crossings from one side of the ROW to the other side of the ROW. In these instances, the calculation of Franchise Compensation shall be the same as described above, with the following exceptions:
  - 2.5.1. In Section 2.1, divide the Assessed Land Value of the parcels adjacent to the ROW on each side of the crossing by the total square feet of such parcels, as provided by GIS.
  - 2.5.2. In Section 2.2.1, use the actual square footage of the area of the ROW where the crossing is located instead of multiplying

the approximate number of linear feet available to be occupied by the Utility by the average width of a Utility easement.

- 2.5.3. Lateral connections to a facility within the ROW are not considered to be crossings.

**V. Implementation Plan**

This rule becomes effective for FMD on January 29, 2018. FMD is responsible for implementation of this rule. FMD shall post this rule on the Real Estate Services page of its website.

**VI. Maintenance**

This rule will be maintained by FMD or its successor agency.

**VII. Consequences for Noncompliance**

A franchise will not be issued to a Utility that fails to reach an agreement on Franchise Compensation and the other terms of a franchise agreement with the County. Nothing in this rule limits any legal or equitable remedies available to the County. See K.C.C. 6.27.150.