



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

February 26, 2008

Ordinance 16026

Proposed No. 2007-0619.2

Sponsors Phillips, Lambert, Constantine and
Ferguson

1 AN ORDINANCE relating to creating an appeal procedure
2 for permit fee estimates issued by the department of
3 development and environmental services under the project
4 management program and for permit billings issued by the
5 department of development and environmental services;
6 amending Ordinance 4461, Section 3, as amended, and
7 K.C.C. 20.24.090, Ordinance 13332, Section 7, as
8 amended, and K.C.C. 20.24.450; adding a new section to
9 K.C.C. chapter 20.24, adding new sections to K.C.C.
10 chapter 27.04 and adding a new chapter to K.C.C. Title 27.

11
12 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

13 SECTION 1. Findings:

14 A. On November 6, 2006, the Snohomish county superior court issued its "Order
15 on Fourth Partial Summary Judgment Re: Reasonableness of Fees" in P & L Associates
16 and Tiger Mountain v. King County, cause number 03-2-07977-9. The court issued its
17 final judgment on May 4, 2007.

18 B. In those orders, the court required King County to institute an independent
19 appeal process for challenges to permit billings and permit fee estimates issued by the
20 department of development and environmental services under its project management
21 program.

22 C. This ordinance implements the court's appeal requirements.

23 D. This ordinance establishes administrative processes for appeals of permit fees
24 and permit fee estimates.

25 NEW SECTION. SECTION 2. There is hereby added to K.C.C. chapter 20.24 a
26 new section to read as follows:

27 A. As provided in K.C.C. chapter 27. __ (sections 10 through 19 of this
28 ordinance), on appeals of permit fee estimates and billings by the department of
29 development and environmental services, the examiner shall receive and examine the
30 available information, conduct public hearings and issue final decisions, including
31 findings and conclusions, based on the issues and evidence.

32 B. The examiner that conducts the appeal hearing or hearings under K.C.C.
33 chapter 27. __ (sections 10 through 19 of this ordinance) of a permit fee estimate and/or
34 permit fee billing related to a development permit application by the department of
35 development and environmental services shall not have conducted and shall not conduct
36 the hearing on any other component of that development permit application.

37 SECTION 3. Ordinance 4461, Section 3, as amended, and K.C.C. 20.24.090 are
38 each hereby amended to read as follows:

39 A. Except as otherwise provided (~~herein~~) in this section, all notices of appeal to
40 the examiner shall be filed with the county department or division issuing the original

41 decision with a copy provided by the department or division to the office of the hearing
42 examiner. Except as otherwise provided (~~(herein)~~) in this section, the notice of appeal,
43 together with the required appeal fee, shall be filed within the prescribed appeal period.
44 Except as otherwise provided in K.C.C. chapter 27. (sections 10 through 19 of this
45 ordinance), ~~((F))~~ the appeal period is fourteen calendar days and commences on the third
46 day after the mailing of the notice of decision. In cases of appeals of Type 2 land use
47 decisions made by the director, the appeal period shall be extended for an additional seven
48 calendar days if WAC 197-11-340(2)(a) applies.

49 B. Notices of appeal of the recommendation to deny vacation of a county road by
50 the department of transportation, shall be filed along with the required two-hundred-dollar
51 administrative fee with the clerk of the county council within thirty days of an issuance of
52 ~~((said))~~ the denial.

53 C. Except as otherwise provided in K.C.C. chapter 27. (sections 10 through 19
54 of this ordinance), ~~((I))~~ if a notice of appeal has been filed within the time period provided
55 ~~((herein))~~ in this section, the appellant shall file a statement of appeal with the county
56 department or division issuing the original decision or action within a twenty-one-calendar-
57 day period commencing three days after the mailing of the notice of decision or action.

58 D. Department or division staff shall:

59 1. Be available within a reasonable time to persons wishing to file a statement of
60 appeal subsequent to an agency ruling and to respond to queries concerning the facts and
61 process of the county decision; and

62 2. Make available within a reasonable time a complete set of files detailing the
63 facts of the department or division ruling in question to persons wishing to file a statement

64 of appeal, subsequent to an agency ruling. If a department or division is unable to comply
65 with these provisions, the hearing examiner may authorize amendments to a statement of
66 appeal to reflect information not made available to an appellant within a reasonable time
67 due to a failure by a county agency to meet the foregoing requirements.

68 E. The statement of appeal shall identify the decision being appealed and the
69 alleged errors in that decision. The statement of appeal shall also state specific reasons
70 why the decision should be reversed or modified; the harm suffered or anticipated by the
71 appellant and the relief sought. The scope of an appeal shall be based principally on
72 matters or issues raised in the statement of appeal.

73 F. Failure to timely file a notice of appeal, appeal fee or statement of appeal
74 deprives the examiner of jurisdiction to consider the appeal.

