**Proviso Report:**

**Code Enforcement and Abatement Process Evaluation**

Response to the 2015-16 Budget Proviso in King County Ordinance 17941

Section 85, P1, Pages 54-55

**Prepared by the Department of Permitting and Environmental Review**

**and Performance, Strategy and Budget**

**September 30, 2015**

**This report responds to the following proviso in King County’s 2015-16 Budget Ordinance 17941, Section 85, P1, pages 54-55:**

*“P1 PROVIDED THAT:*

*Of this appropriation, $250,000 shall not be expended or encumbered until the executive transmits a report on a completed code enforcement and abatement process evaluation and a motion that approves the report and the motion is passed by the council. The motion shall reference the subject matter, the proviso's ordinance, ordinance section and proviso number in both the title and body of the motion.*

*The report shall include, but not be limited to:*

*A. The results of a process evaluation focused on streamlining the code enforcement and abatement processes, in order to shorten the time from initial complaint through resolution with an emphasis on improving the experience for affected property owners, tenants, and neighbors;*

*B. Identification of process improvements and efficiencies through operational or code changes; and*

*C. Identification of cost savings that can be used to provide code enforcement and abatement services consistent with historic levels.*

*The executive must file the report and motion required by this proviso by October 1, 2015, in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff, the policy staff director and the lead staff for the transportation, economy and environment committee, or its successor.”*

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**Executive Summary**

In response to a budget proviso, the Department of Permitting and Environmental Review (DPER) and the Office of Performance, Strategy and Budget (PSB) examined code enforcement processes to identify efficiency and service improvements and cost savings.

The process evaluation identified four challenges to efficient and timely code enforcement:

* Excessive backlog of non-compliant cases awaiting legal action
* No reasonable code compliance option for some violators
* No teeth in existing process or penalties to incentivize timely compliance by some violators
* Due process for legal notification and action is time-consuming and expensive for the County.

Since the large current backlog and due process challenges impact most code enforcement cases, the search for improvements focused on those two problems. Many changes were considered, the underlying premise of which is that code enforcement is a discretionary service provided by King County, not a mandatory service. *Most change proposals involved creating early off-ramps for cooperative violators to obtain compliance or resolution.*

Seven proposals were deemed feasible for implementation by the end of the current biennium:

* Expand the definition of de minimis code violations that may be dismissed without enforcement action.
* Defer enforcement action on cases without recent complaints.
* Abate violations prior to issuing notice and order.
* Streamline/consolidate the citation appeal process.
* Assign a single point-of-contact to facilitate permitting of illegal construction work.
* Disclose potential civil penalties for illegal construction work with notice of violation.
* Increase civil penalties for home occupation and commercially-zoned property violations.

Some of these proposals will require amendment of the King County Code. Others will require reallocation of resources and priorities within DPER. The earliest implementation date for any proposal would be January of 2016.

Future study will be needed to streamline the due process requirements of legal notification and action for the most severe of code violations.

**A. Strategic Context and Process Evaluation**

***Purpose and Scope of Report***

During its review of the 2015/2016 Executive Proposed Budget, the King County Council raised concerns about the adequacy of resources dedicated to the enforcement of building and land use code in unincorporated King County. To address this concern, Council added a proviso to the code enforcement budget of the DPER stipulating that the executive:

1. conduct a process evaluation focused on streamlining the code enforcement and abatement processes, in order to shorten the time from initial complaint through resolution with an emphasis on improving the experience for affected property owners, tenants, and neighbors;
2. identify process improvements and efficiencies through operational or code changes; and
3. identify cost savings that can be used to provide code enforcement and abatement services consistent with historic levels.

DPER and PSB engaged in a line of business (LOB) planning effort to satisfy the requirements of the proviso while also providing additional information to inform planning, budgeting, and monitoring by DPER. PSB convened a LOB planning group with representatives from PSB, DPER, the Prosecuting Attorney’s Office (PAO), and Council staff to perform this task. This planning group met biweekly beginning in February 2015 and examined code enforcement processes, root problems, and ways to address those problems. This report presents the results of this group’s work; in addition to the information requested by Council, it also includes elements of the line of business planning process that go beyond the proviso requirements.

The steps of the LOB planning effort were sequentially conducted, and their findings related hereafter in this section of the report, as follows:

* Articulation of the code enforcement mission and budget issues;
* Description of desired code enforcement outcomes;
* Identification of code enforcement customers;
* Identification of code enforcement products and articulation of processes;
* Analysis of program strengths, weakness, opportunities, and threats;
* Forecast of program capacity and costs; and
* Identification of key problems.

***Code Enforcement Mission and Budget***

The primary function of DPER’s code enforcement staff is to investigate and resolve violations of county code in unincorporated King County, with respect to building and land use issues. Caseload is driven by citizen complaints, which typically average about 1,000 per year. Code enforcement officers spend the majority of their time working to resolve the specific violations alleged in these complaints. By enforcing county code and resolving violations, DPER contributes to the quality of life in unincorporated King County and supports King County Strategic Plan objectives to:

* shape a built environment that allows communities to flourish;
* preserve the unique character of our rural communities in collaboration with rural residents;
* protect and restore water quality, biodiversity, open space, and ecosystems;
* encourage sustainable agriculture and forestry;
* improve our customers’ satisfaction with King County; and
* expand opportunities to seek input, listen, and respond to residents.

DPER’s enforcement of building and land use code in unincorporated King County is supported by the General Fund and budgeted in DPER’s General Public Services appropriation unit (A32530). The Code Enforcement section currently consists of a section manager, an abatement manager, five code enforcement officers, and an administrative specialist. Code Enforcement staffing has declined considerably due to annexations in recent years; as recently as 2008 the section was budgeted for 11 code enforcement officers. In addition to the work performed by direct staff to research and pursue action on reports of code violations, DPER relies on support from civil attorneys in the Prosecuting Attorney’s Office (PAO) when code enforcement cases enter the legal process.

