



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

November 19, 2007

Ordinance 15969

Proposed No. 2007-0398.2

Sponsors Dunn, Lambert and Constantine

1 AN ORDINANCE relating to the enforcement of code
2 compliance by the department of development and
3 environmental services and other executive agencies;
4 amending Ordinance 4461, Section 2, as amended, and
5 K.C.C. 20.24.080, Ordinance 13263, Section 5, and K.C.C.
6 23.02.040, Ordinance 13263, Section 7, and K.C.C.
7 23.02.060, Ordinance 13263, Section 8, as amended, and
8 K.C.C. 23.02.070, Ordinance 13263, Section 10, as
9 amended, and K.C.C. 23.02.090, Ordinance 13263, Section
10 9, and K.C.C. 23.02.080, Ordinance 13263, Section 11, as
11 amended, and K.C.C. 23.02.100 and Ordinance 4461,
12 Section 2, as amended, and K.C.C. 20.24.080 and adding a
13 new section to K.C.C. chapter 23.01.

14
15 STATEMENT OF FACTS:
16 1. As of April 19 2007, five hundred eleven code enforcement actions
17 were opened by the department of development and environmental

18 services ("DDES") for the year 2007. Five hundred thirty-four code
19 enforcement actions, spanning over several years, were closed this year.

20 2. The Voluntary Compliance Agreement is a tool utilized by the
21 department to give citizens the opportunity to engage in voluntary
22 abatement of activities that may constitute code violations on their
23 properties.

24 3. Currently, only a limited number of voluntary compliance agreements
25 have been entered upon by citizens in violation of code compliance. As
26 such, only a small percentage of all opened code enforcement actions are
27 successfully resolved through the use of voluntary compliance
28 agreements. Such a small fraction of cases resolved through the use of
29 voluntary compliance agreements is an indication of the ineffectiveness of
30 the tool in solving the issues it was created to resolve.

31 4. An April 2007 letter from the office of the county ombudsman found
32 that the tool of the "voluntary compliance agreement" offered by DDES
33 are rarely ever entered upon by affected parties. Such an agreement
34 requires the offending party to waive the rights to administrative appeal
35 and runs counter to the statement of goals outlined in K.C.C. 23.01.020.
36 Voluntary compliance agreements, as currently implemented, do not serve
37 the intent of this chapter.

38 5. A subsequent analysis by the office of the county ombudsman has
39 recommended that when the fulfillment of terms of a "voluntary

40 compliance agreement" are in dispute, the right to administrative appeal
41 may significantly improve its effectiveness as a tool for dispute resolution.

42 6. The county councilmembers representing significant portions of
43 unincorporated areas have recognized numerous complaints from residents
44 who claim to have not been notified prior to site visitations by DDES code
45 enforcement personnel. It is unclear whether or not DDES has
46 implemented publicly adopted rules relating to field inspections and the
47 requirement of prior communication to constituents.

48 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

49 NEW SECTION. SECTION 1. There is hereby added to K.C.C. chapter 23.01 a
50 new section to read as follows:

51 The department shall adopt public rules pursuant to K.C.C. chapter 2.98 to
52 implement the provisions of this title.

53 SECTION 2. Ordinance 13263, Section 5 and K.C.C. 23.02.040 are each hereby
54 amended to read as follows:

55 A. In order to discourage public nuisances and otherwise promote compliance
56 with applicable code provisions, a director may, in response to field observations or
57 reliable complaints, determine that civil code violations have occurred or are occurring
58 and may:

59 1. Enter into voluntary compliance agreements with persons responsible for
60 code compliance, and issue notices of noncompliance if the persons responsible fail to
61 comply with the terms of the voluntary compliance agreement;

62 2. Issue citations and assess civil penalties as authorized by K.C.C. chapter
63 23.20((-));

64 3. Issue notice and orders, assess civil penalties and fines and recover costs as
65 authorized by K.C.C. chapter 23.24;

66 4. Order abatement by means of a notice and order, and if such abatement is not
67 timely completed by the person responsible for code compliance, undertake the
68 abatement and charge the reasonable costs of such work as authorized by K.C.C. chapter
69 23.24;

70 5. Allow a person responsible for code compliance to perform community
71 service in lieu of paying civil penalties as authorized by K.C.C. chapter 23.24;

72 6. Order work stopped at a site by means of a stop work order, and if such order
73 is not complied with, assess civil penalties, as authorized by K.C.C. chapter 23.28; and/or

74 7. Suspend, revoke or modify any permit previously issued by a director or deny
75 a permit application as authorized by K.C.C. chapter 23.24 when other efforts to achieve
76 compliance have failed.

