

11-29-82

ORDINANCE NO. 6261

AN ORDINANCE relating to boating regulation; specifying a process and fees requiring the registration of watercraft; and adding new sections to K.C.C. 12.44; amending Resolution 28232, and K.C.C. 12.44.020.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

NEW SECTION. SECTION 1. Legislative Intent and Declaration of Policy. It is hereby declared to be the policy of King County to promote the safety and general welfare of the pleasure boating public by establishing regulations for the use of pleasure watercraft, establishing a registration process and registration fee to promote uniform regulation of pleasure watercraft. It is intended that revenues generated by pleasure watercraft registration fees shall be used only for the administration and enforcement of this ordinance.

SECTION 2. Definitions. Resolution No. 28232, Section 2, and Chapter 12.44.020, King County Code, are hereby amended to to read as follows:

Definitions. For the purpose of this chapter, the following terms shall have the meaning ascribed in this section:

"Anchorage" means a designated position where vessels or watercraft may anchor or moor.

"Aquatic event" means any organized water event of limited duration which is duly sanctioned at least seven days in advance by duly constituted authority and which is conducted according to a prearranged schedule and in which general public interest is manifested

"Authorized emergency vessel" means any authorized vessel or watercraft of the King County (~~Sheriff~~) Public Safety Department, municipal police departments, municipal fire department the United States government, and state of Washington authorized patrol vessels or watercraft.

"Boat dealer" means any person engaged in the business of

1 buying, selling, exchanging, offering, brokering, leasing with an  
2 option to purchase, auctioning, soliciting, or advertising the  
3 sale of new, or used vessels. The term "boat dealer" shall not  
4 include:

5 A. Receivers, trustees, administrator, executors,  
6 guardians, or other persons appointed by, or acting under a  
7 judgement or order of any court;

8 B. Employees of dealers who are engaged in the specific  
9 performance of their duties as such employees; or

10 C. Any person engaged in an isolated sale of a vessel of  
11 which he is the owner.

12 "County" means the county of King.

13 "Diver's flag" means a red flag five units of measurement  
14 on the hoist by six units of measurement on the fly with a white  
15 stripe of one unit crossing the red diagonally (the flag to have  
16 a stiffener to make it stand out from the pole or mast). This  
17 flag shall only pertain to skin and SCUBA (self-contained  
18 underwater breathing apparatus) diving and shall supplement any  
19 nationally recognized diver's flag or marking. Unit of  
20 measurement shall not be less than two inches.

21 "Issuing authority" means a state that has a numbering  
22 system approved by the U.S. Coast Guard or the U.S. Coast Guard  
23 where a numbering system has not been approved.

24 "Master" means the captain, skipper, pilot, or any person  
25 having charge of any vessel or watercraft.

26 "Obstruction" means any vessel or watercraft or any matter  
27 which may in any way blockade, interfere with or endanger any  
28 vessel or watercraft or impede navigation, or which cannot comply  
29 with the "Pilot Rules for Certain Inland Waters of the Atlantic  
30 and Pacific Coasts and of the Coast of the Gulf of Mexico"  
31 (C.F. 236479).

32 "Oil" means any oil or liquid, whether of animal, vegetable  
33 or mineral origin, or a mixture, compound or distillation thereof.

1           "Operator" means a person who is control or in charge of a  
2 vessel or watercraft while it is in use.

3           "Owner" means the person who has lawful possession of a  
4 vessel or watercraft or obstruction by virtue of legal title or  
5 equitable interest therein which entitles him to such possession.

6           "Person" when necessary, means and includes natural persons,  
7 associations, copartnerships and corporations, whether acting by  
8 themselves or by a servant, agent or employee; the singular  
9 number, when necessary, means the plural, and the masculine  
10 pronoun includes the feminine.

11           "Pier" means any pier, wharf, dock, float, gridiron, or  
12 other structure to promote the convenient loading or unloading or  
13 other discharge of vessels or watercraft, or the repair thereof.

