



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

April 11, 2000

Ordinance 13793

Proposed No. 2000-0238.2

Sponsors von Reichbauer

1 AN ORDINANCE relating to hearing examiner appeals,
2 providing for participation of the hearing examiner and
3 staff in the appeal hearing; and amending Ordinance 4461,
4 Section 12, as amended, and K.C.C. 20.24.220 and
5 Ordinance 12196, Section 41, and K.C.C. 20.24.222 and
6 declaring an emergency.

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9 **SECTION 1. Findings of fact.** The council hereby finds that clarification of the
10 procedures for the council to follow in conducting appeals from recommendations and
11 decisions of the hearing examiner is necessary. Clarification will ensure that the council
12 is provided with appropriate staff support during its deliberations on pending appeals
13 while continuing to base its decision on the record as developed before the hearing
14 examiner. This ordinance is administrative and ministerial in nature and does not
15 establish new procedures or conditions for consideration of pending appeals.

16 **SECTION 2.** Ordinance 4461, Section 12, as amended, and K.C.C. 20.24.220 are
17 each hereby amended to read as follows:

18 **Appeal to council - recommendation.**

19 A. If an appeal has been filed pursuant to K.C.C. 20.24.210B, the appellant shall
20 file with the office of the clerk of the county council within twenty-one calendar days of
21 the date of the examiner's written recommendation a written appeal statement specifying
22 the basis for the appeal and any arguments in support of the appeal. If no written appeal
23 statement or arguments are filed within the twenty-one calendar days, the clerk of the
24 council shall place a proposed ordinance ((which)) that implements the examiner's
25 recommended action on the agenda of the next available council meeting. If written
26 appeal arguments are filed, the clerk of the council shall cause notice to be given to other
27 parties of record that a notice of appeal and appeal statement have been filed and that
28 written appeal statements or arguments in response ((thereto)) to the notice of appeal and
29 appeal statement may be submitted to the clerk within fourteen calendar days of the date
30 of such a notification by the clerk.

31 B. Consideration by the council of the appeal, except for appeals of examiner
32 recommendations on petitions for road vacations, shall be based upon the record as
33 presented to the examiner at the public hearing and upon written appeal statements based
34 upon the record((; provided)), but the council also may allow parties a period of time for
35 oral argument based on the record. Consistent with RCW 36.70B.020(1), before or at the
36 appeal hearing and upon the request of the council, the hearing examiner or other county
37 staff may provide a written or oral summary, or both, of the appeal record, issues and
38 arguments presented in an appeal and may provide answers, based on the record, to
39 questions with respect to issues raised in an appeal asked by councilmembers at the
40 appeal hearing . Nothing in this subsection shall be construed as limiting the ability of
41 the council to seek and receive legal advice regarding a pending appeal from the office of

42 the prosecuting attorney or other county legal counsel either within or outside of the
43 hearing.

44 C. The examiner may conduct a conference with all parties to the appeal for the
45 purpose of clarifying or attempting to resolve certain issues on appeal(~~(; provided, that)~~),
46 but the deputy examiner who conducted the public hearing on the proposal may not
47 conduct the conference. Such a conference shall be informal and shall not be part of the
48 public record.

49 ~~((C.))~~ D. If, after consideration of the record, written appeal statements and any
50 oral argument the council determines that:

51 1. An error in fact or procedure may exist or additional information or
52 clarification is desired, the council shall remand the matter to the examiner; or

53 2. The recommendation of the examiner is based on an error in judgment or
54 conclusion, the council may modify or reverse the recommendation of the examiner(~~(;~~
55 ~~provided)~~), but the council's land use appeal committee may retain the matter, refer it to
56 other council committee or remand to the examiner for the purpose of further hearing,
57 receipt of additional information or further consideration (~~(when)~~) if determined
58 necessary (~~(prior to)~~) before the council's taking final action (~~(thereon)~~) on the matter.

59 ~~((D.))~~ E. Subsections B (~~(and)~~), C (~~(above)~~) and D of this section do not apply to
60 an appeal of an examiner's recommendation on a petition for a road vacation. In such an
61 appeal, the council is not bound by the record presented to the hearing examiner. Before
62 acting on a proposed road vacation for which an appeal of the hearing examiner's
63 recommendation has been filed, the council shall hold a legislative public hearing to
64 receive further information and testimony.