77 B. Should violations occur involving multiple agencies, a lead agency shall be
78 designated by the executive to coordinate the county's response. Unless otherwise
79 determined by the directors of the affected departments, the department of development
80 and environmental services shall serve as the lead agency.

81 C. The procedures set forth in this title are not exclusive. These procedures shall
82 not in any manner limit or restrict the county from remedying civil code violations or
83 abating civil code violations in any other manner authorized by law. Ordinance 13263

84 shall not be construed to affect the authority of the King County board of health in
85 enforcement of the King County board of health code or regulations.

86 D. In addition or as an alternative to utilizing the procedures set forth in this title,
87 a director may seek legal or equitable relief to abate any conditions or enjoin any acts or
88 practices which constitute a civil code violation.

89 E. In addition or as an alternative to utilizing the procedures set forth in
90 Ordinance 13263, a director may assess or recover civil penalties accruing under this title
91 by legal action filed in King County superior court by the prosecuting attorney on behalf
92 of King County.

93 F. The provisions of this title shall in no way adversely affect the rights of the
94 owner, lessee or occupant of any property to recover all costs and expenses incurred and
95 required by this title from any person causing such violation.

96 G. A director may use the services of a collection agency in order to collect any
97 fines, penalties, fees or costs owing under this title.

98 H. In administering the provisions for code enforcement, the director shall have
99 the authority to waive any one or more such provisions so as to avoid substantial injustice
100 by application thereof to the acts or omissions of a public or private entity or individual,
101 or acts or omissions on public or private property including, for example, property
102 belonging to public or private utilities, where no apparent benefit has accrued to such
103 entity or individual from a code violation and any necessary remediation is being
104 promptly provided. For purposes of this clause, substantial injustice cannot be based on
105 economic hardship.

106 I. The provisions of this title detailing county department administration of code
107 compliance procedures are (~~intended only for the purpose of providing guidance to~~
108 ~~county employees and are~~) not to be construed as creating a substantive basis for appeal
109 or a defense of any kind to an alleged violation.

110 J. The provisions of Ordinance 13263 authorizing the enforcement of non-
111 codified ordinances are intended to assure compliance with conditions of approval on
112 plats, unclassified use permits, zone reclassifications and other similar permits or
113 approvals which may have been granted by ordinances which have not been codified, and
114 to enforce new regulatory ordinances which are not yet codified. Departments should be
115 sensitive to the possibility that citizens may not be aware of these ordinances, and should
116 give warnings prior to enforcing such ordinances, except in high risk cases.

117 SECTION 3. Ordinance 13263, Section 7 and K.C.C. 23.02.060 are each hereby
118 amended to read as follows:

119 This section sets forth guidelines for more specific procedures to be used by each
120 department in implementing Ordinance 13263. The guidelines set forth in this section are
121 not jurisdictional, and failure to meet them in any particular case shall not affect the
122 county's authority to enforce county code provisions with regard to that case.

123 A. (~~Field verification.~~

124 ~~Except in emergencies and for low risk case complaints, field verification should~~
125 ~~be made if possible prior to, concurrent with or shortly after notifying the owner,~~
126 ~~occupant, and/or other person responsible for code compliance of the potential or alleged~~
127 ~~violation. Low risk case complaints should be acknowledged by sending an informal~~
128 ~~letter to the person(s) responsible for code compliance. The letter should state that a~~

129 violation may have occurred, but has not been verified, and should ask the recipient to
130 contact the department issuing the letter.)) Before conducting a field verification, code
131 enforcement personnel shall notify the owner, occupant, or other person responsible for
132 code compliance of a possible violation through any combination of phone, posting
133 and/or mail, that a field verification is to occur. Code enforcement personnel shall not
134 cross a parcel boundary line onto private property without such prior notification, except
135 in emergencies that pose an imminent threat to environmental health or to the public
136 safety or specifically for the purpose of posting a notice.