14           "Reporting authority" means the same as "Issuing authority."

15           "Restricted area" means an area that has been marked in  
16 accordance with and as authorized by the law or regulations of the  
17 county to be used for, or closed to, certain designated purposes  
18 such as swimming, skindiving, ferry landings and aquatic events,  
19 the method of marking and designation of which shall have been  
20 made by the (~~sheriff~~) Department of Public Safety in accordance  
21 with the provisions of this chapter.

22           "Skin diving" means any free swimming person and/or any  
23 person who uses an artificial or mechanical means to replace  
24 his air, including self-contained underwater breathing apparatus,  
25 snorkel tube equipment and free diving gear, but shall not mean  
26 swimmers using patrolled public beaches designated as swimming  
27 areas.

28           "State" means a state of the United States, the Commonwealth  
29 of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the  
30 District of Columbia.

31           "State of principal use" means the state on whose water a  
32 vessel is used or to be used a majority of a calendar year.

33           "Testing course" means a course or area on waters subject

1 to the jurisdiction of King County, designated in accordance with  
 2 this chapter or pursuant to other applicable laws and regulations,  
 3 for use in industrial development and testing of experimental and  
 4 production watercraft and vessels.

5 "Towboat" means any vessel or watercraft or anything other  
 6 than a vessel or watercraft.

7 "Undocumented watercraft" means a boat which does not have  
 8 a valid marine document as a vessel of the United States.

9 "Vessel" means any contrivance one hundred ten feet or  
 10 more in length overall, used or capable of being used as a means  
 11 or transportation on water.

12 "Watercraft" means (~~any contrivance less than one hundred~~  
 13 ten feet in length overall, used or capable of being used as a  
 14 means of transportation on water) every description of watercraft  
 15 twelve feet or greater but less than one hundred ten feet in length  
 16 or equipped with motor propulsion machinery of more than five  
 17 horsepower, other than a seaplane, used or capable of being  
 18 used as a means of transportation on water, or required to be  
 19 registered by the Boat Safety Act of 1971. PROVIDED, that this  
 20 definition does not include vessels under four feet in beam which  
 21 have no propulsion machinery of any type. PROVIDED FURTHER, that  
 22 this definition shall not include vessels used exclusively for  
 23 commercial purposes. Aircraft, cribs or piles, shinglebolts,  
 24 booms of logs, rafts of logs and rafts of lumber shall not be  
 25 included within the terms "watercraft" or "vessel", but shall  
 26 be included within the term "obstruction" when they shall be  
 27 floating loose and not under control or when under control and  
 28 obstructing any navigable channel.

29 "Water ski" means all forms, manners, means, or contrivances  
 30 of person or persons being towed behind a motor boat.

31 NEW SECTION. SECTION 3. Enforcement. It shall be the duty  
 32 of the Department of Public Safety to enforce all sections of  
 33 this ordinance.

1           NEW SECTION SECTION 4. Registration Process. To aid in  
 2 the enforcement of the provisions of this chapter, to assist in  
 3 the identification of watercraft, and to facilitate the recovery  
 4 of watercraft, all watercraft used upon the waters of King County  
 5 shall be registered annually with the General Services Division  
 6 of this county or any duly appointed representative. Such  
 7 registration shall be upon forms provided by the division which  
 8 shall include at least the following information:

- 9           1. Name and address of the owner;
- 10           2. A description of the watercraft or watercrafts  
 11 registered, including make (if any), age, approximate length,  
 12 seating capacity, and material from which constructed;
- 13           3. A description of the motor usually used to power such  
 14 watercraft (if any);
- 15           4. United States Coast Guard registration number (if any),  
 16 and;
- 17           5. Location of the watercraft on January 1, of the year  
 18 registered.