75 SECTION 4. Ordinance 13332, Section 7, as amended, and K.C.C. 20.24.450 are
76 each hereby amended to read as follows:

77 A. Except as otherwise provided in subsection B. of this section, ((A))all appeals
78 to the hearing examiner, or from decisions of the hearing examiner, shall be charged a
79 fixed fee of two hundred fifty dollars to help defray the cost associated with appeal
80 processing. Appeal fees shall be paid at the time of appeal submittal.

81 B. Appeals of permit fee estimates and billings under K.C.C. chapter 27.
82 (sections 10 through 19 of this ordinance) shall be charged a fixed fee of fifty dollars to
83 help defray the costs associated with appeal processing.

84 NEW SECTION. SECTION 5. A new section is hereby added to K.C.C. chapter
85 27.04 to read as follows:

86 "Closed record hearing" means an administrative appeal to the hearing examiner
87 of a departmental decision when the appeal is on the record with no new evidence or
88 information allowed to be submitted and only appeal argument allowed. The record shall
89 consist solely of a complete set of the documents relating to the facts of the department's
90 decision.

91 NEW SECTION. SECTION 6. A new section is hereby added to K.C.C. chapter
92 27.04 to read as follows:

93 A permit applicant is the "substantial prevailing party" in an appeal under this title
94 if the hearing examiner orders a reduction of the fee estimate, estimate revision or
95 billings that is fifty percent or more of the cumulative sum that the applicant disputed
96 before the examiner. Otherwise, the department is the "substantial prevailing party."

97 NEW SECTION. SECTION 7. A new section is hereby added to K.C.C. chapter
98 27.04 to read as follows:

99 "Project management program" means the program within the department that
100 provides fee estimates and enhanced oversight on projects that are large or complex, and
101 are subject to hourly permit fees.

102 NEW SECTION. SECTION 8. A new section is hereby added to K.C.C. chapter
103 27.04 to read as follows:

104 "Project managed" refers to a permit or approval that the department reviewed
105 under the project management program.

106 SECTION 9. Sections 10 through 19 of this ordinance shall be codified as a new
107 chapter in K.C.C. Title 27.

108 NEW SECTION. SECTION 10. A permit applicant may appeal to the hearing
109 examiner permit fee estimates, including estimate revisions, issued by the department
110 under the project management program only if:

111 A. The department required the applicant to pay in advance all or a portion of the
112 fee estimate; and

113 B. The applicant had first filed a fee estimate dispute with the director, who
114 denied all or a portion of the applicant's request.

115 NEW SECTION. SECTION 11. An applicant disputing a fee estimate must do
116 so in writing filed with the department not later than seventeen days after the date that the
117 department mailed the fee estimate letter or estimate revision to the applicant. Within
118 fourteen days after the applicant files the fee estimate dispute with the department, the
119 department shall mail the director's decision on the fee estimate dispute to the applicant.
120 The director's decision shall be final unless the applicant then files a written combined
121 notice and statement of appeal with the director, together with the required appeal fee, not
122 later than seventeen days after the department mailed the director's decision to the
123 applicant. The applicant may only appeal an adverse decision, in which the director has
124 denied all or a portion of the applicant's dispute. The department shall forward a copy of
125 the combined notice and statement of appeal to the hearing examiner. The department
126 shall also preserve the record, and comply with the appeal provisions in K.C.C.
127 20.24.090.D.

128 NEW SECTION. SECTION 12. The examiner shall conduct a closed record
129 hearing on the appeal of a fee estimate or estimate revision. The burden is on the
130 applicant to demonstrate that the fee estimate or estimate revision is unreasonable. The

131 examiner shall affirm the decision of the director unless the examiner determines that the
132 director's decision was unreasonable. Upon determining that a decision of the director
133 was unreasonable, the examiner shall modify the fee estimate, order the department to
134 modify the fee estimate in accordance with the examiner's ruling, or provide such other
135 relief as reasonably necessary. The examiner's decision is final. If the examiner
136 determines that the applicant is the substantial prevailing party, the department shall
137 refund the appeal fee.

138 NEW SECTION. SECTION 13. Except where the department imposed no
139 permit fee, the department shall provide the applicant, either in person or by United
140 States mail, with a written notice of completion or permit issuance document when it has
141 completed all necessary work on any building or land use permit or approval. The notice
142 of completion or permit issuance document shall inform the applicant of the right to
143 appeal permit billings under this chapter and shall provide notice of the appeal deadlines
144 established in this chapter.

145 NEW SECTION. SECTION 14. An applicant may appeal to the hearing
146 examiner permit fee billings issued by the department. On project managed permits and
147 approvals, the applicant may only appeal after the department has provided a notice of
148 completion or permit issuance document. On non-project managed permits and
149 approvals, the applicant may only appeal after the department has issued an adverse
150 decision by the director on a fee waiver request under K.C.C. 27.02.040. The applicant
151 may not challenge a permit fee estimate or estimate revision in any appeal provided for
152 by this section.