137 B. (~~Advising interested parties of receipt of complaint and/or field~~
138 ~~investigation.~~) In cases involving a complaint, the code enforcement agency shall
139 provide notice (prior to or concurrent with a field verification) in the following manner:

140 1. The owner, occupant and person responsible for code compliance (if not an
141 owner or occupant) (~~should~~) shall be advised (~~of any complaint~~) by personal contact,
142 phone, posting and/or mail of any complaint; and

143 2. The complainant should be contacted by phone and, if possible, in person
144 during the field visit.

145 C. All departments with compliance requirement authority (~~should~~) shall record
146 land-based violations in a database system, which should be accessible to all other
147 departments.

148 D. The department shall check its own records and the records of other agencies
149 for previous violations on the site of the alleged violation or by the owner or occupant of
150 the site or such other person as may be responsible for code compliance. Each
151 department (~~should~~) shall develop and/or maintain a database system for tracking

152 violations of its codes that is designed, to the extent possible, to be used in coordination
153 with other departments.

154 E. Staff undertaking field investigations shall record the time, date, and location
155 of the field investigation, and the reason for entry. This information shall be made
156 available pursuant to subsection C. of this section.

157 SECTION 4. Ordinance 13263, Section 8, as amended and K.C.C. 23.02.070 are
158 each hereby amended to read as follows:

159 A. The department shall determine, based on information derived from sources
160 such as field observations, the statements of witnesses, relevant documents and data
161 systems for tracking violations and applicable county codes, whether or not a violation
162 has occurred. As soon as a department has reasonable cause to determine that a violation
163 has occurred, it shall document the violation and promptly notify the owner, occupant or
164 other person responsible for code compliance.

165 B. Except as provided in subsection D₂ of this section, a warning shall be issued
166 verbally or in writing promptly when a field inspection reveals a violation, or as soon as
167 the department otherwise determines that a violation has occurred. The warning shall
168 inform the person determined to be responsible for code compliance of the violation and
169 shall include a reference to the applicable permit or zoning condition, ordinance or code
170 related to the violation. The warning shall also allow the person an opportunity to correct
171 ~~((it))~~ the violation or enter into a voluntary compliance agreement as provided for by this
172 title. Verbal warnings shall be logged and followed up with a written warning within two
173 weeks, and the site shall be reinspected within thirty days.

174 C. The guidelines in this section for warnings, notifications and reinspections are
175 not jurisdictional, and failure to meet them in any particular case shall not affect the
176 county's authority to enforce county code provisions with regard to that case.

177 D. No warning need be issued in ~~((high-risk))~~ cases~~((;))~~ involving, emergencies
178 ~~((, repeat violation cases, cases that are already subject to a voluntary compliance~~
179 ~~agreement, cases in which the violation creates a situation or condition that is not likely~~
180 ~~to be corrected within a short period of time, cases in which a stop work order is~~
181 ~~necessary, or if the person responsible for code compliance knows or reasonably should~~
182 ~~have known that the action was a civil code violation))~~ that pose an imminent threat to
183 environmental health or to the public safety.

184 E. Citations may be issued in moderate- and low-risk cases, if the department
185 determines it is probable that violation can likely be fully corrected in a short period of
186 time.

187 F. Notice and orders should be issued in all high-risk cases in which a voluntary
188 compliance agreement has not been entered into. Notice and orders may be issued in
189 moderate- and low-risk cases where the department determines that the violation is
190 unlikely be fully corrected in a short period of time.

191 G. The department shall use all reasonable means to determine and cite the
192 person or persons actually responsible for the violation occurring when the owner has not
193 directly or indirectly caused the violation.

194 H. If the violation is not corrected or a voluntary compliance agreement is not
195 achieved within a reasonable time period, a citation, notice and order or stop work order
196 should be issued. As a guideline, citations should be issued within sixty days from

197 receipt of a complaint, and notice and orders should be issued within one hundred twenty
198 days from receipt of a complaint. Stop work orders should be issued promptly upon
199 discovery of a violation in progress.