19           NEW SECTION. SECTION 5. Registration Certificate Required.  
 20 Every owner of a watercraft intended to be operated upon the water  
 21 of King County, shall each year before the same is so operated,  
 22 apply to and obtain from the King County Division of General  
 23 Services an annual registration certificate for such watercraft,  
 24 as in this ordinance provided, which registration certificate  
 25 shall cover the watercraft and motor described in the application  
 26 for registration, PROVIDED, however, an owner who is a nonresident  
 27 of the County of King and has current registration for such boat  
 28 and motor issued by his resident state or county, shall be entitled  
 29 to operate in King County waters for a period up to seven  
 30 consecutive days without having to purchase a permit.

31           NEW SECTION. SECTION 6. Registration Fees. Registration  
 32 certificates shall be valid for one calendar year. The General  
 33 Services Division shall collect from each person a registration

1 fee of ten dollars per watercraft. Persons purchasing watercraft  
2 registered for the current year pursuant to this ordinance shall,  
3 within thirty days following purchase, transfer such registration  
4 to their own names. Such transfer of registration shall be  
5 accomplished on forms provided by said division accompanied by  
6 a fee of two dollars and fifty cents. Revenues generated by this  
7 ordinance shall be used only for the administration and enforcement  
8 of this ordinance.

9 NEW SECTION. SECTION 7. Boat Dealers. Boat dealers may be  
10 issued an annual registration certificate for a single fee of  
11 five dollars, plus one dollar for each dealer's flag furnished.  
12 Such certificate authorizes a boat dealer to demonstrate or  
13 otherwise use any watercraft, held by him for sale, upon the  
14 waters of the county without further registration. In applying  
15 for a dealer's certificate, no listing of watercraft shall be  
16 required. When a watercraft is operated under a dealer's  
17 certificate it shall not be necessary to display a registration  
18 number on the watercraft; PROVIDED, such watercraft is being  
19 used for demonstration purposes; and PROVIDED FURTHER, that such  
20 dealer shall carry and publically display on the watercraft a  
21 current numbered dealer's flag which shall be supplied annually  
22 by said division for one dollar.

23 NEW SECTION. SECTION 8. Registration Numbers. The division  
24 shall issue to each person registering a watercraft a registration  
25 number. Registration numbers shall run in consecutive sequence  
26 and the numbering system shall be acceptable to and consistent  
27 with the regulations established by the United States Coast  
28 Guard.

29 NEW SECTION. SECTION 9. Displaying Numbers. The identificatio  
30 number awarded to any watercraft shall be displayed thereon by a  
31 decal affixed to the craft immediately aft of the U.S. Coast  
32 Guard registration number.

1           NEW SECTION. SECTION 10. Penalty for Violations. Any  
2 person who operates or permits the operation of any watercraft  
3 upon the waters of King County without having attached thereto  
4 and displayed thereon the registration number decal assigned  
5 thereto for the current year shall be guilty of a misdemeanor,  
6 and subject to a fine of not more than five hundred dollars.

7           NEW SECTION. SECTION 11. Certificate of Number. All  
8 undocumented watercraft equipped with propulsion machinery of  
9 any type shall have a number issued by the proper issuing  
10 authority in the state in which the watercraft is principally  
11 used. The number issued to a watercraft is shown on the  
12 certificate of number. The certificate of number must be on  
13 board and available for inspection whenever the watercraft is  
14 in use.

15           This section applies to each watercraft equipped with  
16 propulsion machinery of any type used on the waters subject  
17 to the jurisdiction of the County of King, except:

18           A. Foreign vessels temporarily using waters subject to  
19 the jurisdiction of the County of King;

20           B. Military or public vessels of the United States;

21           C. A watercraft whose owner is a state or subdivision  
22 thereof, which is used principally for governmental purposes, and  
23 which is clearly identifiable as such;

24           D. Ships' lifeboats;

25           E. A watercraft that is used exclusively for racing.

26           NEW SECTION. SECTION 12. Certificate of Number on Leased  
27 or Rented Vessels. The certificate of number for watercraft less  
28 than twenty-six feet in length, leased or rented to a person  
29 for that person's noncommercial use for less than twenty-four  
30 hours, will not have to be aboard the watercraft. However, if  
31 the vessel is equipped with propulsion machinery of any type, it  
32 is required to properly display the number issued to it and to  
33 have aboard the lease or rental agreement. This agreement is

1 is to list at least the watercraft number that appears on the  
2 certificate of number, the period of time for which the watercraft  
3 is leased or rented, and must be signed by both the owner or his  
4 authorized representative and the person leasing or renting the  
5 vessel.