In addition to the General Fund support for code enforcement, King County Code (4A.200.200) establishes the Abatement Fund, which collects revenue from civil penalties, cleanup restitution payments, and the recovery of code compliance and abatement costs. This fund provides direct funding for contracted abatement work, the abatement manager position, and services by the PAO. In recent years, however, these expenditures have exceeded revenues to the Abatement Fund resulting in its decline. At the end of the 2013/2014 biennium the fund balance was $351,146, of which the cash balance available to fund abatement work and the abatement manager position was only $115,402. (The non-cash portion of the fund balance, $235,744, was receivable penalties and charged certified to the tax rolls.)

In an effort to reduce costs and prevent complete depletion of the Abatement Fund, the 2015/2016 Executive Proposed budget proposed restricting PAO involvement in code enforcement to cases with serious safety or environmental concerns and eliminating Abatement Fund support for PAO charges. These changes raised concerns among councilmembers that residents of unincorporated King County would experience a decline in the quality of code enforcement service, leading Council to direct DPER to look for ways to improve code enforcement processes so that service levels could be maintained within existing resources.

***Outcomes***

The LOB planning group began the code enforcement process evaluation by exploring the strategic context within which code enforcement operates. As a first step in this process, the group identified the desired outcomes for code enforcement in the short term, medium term, and long term. The planning group kept these desired outcomes in mind throughout the examination of the code enforcement process.

Short term – Resolve violations in timely manner; educate before violation occurs; treat people in a fair and equitable manner.

Medium term – Cultivate respect for the law in King County; provide fiscal stability for code enforcement and abatement.

Long term – Sustain the natural environment; preserve livability and public safety in King County.

***Customers***

The planning group agreed that although complainants and the community at large are stakeholders and beneficiaries of the code enforcement process, the violators are the customers of Code Enforcement because the products that are made by code enforcement staff are intended for them. The fact that the violators generally do not want to be code enforcement customers adds complexity to the process and makes the job of code enforcement officers more difficult.

***Products and Processes***

As shown in the process map on the following page (Exhibit 1), code enforcement products are divided into three product families defined by the point in the process where the case is resolved. Approximately 93 percent of code enforcement cases are resolved in the voluntary compliance phase, another 4 percent in legal notice phase, and 3 percent in the legal action phase. (This distribution of outcomes is depicted in greater detail in Appendix A.)

Products within the voluntary compliance phase include:

* The initial violation letter informing the customer that a violation has been reported,
* Subsequent research and investigation by code enforcement officers to verify that the reported violation has occurred, and
* One or two follow-up violation letters informing the customer that a violation has been confirmed and the steps that must be taken to correct it.

**Exhibit 1: Code Enforcement Process Map**



The legal notice phase begins when DPER issues a notice and order – a legal notice of violation that is attached to the title of the property. According to code, notice and order should be issued 120 days after a complaint is reported if it has not yet been resolved, but in practice code enforcement cases frequently remain as backlog in the voluntary compliance phase well beyond this 120-day target. Notice and orders may be appealed to the Hearing Examiner and following that to Superior Court. After all appeals have been exhausted, civil penalties may be assessed, which the violator may also appeal.

Eventually, DPER may refer a code enforcement case to the PAO, which sends a letter to the violator and attempts to come to a negotiated resolution resulting in a settlement agreement. If the violator refuses to negotiate resolution or does not comply with the terms of the settlement agreement, PAO may file a civil suit in Superior Court and seek a judgment or injunction, which is nearly always resolved in the County’s favor. Once the County has a favorable judgment, it may perform abatement work on the property if funding is available; if not, the injunction clouds the property’s title and the violation must typically be addressed before the property can be sold.

***SWOT Analysis***

As part of the examination of code enforcement’s strategic context, the planning group conducted an analysis of code enforcement’s strengths, opportunities, weaknesses, and threats (SWOT). The results (Exhibit 2) in turn informed problem identification and alternatives analysis.

**Exhibit 2: Code Enforcement SWOT Analysis**

|  |
| --- |
| **Strengths (internal)** |
| * Code Enforcement officers are scrupulous and excellent at following process * Code Enforcement officers have professional responsibilities and wealth of experience * 93% of cases are either voided or closed through voluntary compliance * Excellent coordination between Code Enforcement and the PAO * Code Enforcement provides emergency response for major environmental violations * Code Enforcement has found way to adjust to fewer resources * Vast majority of cases upheld on appeal * Code Enforcement has Collaborative relationships with Environmental Health, Local Hazardous Waste Management Program, Solid Waste Division * Code Enforcement officers work well together despite highly stressful situation * Little staff turnover in Code Enforcement * Strong system supporting fines and fee processing |

|  |
| --- |
| **Weaknesses (internal)** |
| * Lengthy and complicated process * Lack of standard work or uniformity in how Code Enforcement officers do their work * Difficult to track code enforcement cases in Accela * Don’t always have good communication with other agencies * Lack of clarity among Code Enforcement staff on who is customer prior to Line of Business analysis * Internal DPER coordination doesn’t always work * Longstanding and unchallenged culture of being driven by complaints * Priorities change at the drop of a hat * Not effectively getting outreach and education to public to reduce invalid complaints |
| **Opportunities (external)** |
| * Council and Exec staff more focused on code enforcement than permitting * Better explain successes * Improve relationships with staff in other County agencies * Line of Business can tell code enforcement story internally and externally * Line of Business will identify data to track * Cost-benefit analysis could justify case for more funding * ESJ analysis can complement focus on money * Can we increase justice and reduce bureaucracy? * Improve/redesign cumbersome process and develop a rational process * Presently, DPER vastly overdoes due process * Make more use of support from other agencies such as DCHS * Synchronize with regional partners |
| **Threats (external)** |
| * Limited staff/resources * Complicated * Customers don’t want Code Enforcement service * External politics or people can shift priorities * Third-parties express conflicting opinions about process * Huge variation in types of cases, complaint-driven process by its nature produces uneven enforcement * Single case can be so big it drains resources * Changing process will require legislative action * Nature of cases and reputation of Code Enforcement varies by rural v. urban |

***Capacity Forecast and Cost Model***

In order to establish a baseline from which to measure the impact of changes to code enforcement processes, DPER developed a product cost model and 10-year capacity and demand forecast for code enforcement, extrapolated from current operations. The product cost model for 2014, measured by cases resolved, is shown in Exhibit 3. Current code enforcement processes devote the majority of officer time and resources to voluntary compliance. Cases requiring legal notice and action use much more resources *per case*, but their small volume requires only 17 percent of total Code Enforcement resources.