200 I. Any complainant who provides a mailing address and requests to be kept
201 advised of enforcement efforts should be mailed a copy of all written warnings, voluntary
202 compliance agreements, citations, notice and orders, stop work orders and notices of
203 settlement conferences issued by a department with regard to the alleged violation. Any
204 complainant who is an aggrieved person may appeal a citation, notice and order, stop
205 work order, a determination to enter into a voluntary compliance agreement or a
206 determination not to issue a citation or order pursuant to the provisions of K.C.C. chapter
207 20.24, provided that the appeal shall be considered a civil proceeding, and any decision to
208 pursue criminal sanctions shall remain the obligation of the prosecuting attorney, as set
209 out in K.C.C. 23.02.030.

210 SECTION 5. Ordinance 13263, Section 10, as amended and K.C.C. 23.02.090 are
211 each hereby amended to read as follows:

212 A. Whenever the applicable department determines that a code violation has
213 occurred or is occurring, the department shall make reasonable efforts to secure voluntary
214 compliance from the person responsible for code compliance. Upon contacting the
215 person responsible for code compliance, the department may enter into a voluntary
216 compliance agreement as provided for in this section.

217 B. A voluntary compliance agreement may be entered into at any time after
218 issuance of a verbal or written warning, a citation, a notice and order or a stop work order
219 and before an appeal is decided pursuant to K.C.C. chapter 20.24.

220 C. The voluntary compliance agreement is a commitment by the person
221 responsible for code compliance under which the person agrees to do any combination of
222 abating the violation, remediating the site or mitigating the impacts of the violation. The
223 voluntary compliance agreement shall include the following:

224 1. The name and address of the person responsible for code compliance;
225 2. The address or other identification of the location of the violation;
226 3. A description of the violation and a reference to the provision or provisions of
227 the ordinance, resolution or regulation that has been violated;

228 4. A description of the necessary corrective action to be taken and identification
229 of the date or time by which compliance must be completed. For the purpose of this
230 subsection C.4, the department may either require that compliance be achieved by a
231 specific date or that compliance be achieved by a date to be determined based on the
232 occurrence of some future event;

233 5. The amount of the civil penalty that will be imposed pursuant to K.C.C.
234 chapter 23.32 if the voluntary compliance agreement is not satisfied;

235 6. An acknowledgment that the voluntary compliance agreement will be
236 recorded against the property in the office of records and elections, the recording to be
237 accomplished as provided for in notice and order cases;

238 7. An acknowledgment that if the department determines that the terms of the
239 voluntary compliance agreement are not met, the department may issue a notice of
240 noncompliance, and if the notice of noncompliance is not successfully appealed pursuant
241 to K.C.C. 20.24.090, that the county may without issuing a citation, notice and order or
242 stop work order, impose any remedy authorized by this title, which includes the

243 assessment of the civil penalties identified in the voluntary compliance agreement,
244 abatement of the violation, assessment of the costs incurred by the county to pursue code
245 compliance and to abate the violation, including legal and incidental expenses, and the
246 suspension, revocation or limitation of a development permit;

247 8. An acknowledgment that if any assessed penalty, fee or cost is not paid, a
248 director may charge the unpaid amount as a lien against the property where the civil code
249 violation occurred if owned by the person responsible for code compliance, and that the
250 unpaid amount may be a joint and several personal obligation of all persons responsible
251 for code compliance;

252 9. An acknowledgment that by entering into the voluntary compliance
253 agreement the person responsible for code compliance ~~((waives the right to~~
254 ~~administratively appeal, and))~~ thereby admits~~((s))~~ that the conditions described in the
255 voluntary compliance agreement existed and constituted a civil ~~((code))~~ violation, and
256 ~~((that if the department determines that the terms of the voluntary compliance agreement~~
257 ~~are not met))~~ that the person responsible waives the right to administratively appeal the
258 existence of the conditions and the fact that they constituted a civil code violation, and
259 that if a notice of noncompliance is issued and not successfully appealed, the person is
260 subject to and liable for any remedy authorized by this title, which includes the
261 assessment of the civil penalties identified in the voluntary compliance agreement,
262 abatement of the violation, assessment of the costs incurred by the county to pursue code
263 compliance and to abate the violation, including legal and incidental expenses, and the
264 suspension, revocation or limitation of a development permit; and