6 NEW SECTION. SECTION 13. Authority of Officers to Board  
7 Boats. Commissioned officers of the King County Department of  
8 Public Safety are hereby given the authority to board any vessel  
9 or watercraft found underway in the waters of the County of King  
10 for the purpose of inspection and enforcement of this chapter.

11 NEW SECTION. SECTION 14. Interlocal Cooperation. Nothing  
12 in this ordinance shall preclude the County of King from  
13 entering into interlocal agreements with cities and towns within  
14 the county for the administration and enforcement of this  
15 ordinance.

16 NEW SECTION. SECTION 15. Severability. Should any section,  
17 subsection, paragraph, sentence, clause or phrase of this  
18 ordinance be declared unconstitutional or invalid for any reason,  
19 such decision shall not affect the validity of the remaining por-  
20 tions of this ordinance.

21 INTRODUCED AND READ for the first time this 29th day of  
22 November, 1982.

23 PASSED this 27th day of December, 1982.

24 KING COUNTY COUNCIL  
25 KING COUNTY, WASHINGTON

26  
27 Lois North  
Chairman

28 ATTEST:

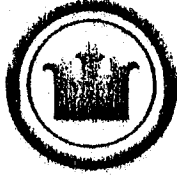
29 [Signature]  
30 Deputy Clerk of the Council

31 APPROVED this \_\_\_\_\_ day of \_\_\_\_\_  
32 DEEMED ENACTED WITHOUT COUNTY EXECUTIVE'S SIGNATURE \_\_\_\_\_

33 DATED: 1/6/83

King County Executive





King County Executive  
Hardy Revelle

January 10, 1983

CLERK OF THE COU  
10 JAN 23 1983

The Honorable Lois North  
Chairman, King County Council  
C O U R T H O U S E

RE: Boat Fee Ordinance 6261

Dear Madam Chairman:

Enclosed is Ordinance 6261, which establishes a process for registering and collecting a registration fee from certain recreational boats used upon the waters of King County. While I support the underlying principle of the ordinance (that boat owners should pay for marine patrol services), I am allowing the ordinance to become effective without my signature for the reasons discussed below.

First, as discussed in the enclosed letter opinion from the Prosecuting Attorney, King County lacks the authority to enforce the provisions of the ordinance on the incorporated waters of King County. As a result, the Department of Public Safety, the agency designated in the ordinance as the enforcement agency, could only enforce the ordinance on unincorporated waters of the County. Because the territorial jurisdiction of Lake Washington and Lake Sammamish is shared by nine and three local governments, respectively, it would be impractical to enforce the ordinance on only the unincorporated portions of the two lakes.

Second, as also discussed in the enclosed letter opinion, the ordinance cannot be legally implemented on a County-wide basis. Because we may not have those mechanisms in place in 1983, however, I do not think we should assume the collection of any boat fee revenues in 1983.


Additionally, Ordinance 6261 is not inconsistent with the general approach we are following to secure a permanent funding source for the County's marine patrol services. Our overall objective is to secure an adequate, stable funding source for marine patrol services by establishing, through a change in State and/or local law, a means for collecting revenue from the recreational boat owners who use the waters of King County. This objective is based upon the premise that recreational boat owners create a need for a special type of service and, therefore, they should pay for that service.

The Honorable Lois North  
January 10, 1983  
Page Two

In closing, I would like to reiterate my support of the King County Council's policy intent in enacting Ordinance 6261. I look forward to working with the County Council on this matter during the next several months.