**Exhibit 3: DPER Code Enforcement Product Cost - 2014**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **DPER Product Cost** | **Annual Cases**  **Closed** | **Officer Hours per Case** | **Annual Officer Hours** | **Average Cost per Case** | **Total Cost** | **Percentage of Total Cost** |
| Voluntary Compliance | 1,023 | 7.4 | 7,570 | $1,538 | $1,573,026 | 83% |
| Legal Notice | 46 | 12.0 | 552 | $2,494 | $114,701 | 6% |
| Legal Action | 37 | 28.0 | 1,036 | $5,818 | $215,272 | 11% |
| Total | 1,106 |  | 9,158 |  | $1,903,000 | 100% |

Although more than 90 percent of cases achieve compliance voluntarily every year, many cases require more than 120 days from initial notice of violation to compliance.[[1]](#footnote-1) These are the cases that comprise the heavy code enforcement case backlog. As shown in Exhibit 4, the current backlog exceeds 800 cases, in contrast to 149 cases in legal notice, 210 cases in legal action, and 142 cases not yet past the 120-day threshold for notice and order.

In recent years, Code Enforcement has kept pace with the volume of new complaints, closing as many cases as it opens every year. ***But absent process improvements or substantial annexation, DPER expects the backlog to remain static.*** The 10-year forecast extrapolated from current conditions, as shown in Appendix B, depicts this outcome.

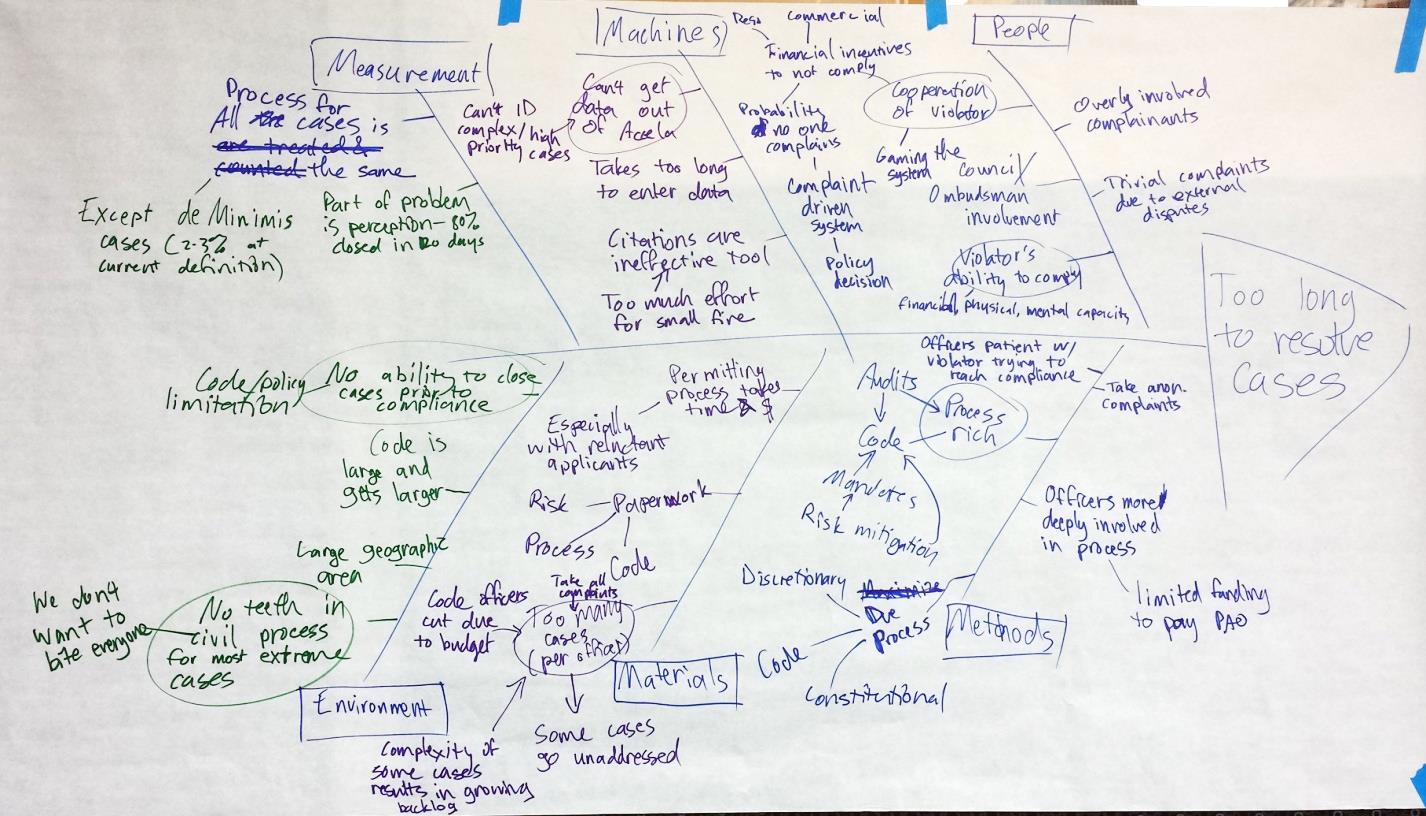
***Problem Identification***

As the next stage of the code enforcement line of business planning process, the planning group drew on findings from the strategic context phase and used cause-effect analysis to identify underlying root problems. To complete this exercise, the planning group identified contributing factors to the underlying problem that cases take too long to resolve and organized them into the following themes: measurement, machines, people, environment, materials, and methods. The planning group then began to look for patterns and identify the issues that other problems could be traced back to, outlined in Exhibit 5.