65 SECTION 3. Ordinance 12196, Section 41, and K.C.C. 20.24.222 are each
66 hereby amended to read as follows:

67 **Appeal to council - examiner's decision.**

68 A. If an appeal has been filed pursuant to K.C.C. 20.24.210D, the appellant shall
69 file with the office of the clerk of the county council within twenty-one calendar days of
70 the date of the examiner's written decision a written appeal statement specifying the basis
71 for the appeal and any arguments in support of the appeal. If no written appeal statement
72 or arguments are filed within the twenty-one calendar days, the hearing examiner's
73 decision made pursuant to K.C.C. 20.24.070 shall be deemed final and conclusive action.
74 If written appeal arguments are filed, the clerk of the council shall cause notice to be
75 given to other parties of record that a notice of appeal and appeal statement have been
76 filed and that written appeal statements or arguments in response ~~((thereto))~~ to the notice
77 of appeal and appeal statement may be submitted to the clerk within fourteen calendar
78 days of the date of such notification by the clerk.

79 B. Consideration by the council of the appeal shall be based upon the record as
80 presented to the examiner at the public hearing and upon written appeal statements based
81 upon the record ~~((; provided))~~, but the council also may allow parties a period of time for
82 oral argument based on the record. Consistent with RCW 36.70B.020(1), before or at the
83 appeal hearing and upon the request of the council, the hearing examiner or other county
84 staff may provide a written or oral summary, or both, of the appeal record, issues and
85 arguments presented in an appeal and may provide answers, based on the record, to
86 questions with respect to issues raised in an appeal asked by councilmembers at the
87 appeal hearing . Nothing in this subsection shall be construed as limiting the ability of

88 the council to seek and receive legal advice regarding a pending appeal from the office of
89 the prosecuting attorney or other county legal counsel either within or outside of the
90 hearing.

91 C. The examiner may conduct a conference with all parties to the appeal for the
92 purpose of clarifying or attempting to resolve certain issues on appeal, ~~((provided, that))~~
93 but the deputy examiner who conducted the public hearing on the proposal may not
94 conduct the conference. Such a conference shall be informal and shall not be part of the
95 public record.

96 D. If, after consideration of the record, written appeal statements and any oral
97 argument the council determines that:

98 ~~((A-))~~ 1. Additional information or clarification is required, the council shall
99 remand the matter to the examiner; or

100 ~~((B-))~~ 2. The decision of the examiner is based on an error in judgment or
101 conclusion, the council may modify or reverse the recommendation of the examiner;
102 provided, the council's land use appeal committee may retain the matter, refer it to
103 another council committee or remand to the examiner for the purpose of further hearing,
104 receipt of additional information or further consideration ~~((when))~~ if determined
105 necessary ~~((prior to))~~ before the council's taking final action ~~((thereon))~~ on the matter.

106 E. Appeals shall be processed by the council as expeditiously as possible, giving
107 appropriate consideration to the procedural due process rights of the parties.

108 Consideration of the appeal by the council shall be scheduled to ensure that such appeals
109 are processed within the time periods provided in K.C.C. 20.20.100. Failure of the
110 council to determine an appeal within applicable time limits shall not terminate the

111 jurisdiction of the council.

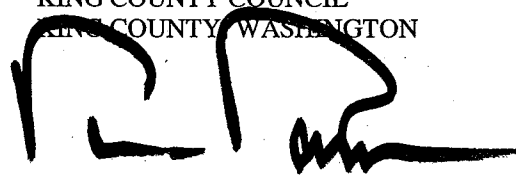
112 SECTION 4. The council finds as a fact and declares that an emergency exists
113 and that the enactment of this ordinance as an emergency ordinance is necessary for the
114 immediate preservation of public peace, health or safety or for the support of county
115 government and its existing public institutions.

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Ordinance 13793 was introduced on 4/3/00 and passed as amended by the Metropolitan King County Council on 4/10/00, by the following vote:

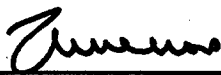
Yes: 12 - Mr. von Reichbauer, Ms. Miller, Ms. Fimia, Mr. Phillips, Mr. Pelz, Mr. McKenna,
Ms. Sullivan, Mr. Nickels, Mr. Pullen, Mr. Gossett, Ms. Hague and Mr. Vance
No: 0
Excused: 1 - Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



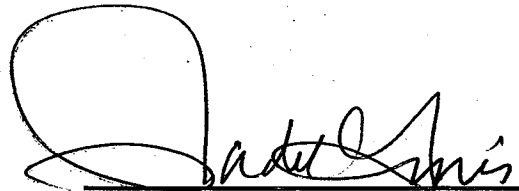
Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 17 day of April, 2000.



Ron Sims, County Executive

Attachments None