265 10. An acknowledgment that the person responsible for code compliance
266 understands that he or she (~~(has the right to be served with)~~) knowingly, voluntarily and
267 intelligently waives the right to administratively appeal a citation, notice and order or
268 stop work order for any violation identified in the voluntary compliance agreement(~~(, has~~
269 ~~the right to administratively appeal any such a citation, notice and order or stop work~~
270 ~~order, and that he or she is knowingly, voluntarily and intelligently waiving those~~
271 ~~rights))~~).

272 D. Upon entering into a voluntary compliance agreement, a person responsible
273 for code compliance (~~((waives the right to administratively appeal, and thereby))~~) admits
274 that the conditions described in the voluntary compliance agreement existed and
275 constituted a civil code violation; and agrees that if the department (~~((determines the terms~~
276 ~~of a voluntary compliance agreement are not met,))~~) issues a notice of noncompliance, and
277 if the notice of noncompliance is not successfully challenged through administrative
278 appeal, he or she is liable for the civil penalty available under K.C.C. chapter 23.32
279 (~~(and)~~). The person identified in the voluntary compliance agreement(~~(,))~~) is liable for the
280 costs incurred by the county to pursue code compliance and to abate the violation,
281 including legal and incidental expenses as provided for in K.C.C. chapter 23.24, and is
282 subject to all other remedies provided for in this title.

283 E. An extension of the time limit for compliance or a modification of the required
284 corrective action may be granted by the department if the person responsible for code
285 compliance has shown due diligence or substantial progress in correcting the violation,
286 but circumstances render full and timely compliance under the original conditions
287 unattainable.

288 F. The voluntary compliance agreement is not a settlement agreement.

289 SECTION 6. Ordinance 13263, Section 9, and K.C.C. 23.02.080 are each hereby
290 amended to read as follows:

291 A. Service of a citation, notice of noncompliance or notice and order shall be
292 made on a person responsible for code compliance by one or more of the following
293 methods:

294 1. Personal service of a citation, notice of noncompliance or notice and order
295 may be made on the person identified by the department as being responsible for code
296 compliance, or by leaving a copy of the citation or notice and order at that person's house
297 of usual abode with a person of suitable age and discretion who resides there.

298 2. Service directed to the landowner and/or occupant of the property may be
299 made by posting the citation, notice of noncompliance or notice and order in a
300 conspicuous place on the property where the violation occurred and concurrently mailing
301 notice as provided for below, if a mailing address is available.

302 3. Service by mail may be made for a citation, notice of noncompliance or a
303 notice and order by mailing two copies, postage prepaid, one by ordinary first class mail
304 and the other by certified mail, to the person responsible for code compliance at his or her
305 last known address, at the address of the violation, or at the address of the place of
306 business of the person responsible for code compliance. The taxpayer's address as shown
307 on the tax records of the county shall be deemed to be the proper address for the purpose
308 of mailing such notice to the landowner of the property where the violation occurred.
309 Service by mail shall be presumed effective upon the third business day following the day

310 upon which the citation, notice of noncompliance or notice and order was placed in the
311 mail.

312 B. For notice and orders only, when the address of the person responsible for
313 code compliance cannot reasonably be determined, service may be made by publication
314 once in a local newspaper with general circulation.

315 C. Service of a stop work order on a person responsible for code compliance may
316 be made by posting the stop work order in a conspicuous place on the property where the
317 violation occurred or by serving the stop work order in any other manner permitted by
318 this section.

319 D. The failure of the director to make or attempt service on any person named in
320 the citation, notice of noncompliance, notice and order or stop work order shall not
321 invalidate any proceedings as to any other person duly served.