**Exhibit 4: Current Code Enforcement Backlog**



**Exhibit 5: Code Enforcement Fishbone Diagram of Root Problems**



After organizing the root causes of the lengthy resolution time for code enforcement cases in this way, the planning group identified four underlying issues to explore further:

1. **Excessive Backlog** – At the time of the analysis, there were 805 open cases in the voluntary compliance phase that were older than 120 days and had not gone to notice and order. This equals 80 percent of the total volume of new complaints received in a year. According to code, cases are to be resolved or have a notice and order issued 120 days after being opened. This backlog overhang prevents Code Enforcement staff from quickly processing all incoming cases so that they do not also become backlog, and diverts staff time that should be devoted to resolving cases in the legal notice and legal action phases.
2. **No Teeth** – In some extreme cases, the civil penalties and legal sanctions are insufficient to compel compliance. For example, a business owner may consider civil penalties a cost of doing business or determine that there is minimal consequence to not paying fines. In either case, the owner is unwilling to act to address the underlying code violation.
3. **No Reasonable Solution** – In some cases no reasonable solution to the code violation is apparent. This includes cases where the owner is cooperative but lacks the ability to comply due to financial, physical, or mental health limitations; cases where already-built construction is in clear violation of code, but the County does not have the will, desire, or resources to abate (i.e., tear it down); and cases that are in substantial compliance but that enforcement officers cannot close because there is no mechanism to declare the property owner’s effort “good enough.” These cases may stay open indefinitely without resolution.
4. **Process Heavy** – The complex procedures that underlie code enforcement, many of which are in King County Code alone, allow property owners who are out of compliance to drive the process. The violator’s willingness and ability to cooperate determines how long the process takes, resulting in a misallocation of limited resources. Code enforcement officers currently spend a disproportionate amount of time on cases that have remained in the system for years without resolution, and thus do not have the time available to resolve less complex cases involving potentially cooperative violators.

After discussing these problems in great detail, the planning group recognized that the problems described in “No Teeth” and “No Reasonable Solution” involve a relatively small number of cases. Therefore, focusing efforts on solving these problems may not be the most efficient way to reduce case processing time overall, despite the fact that these problems describe some of the most extreme and troublesome cases. With this in mind, the planning group recommended focusing efforts on addressing the “Excessive Backlog” and “Process Heavy” issues.

The planning group presented this approach to the County Executive on June 2, 2015. While the Executive supported the focus on backlog reduction and process simplification, he also stressed, firstly, that code requirements that do not contribute to environmental protection or quality of life should be revised or deleted, and secondly, that DPER should use all available sanctions to compel compliance from recalcitrant violators, provided there is political support for such action. The former point of emphasis by the Executive was a legislative/policy issue beyond the scope of both the process evaluation required by the budget proviso and the LOB planning effort, and was thus deferred for future review. The latter emphasis by the Executive addresses the insufficiency of sanctions to compel compliance (“No Teeth”).

**B. Recommended Improvements**

In seeking improvements to code enforcement processes, the planning group was mindful that civil code enforcement action is an optional service, not a mandated service. The proposals presented in this report reflect the aim of achieving the best outcomes possible within existing resources, in contrast to committing comparable resources to all cases. The proposals are compatible with and complementary to the Community Justice Project (CJP) and other County efforts to reallocate resources to high-priority problem-solving. The CJP obtains rapid results by coordinating and expediting the efforts of the PAO, King County Sheriff’s Office, and DPER to locate owners of property with serious code violations conducive to crime, and to bring full law enforcement and legal pressure to bear, including removal of squatters and abatement. The proposals presented here, by reducing officer time spent resolving less severe violations, would similarly allow more Code Enforcement resources to be devoted to higher-priority cases or other County initiatives.

Many improvements were considered by the planning group. Not all were deemed capable of implementation within the current biennium. The full list of improvements considered is found in Appendix C.

**Exhibit 6: Summary of Proposals and Problems**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Proposal | Excessive Backlog | No Teeth | No Reasonable Solution | Process Heavy |
| 1. Expand quantity of violations dismissed for minimal impact |  |  |  |  |
| 2. Defer enforcement action on cases without recent complaints |  |  |  |  |
| 3. Abate prior to issuing notice and order |  |  |  |  |
| 4. Streamline/consolidate citation appeal process |  |  |  |  |
| 5. Assign single point-of-contact to facilitate permitting of illegal construction work |  |  |  |  |
| 6. Advertise financial penalties for illegal construction work |  |  |  |  |
| 7. Increase civil penalties for home occupation and commercially-zoned property violations |  |  |  |  |

Seven proposals for improvement are presented here as potentially actionable within the next year. The proposals generally enhance administrative tools to expedite resolution of most cases prior to legal notification, thereby reducing the current backlog of unresolved cases. Two of the proposals also aim to improve the experience of affected property owners in other ways as well, by making the remedial permitting process less intimidating (proposal #5) or by instigating abatement without referral to a court-mediated process (proposal #3). The seven proposals and the problems they address are listed in Exhibit 6.

The following sections of this report describe each proposal in detail, the specific problem it addresses, its suggested code or procedural changes, the target outcomes, impacts, and ESJ considerations.

*Proposal 1: Expand quantity of violations dismissed for minimal impact*

Currently, about 2 to 3 percent of complaints stem from violations determined by code enforcement officers to have minimal impacts on property, public safety, or the environment. Code Enforcement responds to de minimis violations by notifying the property owner of the violation, but taking no further enforcement action. Additionally, Code Enforcement may cease enforcement where substantial compliance has been obtained with only de minimis code violation(s) outstanding.

*Proposed Change*

The King County Code provides authority to dismiss de minimis violations (KCC 23.02.040 A8), allowing the County to prioritize the use of code enforcement resources for more serious violations. This plan would reduce the backlog of open cases, and reduce the quantity of new cases subject to code enforcement action, by expanding the types and extent of minor violations considered de minimis. Exhibit 7 compares the current and proposed revisions to de minimis criteria.

King County Code does not require amendment to revise de minimis thresholds. Codification of de minimis thresholds could, moreover, establish legal precedents that constrain future code enforcement policy choices.

*Target Outcomes*

The plan aims to increase the quantity of violations considered de minimis from 2 to 3 percent to 5 percent of new complaints and to reduce the current backlog by about 2 percent.