153 NEW SECTION. SECTION 15.

154 A. An applicant appealing any billing on a project managed permit or approval
155 must file a written combined notice and statement of appeal with the director, together
156 with the required appeal fee not later than twenty-one days after the date the department
157 issues the written notice of completion or permit issuance document to the applicant. The
158 department shall forward the combined notice and statement of appeal to the hearing
159 examiner. The department shall also preserve the record, and comply with the appeal
160 provisions outlined in K.C.C. 20.24.090.D.

161 B. The director shall respond to the combined notice and statement of appeal
162 filed under this section within twenty-one days after the combined notice and statement is
163 filed with the department. The director shall determine whether to grant, partially grant,
164 or deny the billing appeal. The department shall mail the director's decision to the
165 applicant and the examiner. If the director grants the appeal of the billing, the examiner
166 shall dismiss the appeal and the department shall refund the applicant's appeal fee. If the
167 director partially grants or denies the applicant's billing appeal request, the examiner shall
168 conduct an open record hearing, and affirm, modify or reverse the decision of the
169 director.

170 NEW SECTION. SECTION 16.

171 A. Before appealing any billing on a non-project managed permit or approval, an
172 applicant must first file a fee waiver request as provided in K.C.C. 27.02.040, no later
173 than twenty-one calendar days after the department issues the notice of completion or
174 permit issuance document. Within fourteen days after the applicant files the fee waiver
175 request with the department, the department shall mail the director's decision on the fee
176 waiver request to the applicant.

177 B. The director's fee waiver decision is final unless the applicant then files with
178 the director a combined written notice and statement of appeal of the billing, together
179 with the required appeal fee, not later than twenty-one calendar days after the department
180 mails the fee waiver response. The department shall forward the combined notice and
181 statement of appeal to the hearing examiner. The department shall also preserve the
182 record. The examiner shall conduct an open record hearing, and affirm, modify or
183 reverse the decision of the director.

184 NEW SECTION. SECTION 17. In an appeal of department billings under
185 sections 14 through 16 of this ordinance, the burden is on the applicant to prove that the
186 particular billing or fee was unreasonable or inconsistent with this title. If the applicant
187 fails to meet that burden, the examiner shall affirm the decision of the director. If the
188 examiner determines that a particular billing or fee was unreasonable or inconsistent with
189 the provisions of this title, the examiner shall modify the fee or billing, order the
190 department to modify the fee or billing in accordance with the examiner's ruling, or
191 provide such other relief as reasonably necessary. If the examiner determines that the
192 applicant is the substantial prevailing party, the department shall refund the appeal fee.
193 The examiner's decision is final.

194 NEW SECTION. SECTION 18. In an appeal under this chapter, the applicant
195 may only challenge the department's application of the development permit fees provided
196 for in this title to the applicant's permit and approval. The applicant may not challenge in
197 an appeal under this chapter the development permit fees as adopted by the council and
198 codified in this title, or any other King County Code requirement, including any land use
199 provision.

200 NEW SECTION. SECTION 19.

201 A. Applicants with fee disputes on billings that the agency first issued between
202 January 1, 2004, and the effective date of this section may, for one year after the effective
203 date of this section, commence billing appeals under this chapter.

204 B. For any project managed permit or approval, the applicant must, within the
205 one-year period under subsection A. of this section, file a notice of appeal together with
206 the required appeal fee. The applicant must also file a statement of appeal no later than
207 thirty days after filing the notice of appeal.

208 C. For any non-project managed permit or approval, if the applicant has not done
209 so already, the applicant must, within the one-year period under subsection A. of this
210 section, file a fee waiver request, in accordance with K.C.C. 27.02.040. The applicant
211 must then file a timely appeal together with the required appeal fee, as provided in
212 section 16 of this ordinance.

213 SECTION 20. If any provision of this ordinance or its application to any person

214 or circumstance is held invalid the remainder of the ordinance or the application of the
215 provision to other persons or circumstances is not affected.

216

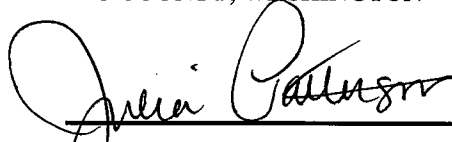
Ordinance 16026 was introduced on 12/3/2007 and passed by the Metropolitan King
County Council on 2/25/2008, by the following vote:

Yes: 8 - Ms. Patterson, Mr. Dunn, Mr. Constantine, Ms. Lambert, Mr. von
Reichbauer, Mr. Gossett, Mr. Phillips and Ms. Hague

No: 0

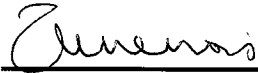
Excused: 1 - Mr. Ferguson

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



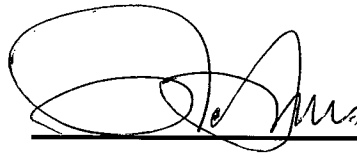
Julia Patterson, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 7 day of March, 2008.



Ron Sims, County Executive

Attachments None

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CLERK
KING COUNTY COUNCIL