322 SECTION 7. Ordinance 13263, Section 11, as amended and K.C.C. 23.02.100 are
323 each hereby amended to read as follows:

324 If the department determines that the terms of the voluntary compliance agreement
325 are not completely met, the director may issue a notice of noncompliance. A notice of
326 noncompliance shall include a description of all incomplete or untimely corrective or
327 abatement action required under the voluntary compliance agreement. The notice of
328 noncompliance shall also include the civil penalty to be imposed based upon the failure to
329 comply with the voluntary compliance agreement. The person or persons responsible for
330 code compliance may appeal the facts and conclusions described in the notice of
331 noncompliance as provided by K.C.C. 20.24.090. If the director issues a notice of
332 noncompliance, and the notice of noncompliance is not successfully challenged through

333 administrative appeal, the department may abate the violation in accordance with this title,
334 and the person responsible for code compliance may, without being issued a citation, notice
335 and order, or stop work order, be assessed a civil fine or penalty, in accordance with the
336 penalty provisions of ~~((this title))~~ the voluntary compliance agreement, plus all costs
337 incurred by the county to pursue code compliance and to abate the violation, including
338 legal and incidental expenses as provided for in this title, and may be subject to other
339 remedies authorized by this title. Penalties imposed what a voluntary compliance
340 agreement is not met accrue from the date that the ~~((terms of the voluntary compliance~~
341 ~~agreement were violated))~~ notice of noncompliance was issued.

342 SECTION 8. Ordinance 4461, Section 2, as amended, and K.C.C. 20.24.080 are
343 each hereby amended to read as follows:

344 A. The examiner shall receive and examine available information, conduct open
345 record public hearings and prepare records and reports thereof, and issue final decisions,
346 including findings and conclusions, based on the issues and evidence in the record, which
347 shall be appealable as provided by K.C.C. 20.24.240, or to other designated authority in
348 the following cases:

349 1. Appeals of SEPA decisions, as provided in K.C.C. 20.44.120 and public rules
350 adopted under K.C.C. 20.44.075;

351 2. Appeals of all Type 2 land use decisions, with the exception of appeals of
352 shoreline permits, including shoreline variances and conditional uses, which are
353 appealable to the state shoreline hearings board;

354 3. Appeals of citations, notices and orders, notices of noncompliance and stop
355 work orders issued pursuant to K.C.C. Title 23 or Title 1.08 of the rules and regulations
356 of the King County board of health;

357 4. Appeals of decisions regarding the abatement of a nonconformance;

358 5. Appeals of decisions of the director of the department of natural resources and
359 parks on requests for rate adjustments to surface and storm water management rates and
360 charges;

361 6. Appeals of department of public safety seizures and intended forfeitures, when
362 properly designated by the chief law enforcement officer of that department as provided
363 in RCW 69.50.505;

364 7. Appeals of notices and certifications of junk vehicles to be removed as a public
365 nuisance as provided in K.C.C. Title 21A and K.C.C. chapter 23.10;

366 8. Appeals of the department's final decisions regarding transportation
367 concurrency, mitigation payment system and intersection standards provisions of K.C.C.
368 Title 14;

369 9. Appeals of decisions of the interagency review committee created under
370 K.C.C. 21A.37.070 regarding sending site applications for certification pursuant to
371 K.C.C. chapter 21A.37; and

372 10. Appeals of other applications or appeals that the council prescribes by
373 ordinance.

374 B. The examiner's decision may be to grant or deny the application or appeal, or
375 the examiner may grant the application or appeal with such conditions, modifications and
376 restrictions as the examiner finds necessary to make the application or appeal compatible

377 with the environment and carry out applicable state laws and regulations, including
378 chapter 43.21C RCW, and the regulations, policies, objectives and goals of the
379 comprehensive plan, the community plans, subarea or neighborhood plans, the zoning
380 code, the subdivision code and other official laws, policies and objectives of King
381 County. In case of any conflict between the King County Comprehensive Plan and a
382 community, subarea or neighborhood plan, the King County Comprehensive Plan shall
383 govern.
384

Ordinance 15969 was introduced on 7/23/2007 and passed by the Metropolitan King County Council on 11/19/2007, by the following vote:

Yes: 9 - Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. von Reichbauer, Mr. Dunn, Mr. Ferguson, Mr. Phillips, Ms. Hague and Mr. Constantine
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

KING COUNTY COUNCIL

2007 DEC -3 PM 3:40

RECEIVED

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 30 day of NOVEMBER, 2007.



Ron Sims, County Executive

Attachments None