*Impacts and ESJ Considerations*

Some complainants will likely express dissatisfaction with the higher threshold for code enforcement follow-up, but allocation of County resources to more serious violations is inherently fairer to the community and affected properties.

**Exhibit 7: Current and Proposed De Minimis Criteria**

|  |  |
| --- | --- |
| **Current Criteria** | **Proposed Criteria** |
| **All Violation Types** | |
| * No more than one of the following violation categories exist | * Violations do not pose a hazard to public or environment, per KCC 23.02.050 A1 * No more than two of the following violation categories exist |
| **Illegal Construction Work** | |
| * No critical area, shoreline, or floodplain * No hazardous area defined per KCC 23.02.050 * Less than 200 SF of occupied space * No violation of plat restrictions or CUP * No setback encroachment * Construction not currently underway * No hazardous structure or open entry issue | * No critical area or buffer impacts * No hazardous area defined per KCC 23.02.050 * Less than 200 SF of occupied space or 300 SF storage or Ag space * No violation of plat restrictions or CUP * Less than 18” setback encroachment * Construction not currently underway |
| **CUP, UPD, SUP, Plat Condition (no changes)** | |
| * No material impact on adjacent property or neighborhood (noise, light, drainage, screening, traffic or signage) * No impact on critical area, no clearing/grading violation, and no life safety issues (emergency access, etc) | |
| **Fence** | |
| * Fence on a retaining wall, but structural failure is not imminent * No razor wire in “R” zone * Less than 1 foot over-height * Not a sight triangle infringement, pool enclosure or other hazard | * Not a sight triangle infringement, pool enclosure or other hazard * Less than 1 foot over-height |
| **Home Occupation (no changes)** | |
| * Less than 20% of residence used * Fewer than 3 non-resident employees * Less than half-acre lot with less than 500 sf used for business * 0.5 to 1 acre lot with less than 1000 sf used for business * 1-5 acre lot with less than 2000 sf used for business * Over 5 acre lot with less than 3000 sf used for business * No signage larger than 25 SF * In rural area, fewer than 5 cars stored outside * If auto repair business in rural area, storage is outside of setbacks * In rural area, outside vehicles or storage is behind 6-foot view of obstructing fence * In urban area, outside vehicles less than one ton and have no impact on neighborhood | |
| **Inoperative Vehicle** | |
| * Fewer than 3 inoperative vehicles in urban zone or less than 1 acre in RA, Ag, or F zone, and no hazard per KCC 23.02.050 * Fewer than 4 inoperative vehicles in RA, Ag, or F zone with more than 1 acre, with adequate parking, and no hazard per KCC 23.02.050 * Fewer than 5 dismantled vehicles at a legal home occupation and properly fenced | * Fewer than 3 inoperative vehicles in on lots less than 1 acre and no hazard per KCC 23.02.050 * Fewer than 5 inoperative vehicles on lots with more than 1 acre, with adequate parking (on impervious surface), and no hazard per KCC 23.02.050 |

|  |  |
| --- | --- |
| **Current Criteria** | **Proposed Criteria** |
| **Junk/Debris** | |
| * No hazardous or unsanitary material * Vacant site with less than one pick-up load per acre, not visible to neighbors or public * Vacant site with more than one pick-up load per acre but no adverse impact on community, not visible to neighbors or public * Developed site with less than one pick-up load per acre, not visible to neighbors or public * Visible to public or neighbor, but only small amount of litter or salvage, no CA involved, and no adverse impact on community | * No hazardous or unsanitary material * Not easily visible to general public   + Lots ½ acre or less - one pick-up truckload (~ 57 cubic feet).   + Lots over ½ acre - three pick-up truck loads per acre. (~ 6 cubic yards) * Easily visible to general public   + On vacant lot – one 96 gallon trash can load   + On a Developed site – one 20 gallon trash (tall kitchen) bag load |
| **Sign** | |
| * Not in ROW, no hazard or sight distance problem * Prohibited sign, but no distracting features or no neighborhood impact * In A, F, or M zone, but less than 6 sf * In NB, CB, RB, O or I zone, could be permitted, and less than 6 sf * In R, RA, or UR zone and less than 25 sf * Non-residential use sign and less than 25 sf * Home occupation and less than 25 sf | * Not in ROW, no hazard or sight distance problem * Prohibited sign – One sign less than 25 sq. ft. with no distracting features * Home occupation sign - less than 32 sf * Wall sign less than 20% of building façade. * Two or less signs, 6 feet or less in height and less than 25 sq. ft. in size |
| **Small Household Pets Kept in the Dwelling** | |
| * Caged or contained * Fewer than 4 unaltered dogs/cats * Fewer than 7 dogs * No hazard | * Unaltered dogs/cats - fewer than 4 * Altered dogs/cats - unlimited * No hazards |
| **Small Household Pets Kept Outdoors** | |
| * Unaltered animals kept on leash/contained * <20,000 sf and < 5 animals * 20,000-35,000 sf and < 6 animals * >35,000 sf and < 9 animals | * Unaltered animals kept on leash/contained * 2 pets over allowed with maximum of 25 pets * No observable hazards |
| **Sub-Standard Dwelling – RV (no changes)** | |
| * No sewage on ground, not in critical area, and no hazard per 23.02.050 * In Urban area only 1 RV * In rural area fewer than 3 RVs | |
| **Sub-Standard Dwelling – Housing (no changes)** | |
| * No hazard per 23.02.050 * No structural, electrical, plumbing violations * No rat infestation, and no unsanitary condition per UHC 1001.11 * No life safety issues * Mold, dampness, winter heating, ventilation, weather protection issues, but owner occupied | |
| **Livestock** | |
| * No critical area involved, and only minimal impacts | * No critical area involved, and only minimal impacts * Two or less animal units above allowed |

*Proposal 2: Defer enforcement action on cases without recent complaints*

The current backlog of cases open more than 120 days numbers more than 800 cases. Code Enforcement estimates that a high percentage of these cases have not had further complaints of violation after the initial report. While the code compliance may not be obtained, the County lacks sufficient resources to issue notice and orders or follow-up with legal action. Such cases can linger on for years without resolution.