If you have any questions about my position on the boat fee ordinance, please call me or Shelley Sutton on extension 4040.

Sincerely,

  
RANDY REVELLE  
King County Executive

RR:SS:ce

Enclosure

cc: King County Councilmembers  
Norm Maleng, King County Prosecuting Attorney  
ATTN: Richard Holmquist, Chief Civil Deputy  
Lauraine Brekke, Director, Department of Executive Administration  
Shelly Yapp, Director, Budget Office  
Barney Winckoski, Sheriff-Director, Department of Public Safety  
Larry Phillips, Executive Assistant  
ATTN: Jim Cantu, Staff Assistant  
Tom Fitzsimmons, Program Development Manager  
ATTN: Shelley Sutton, Staff Assistant

KING COUNTY

JAN 3 1983

PROGRAM DEVELOPMENT  
DIVISION

OFFICE OF THE PROSECUTING ATTORNEY  
KING COUNTY, WASHINGTON  
CIVIL DIVISION

E 550 KING COUNTY COURTHOUSE  
516 THIRD AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 583-4437

NORM MALENG  
PROSECUTING ATTORNEY

4 January 1983

The Honorable Randy Revelle  
King County Executive  
400 King County Courthouse  
Seattle, Washington 98104

Ref: Ordinance 6261 -- Proposed Boat Registration Fee

Dear Mr. Revelle:

By her memorandum of December 30, 1982, Ms. Shelley Sutton has requested on your behalf the advice of this office concerning the legality of proposed Ordinance No. 6261, passed by the King County Council on December 27, 1982 and awaiting your action.

At the outset, two separate legal questions are presented by Ordinance 6261 as enacted by the Council. First, would the boat registration fee provided for within this ordinance truly be a "fee" enacted within the police power of the county, or would it be a "tax" whose validity must be judged under Article VII, Section 5, of the Washington Constitution? The second question is: whether or not this ordinance would by its terms apply to waters within King County which are located within incorporated cities?

With respect to the first question, without belaboring the point, the question of whether or not this registration "fee" could properly be enacted within the police power of King County has been the subject of a short letter opinion from our office on October 21, 1982, which in turn was modified orally by me in later discussions with your office. The modified advice so given is fairly described in the December 21, 1982 from Shelley Sutton to you. In short, by virtue of Hillis Homes, Inc. v. Snohomish Co., 97 Wn.2d 804, \_\_\_ P.2d \_\_\_ (1982), it is clear that if the primary purpose of the "fee" is to supply revenue for the county treasury, then however denominated by the legislation, for constitutional purposes the exaction would be a "tax", and such a tax could only be imposed if expressly authorized by the Legislature acting under Article VII, Section 5, of the Washington Constitution. In passing, no such authorizing legislation has been enacted by the Washington Legislature.

The Honorable Randy Revelle  
King County Executive  
Page 2  
4 January 1983

On the other hand, under Hillis, if the primary purpose of the "fee" is regulatory in nature enacted under the police power of the county, then the "fee" will be upheld as within the constitutional authority of a county under Article XI, Section 11, of the Washington Constitution.

While the question is not wholly free from doubt, we are of the opinion that in view of the manifest purpose of Ordinance 6261 as reflected in Section 1 thereof, and further in view of the provision of Section 6 of that ordinance which dedicates revenues generated by the ordinance to the administration and enforcement of the ordinance, this ordinance would pass muster under Hillis, and thus no constitutional infirmity on this score exists.

The other and more troublesome issue presented by Ordinance 6261 concerns the issue of whether or not it is within the police powers of the county to attempt to regulate boating safety within portions of the county located in incorporated cities. In this regard, it is significant to note that throughout the ordinance are repeated references to "water craft used upon the waters of King County". See, Ordinance 6261, § 4 (line 4), § 5 (lines 20-21, 29), § 7 (lines 13-14), § 10 (line 3), § 13 (line 9). Taken literally, this terminology amounts to an assertion of local police power by King County throughout the geographical confines of King County including within waters located within incorporated cities.