*Proposed Change*

In lieu of issuing notice and orders and pursuing legal action, code enforcement would encourage violators to voluntarily enter settlement agreements which would be recorded on the property title, recognizing the code violation(s). A notice would also be placed on the parcel in Accela. Enforcement action would then cease until future development proposals or complaints are received, subsequent hazards are identified, or the property transfers ownership or is re-financed, at which time compliance would be required. Enforcement cases would be eligible for deferred enforcement only if neighboring property damage, life-safety, or extensive environmental degradation were not present or at risk, no complaints had been received for four months, a notice and order had not been issued, and the person responsible for code compliance was not a repeat offender. The PAO suggests that objective criteria for deferred enforcement be explicitly defined by formal rule.

Individual case-specific settlement agreements would be used to implement this approach, enabling renewed enforcement action in the event of new complaints, violations, or emerging hazards, and allowing recording of the document to alert potential purchasers of the existing violations.

*Target Outcomes*

This plan allows staff to defer enforcement of cases that would otherwise remain open and require attention. Code enforcement estimates that this plan could eliminate 10 percent of its total backlog within 3 years. Staff time required to issue notice and orders would also be reduced. As new cases approach the 120-day deadline to obtain compliance voluntarily, this approach could be useful to resolve many of them before they become backlogged.

*Impacts and ESJ Considerations*

*A typical code enforcement case affected by this proposal would be a deck on a residential home built illegally into the minimum required setback from a property boundary.* Some complainants will likely express dissatisfaction with the higher threshold for immediate code enforcement action, but allocation of County resources to more serious or impactful violations is inherently fairer to the community and affected properties.

*Proposal 3: Abate prior to issuing notice and order*

Code enforcement works with violators whenever possible to bring them voluntarily into compliance. Abatement by the County is typically pursued after notice and order has been issued and legal action commenced. Small, easily-abated violations thus may linger for protracted periods, adding to backlog. At present, about 140 cases of the following violation types could easily be abated by the County:

* Junk, debris, and inoperative vehicles, which could be hauled away
* Some substandard dwellings, which could be boarded up to deny access
* Some hazardous trees, which could be removed
* Some unsafe structures or premises, such as dilapidated sheds
* Some small accessory structures, such as misplaced fences

These cases have not been issued notice and orders due to resource limitations, and have no immediate prospect for abatement.

*Proposed Change*

Shift enforcement policy toward early abatement by the County on behalf of violators, rather than prompting violators to self-abate by issuing notice and order or commencing legal action. Including a hold harmless clause in a voluntary compliance or settlement agreement would enable abatement without legal notice. Payback to the County would occur in 3 to 4 years via certification to property taxes. The plan resemblesthe Community Justice initiative for its immediacy of County action to resolve problems. The advancement of abatement in the code enforcement process is depicted in Exhibit 8.

*Target Outcomes*

The abatement fund has sufficient resource to conduct 10 to 12 such low-cost abatements without court proceedings; 10 to 12 fewer notice and orders would need to be issued, and about 1 percent of the total backlog could be reduced within 3 years.

*Impacts and ESJ Considerations*

The proposed change would reduce the time to compliance for the limited number of cases abated. Removal of debris and repair/removal of damaged/unsafe structures, for those violators willing to cooperate, does not present obvious fairness issues.

**Exhibit 8: Advancement of Abatement in Code Enforcement Process**



*Proposal 4: Streamline/consolidate citation appeal process*

Citations are the simplest means to penalize and discourage code violations that cannot result in a notice on title. Examples of such violations include:

* Development signs in non-approved locations on road right-of-ways
* Failure to meet deadlines in the permitting process to rectify illegal construction
* Parking in a fire lane
* Parking on non-improved surfaces (lawn)
* Placement/construction of structures (storage sheds or playhouses < 200 sq. ft.) in setbacks
* Repeat occupancy of substandard structures or vehicles
* Repeat violations of accumulation of junk and debris or inoperable vehicles

The King County Code provides the right to appeal the dollar amount of civil penalties assessed by citation (KCC 23.20.070) and to appeal the basis of the citation itself (KCC 23.20.080).[[2]](#footnote-2) The Code also provides the right to request a waiver of newly assessed civil penalties (KCC 23.32.050) and appeal of the penalty waiver decision (KCC 23.32.100). Such appeals may be heard in separate hearings, thereby spreading the current citation and appeal process over 19 steps. The estimated minimum elapsed time from issuance of the citation to abatement is approximately eighteen months, involving thirty hours of officer time and three or four hearings. The added cost and time required to conduct hearings limits the use of citations as an effective enforcement tool to very few cases.

*Proposed Change*

The proposed change would streamline the current citation process by using the same civil penalty waiver/appeal process as exists for all other civil penalties and removing the need for a legal notice prior to requesting an injunction to abate. Compared to the current process, the streamlined version has only half the steps, as shown in Exhibit 9. Amendment of Title 23 would be required by this proposal.

**Exhibit 9: Current and Proposed Citation and Appeal Processes**

|  |  |
| --- | --- |
| **Current Stepwise Process** | **Proposed Stepwise Process** |
| 1. Citation issued with civil penalty | 1. Citation issued with civil penalty |
| 1. Citation penalty appealed (mitigated appeal) | 1. Citation appealed |
| 1. Hearing Examiner upholds penalty amount | 1. Hearing Examiner upholds violation and penalty amount |
| 1. Penalty invoiced to violator | 1. Penalty invoiced to violator |
| 1. Waiver request is submitted, but denied by DPER per Hearing Examiner’s order | 1. Waiver request submitted, but denied by DPER per Hearing Examiner’s order |
| 1. Violator appeals waiver decision | Proposed process eliminates steps 6-15 in the current process |
| 1. Hearing Examiner upholds penalty amount again |
| 1. Notice and order issued to require compliance |
| 1. Notice and order is appealed |
| 1. Hearing Examiner denies appeal and sets new compliance deadlines |
| 1. Penalty is assessed for failure to comply |
| 1. Penalty is invoiced |
| 1. Waiver request is submitted but denied by DPER |
| 1. Violator appeals waiver decision |
| 1. Hearing Examiner denies appeal |
| 1. Case referred to PAO for abatement | 1. Case referred to PAO for abatement |
| 1. Judgement and injunction granted | 1. Judgement and injunction granted |
| 1. Violation abated | 1. Violation abated |
| 1. Abatement costs certified to taxes | 1. Abatement costs certified to taxes |

*Target Outcomes*

Under the streamlined process, the estimated minimum elapsed time from issuance of the citation to abatement is approximately nine months, involving thirteen hours of officer time and two hearings. Code Enforcement would expect to issue citations for fewer than 5 percent of violations in the first year after the code change and see the quantity of citations decline in subsequent years as recidivism diminishes.

*Impacts and ESJ Considerations*

The proposed change would consolidate the exercise of appeal rights in a single hearing process, but would not abridge their scope. In the short term, increasing use of citations could increase Code Enforcement commitments to attend consolidated appeal hearings, but in the long-run could reduce recidivism and complaints. The Solid Waste Division issues citations under KCC Title 23. No impacts from proposed streamlining are anticipated by it.

*Proposal 5: Assign SPOC to facilitate permitting of illegal construction work*

Of new complaints every year, 48 percent involve construction work without a permit; 73 percent of the backlog involves this type of violation. Code compliance requires either removing the construction or permitting it.

Violators have reported that the permitting requirements are hard to understand and the process intimidating. In 2012, the department reorganized into product lines to better serve distinct customer classes (e.g. residential, commercial, and resource). No departmental permitting staff is specially assigned to assist permit customers who have done construction work without a permit, however. Violators begin the permitting process by attending a department meeting with two to four permitting staff and the violator’s assigned code enforcement officer. Follow-up as needed is thereafter decentralized among the various staff reviewing an application. Enforcement cases can linger on for long periods while non-responsive violators delay permit completion.

*Proposed Change*

This plan increases procedural assistance for violators who are willing to complete the permitting process. The essential elements of the plan are as follows:

Code enforcement transfers cases to a single point-of-contact at DPER responsible for the permitting of construction work without a permit. In lieu of a formal pre-application conference attended by 2 to 4 departmental permitting staff and the assigned code enforcement officer, the violator meets with the single point-of-contact. The single point-of-contact communicates permitting requirements to the violator, coordinates departmental reviews, follows-up with the violator to facilitate progress toward permit completion, and ensures that the permitted construction resolves the original code violation. The single point-of-contact is responsible for referring non-responsive violators to code enforcement to issue notice and orders with the potential for increasing civil penalties.

Just as a single code enforcement officer manages all abatement activity conducted by DPER, one permitting services professional would serve as the single point-of-contact for all cases referred from code enforcement.

*Target Outcomes*

In conjunction with proposal #6, Code Enforcement expects this proposal would help resolve about 40 percent of the backlog within three years.

*Impacts and ESJ Considerations*

*Most of the cases affected by this proposal involve unpermitted construction of additions or remodels of single family dwellings.* Dedication of a single point of contact assigned to case resolution would enable the department to provide more assistance to those customers who need it most. Consistency of information provided to the violator would also be improved by a single point of contact. Single point-of-contact duties are estimated to require 0.33 FTE. Code Enforcement would redirect resources from pre-application conferences to backlog reduction, about 170 hours per year.

*Proposal 6: Disclose potential civil penalties for illegal construction work with the notice of violation*

Of new complaints every year, 48 percent involve construction work without a permit; 73 percent of the backlog involves this type of violation. Code compliance requires either removing the construction or permitting it.

Little incentive is provided by Code Enforcement to complete the permitting process in a timely fashion. Violators are not informed of civil penalties that could be charged for non-compliance, and Code Enforcement seldom issues notice and order after permit applications have been submitted. Enforcement cases can linger on for long periods while non-responsive violators delay permit completion.

*Proposed Change*

Code Enforcement would disclose to violators in the initial notice of violation that a notice and order may be issued and civil penalties assessed if permitting requirements are not satisfied within a reasonable timeframe. The initial notice would also refer violators to the department’s website, which would describe the range of potential civil penalties, as shown in Exhibit 10.

**Exhibit 10: Civil Penalties**



*Target Outcomes*

In conjunction with proposal #5, Code Enforcement expects this proposal would help resolve about 40 percent of the backlog within three years.

*Impacts and ESJ Considerations*

*Most of the cases affected by this proposal involve unpermitted construction of additions or remodels of single family dwellings.* Cooperative violators will pay less or no civil penalties, while uncooperative violators will pay more. To the extent effective, the proposed change would reduce code enforcement resources required to follow-up with non-responsive violators and increase the number of permits obtained.

*Proposal 7: Increase civil penalties for home occupation and commercially-zoned property violations*

About 60 percent of zoning violations reported each year involve home occupation or commercially-zoned property. Current civil penalties are not linked to the scale of commercial operations, and often constitute an immaterial cost of business to the violator. Current civil penalties are shown in Exhibit 10, above.

Lacking incentive to comply with code, these cases linger and generate high-profile complaints. Examples of high-profile home occupation violators include:

* Rengo (See Appendix E for a recent media report)
* Fox Hollow Farms
* Wedding venues, e.g. Moon Mansion
* Tree houses
* Wine-tasting rooms (See Appendix F for a recent media report)

Examples of high-profile commercial violators include:

* Pacific Raceways
* Pacific Topsoils
* Spencer/Shear
* Mount Anderson

*Proposed Change*

Increasing civil penalties for businesses operating in violation of zoning code will more likely induce them to obtain compliance before a notice and order is issued or within the deadline specified by the notice and order. To be credible, the civil penalties would be scaled to the business operation, so that the penalties for violations on commercially-zoned property are greater than for violations related to residential rental property or home industry. The Hearing Examiner in the past has upheld large civil penalties on home occupations and businesses on commercially-zoned properties.

Exhibits 11 and 12 show the civil penalties multiplied by 10 and by 100. Of these two options, the x10 fees would better suit home occupation violations, while the x100 would better suit the commercial. Multiple violations may occur on a single property, resulting in total penalties that are a multiple of the amounts shown in these exhibits.