The starting point for measuring the assertion of police power by a county or other municipal corporation is Article XI, Section 11, of the Washington Constitution, which provides:

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

See Leno v. Seattle, 63 Wn.2d 664, 338 P.2d 926 (1964).

While the precise fact pattern here involved has not been presented to our Supreme Court, a related pattern has been. In Brown v. Cle Elum, 145 Wash. 588, 261 Pac. 112 (1927), the Supreme Court ruled that a city may not exercise its police power beyond its territorial limits. We believe that the true constitutional rule is best ascertained by studying a line of Washington cases beginning with Paine v. Port of Seattle, 70 Wash. 294, 126 Pac. 628 (1912), including Royer v. PUD Dist. No. 1, 186 Wash. 142, 56 P.2d 1302 (1936), and culminating most recently in Municipality of

The Honorable Randy Revelle  
King County Executive  
Page 3  
4 January 1983

Metropolitan Seattle v. City of Seattle, 57 Wn.2d 446, 357 P.2d 863 (1960).

The proper understanding of the rule in these matters is best reflected in the Metro case where it was argued unsuccessfully that ". . . two municipalities may not exercise the same phase of the police power concurrently in the same area." 57 Wn.2d at 455. In rejecting this argument as applied to Metro's exercise of police power within the City of Seattle, the Supreme Court reaffirmed Paine and Royer construing Article XI, Section 11, implicitly as a limitation on local police powers, not upon the state's police power. As such it was the presence in each of these three cases of a general state statute authorizing some overlapping jurisdiction between municipal corporations which accounted for the upholding of that exercise of police power in a concurrent sense.

Unfortunately, in the present case involving a boat registration fee ordinance, we are unaware of any state statute authorizing counties to regulate boating within incorporated cities located within the territorial or geographic confines of the county. As such, it seems clear that were Ordinance 6261 to become law and were it to be construed as applying to waters within incorporated cities, it would be unconstitutional as a violation of Article XI, Section 11, of the Washington Constitution.

Notwithstanding this conclusion, this does not end our inquiry, since it is well settled that a narrow construction of a statute may be justified where necessary ". . . to save the statute or act from constitutional infirmity". Childers v. Childers, 89 Wn.2d 592, 597, 575 P.2d 201 (1978).

If the phrases in Ordinance 6261 are construed as being consistent with the reference in Section 11 of the ordinance, lines 16-17 thereof, to ". . . waters subject to the jurisdiction of the County of King", to wit, those not located within incorporated cities, this constitutional problem would drop out and the ordinance would then pass constitutional muster.

Accordingly, to save the constitutionality of Ordinance 6261, we are of the opinion that if it becomes law, it must be construed as only applicably to unincorporated waters of King County.

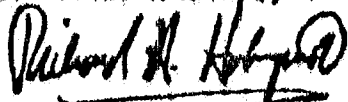
The Honorable Randy Revelle  
King County Executive  
Page 4  
4 January 1983

It should be noted that were a county-wide program desired, the two ways most obviously available to accomplish this objective are (1) obtain authorizing state legislation at the level of the Washington Legislature, or (2) have each city within the county adopt an essentially identical registration fee ordinance and then by additional ordinances of those cities and King County enter appropriate interlocal agreements under the Interlocal Cooperation Act, Ch. 39.34 RCW, which would call for enforcement by King County officials.

In conclusion, we have no independent recommendation to you on the issue of whether to sign, not sign, or veto Ordinance 6261. As construed by us, the issue of whether or not Ordinance 6261 is practically enforceable is exclusively a policy question for you and the Council.

We trust the foregoing will be of assistance in your review of Ordinance 6261. If you have further questions regarding this matter, kindly advise.

For NORM MALENG, King County Prosecuting Attorney:



RICHARD H. HOLMQUIST  
Chief Civil Deputy