**Exhibit 11: Current Civil Penalties x10**



**Exhibit 12: Current Civil Penalties x100**



Consistent with this proposal, Snohomish County has adopted penalties that are higher for commercial than residential violations. Note also that Snohomish County’s maximum penalty for residential violations is three times as much as King County’s current maximum penalty amount. The penalties assessed by Snohomish County appear in Exhibit 13.

**Exhibit 13: Snohomish County Penalties for Notices of Violation – SCC 30.85.170**

|  |  |  |  |
| --- | --- | --- | --- |
| Non-Commercial Violations | | Commercial Violations | |
| Days Past Compliance Deadline | Penalty Amount | Days Past Compliance Deadline | Penalty Amount |
| 1 to 20 | $500 | 1 to 14 | $1,500 |
| 21 to 40 | Add $1,500 (=$2,000) | 15 to 29 | Add $1,500 (=$3,000) |
| 41 to 60 | Add $2,000 (=$4,000) | 30 to 44 | Add $3,000 (=$6,000) |
| 61 to 80 | Add $2,500 (=$6,500) | 45 to 59 | Add $5,000 (=$11,000) |
| 81 or more | Add $3,500 (=$10,000) | 60 to 74 | Add $6,000 (=$17,000) |
|  |  | 75 or more | Add $8,000 (=$25,000) |

The planning group also suggested exploring other methods for scaling penalties to the scale of business operations or commercial violation, including:

* Adopting unique penalty fees for various categories of business, from small to large penalty amounts corresponding to the typical scale of operations for the businesses in each category,
* Setting penalties as either a percentage of business revenue, or a base penalty fee, whichever is less, or
* Doubling the current penalty amounts for commercial violations every 30 days, instead of the current policy of capping the penalty amount at 60 days.

These options for increasing civil penalties require further evaluation, and are presented only to inform policy discussion, but the dollar amounts do not constitute a final recommendation.

*Target Outcomes*

Well under 10 percent of the violations reported each year would be subject to stiffer civil penalties once a notice and order has been issued. This proposal is thus not expected to materially reduce the current backlog of cases awaiting voluntary compliance or legal notice, however it would provide DPER with a tool to incentivize compliance among the highest profile violators.

*Impacts and ESJ Considerations*

Compliance in some cases could negatively impact employees of businesses required to curtail illegal operations. If the prospect of greater penalties is impactful, the workload of the code enforcement officers could increase as violators seek to negotiate voluntary compliance agreements. This increase in workload could be partly offset by reduction in cases requiring issuance of notice and order.

**C. Potential for Cost Savings**

In total, improvements recommended in the preceding proposals are expected to reduce average time to voluntary resolution per case by 14 percent (from 7.4 hours to 6.4 hours). Most of the gains are expected from facilitating permit completion (proposal #5) or from settlement agreements for less serious violations that defer compliance until future development, property transfer, or re-finance (proposal #2). The economies obtained would enable Code Enforcement to reduce its backlog by 50 percent in three years, and virtually eliminate it in six years. Thereafter, resource savings (estimated at more than $200,000 annually) could be devoted to a higher level of service for the more serious or impactful violations, or devoted to other County priorities. The backlog reduction and costs savings is shown in Exhibit 14.

**Exhibit 14: 10-Year Forecast and Cost Model with Backlog Reduction and Cost Savings**



**D. Next Steps**

The planning group presented these improvement proposals to the County Executive on September 14, 2015. He authorized DPER to proceed with implementation planning for those proposals that do not require changes to the King County Code. The simplest proposals will be implemented soonest:

* Expand the definition of de minimis code violations that may be dismissed without enforcement action.
* Defer enforcement action on cases without recent complaints.
* Abate violations prior to issuing notice and order.
* Disclose potential civil penalties for illegal construction work with notice of violation.

Implementation of these proposals will require changes in forms, letters, and reporting tools used by Code Enforcement. To ensure reduction of the current backlog, operational performance reports will be also developed to measure thru-put (i.e. volume of complaints opened and cases closed), backlog (i.e. age of cases pending notice and order), and outcomes (i.e. timeframes in which compliance is obtained). This work will take several months to complete with existing resources, but should dovetail with concurrent tier board development guided by PSB.

A more protracted effort, involving some organizational changes at DPER, will be necessary to assign a single point-of-contact to facilitate permitting of illegal construction work. Implementation in 2016 will be contingent upon availability of a suitable staff resource within the department’s existing position authority and budget constraints.

Two proposals, streamlining appeals and increasing penalties for home occupation and commercial violations, require Council action. Consultation with the Council on these proposals could occur in 2016.

*Continuous Improvement*

The process evaluation conducted for this proviso report generally focused on policy and procedural changes that DPER can make in 2016 or plan for 2017-18, and on related Code changes in support thereof. The proposed changes would impact principally the excessive backlog of unresolved code enforcement cases that have not been issued notice and orders.

None of the proposals streamline the processes of legal notification or legal action, which are used to resolve about 7 percent of violations. DPER intends in the next biennium to evaluate more closely these process-heavy aspects of code enforcement. Future lines of research were suggested in the Line of Business process evaluation:

* The legal requirements of due process, as codified or practiced by other jurisdictions in Washington State,
* The impact on compliance timelines obtained by expediting legal judgments, or shifting from notice and order to citations and court hearings, and
* Requiring licenses for all businesses in unincorporated King County in order to simplify and accelerate enforcement of commercial violations.

As the backlog is reduced in the years ahead, staff resources could be increasingly devoted to further process improvements.

**Appendix A: Case Outcomes by Resolution Phase**



**Appendix B: Baseline 10-Year Forecast, 2015-2025**



**Appendix C: Detailed Alternatives Analysis**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **#** | **Problem** | **Alternative** | **Explanation/Considerations** | **Change Hypothesis** | **Code Change** | **Impact** | **Effort** | **Pursue Further** | **Measure** |
| **1** | No Teeth | Maximize penalties as an example and to incentivize compliance | Penalties equivalent to the cost of enforcement. Would need more resources to file more N&O. Would not affect backlog because civil penalties occur after N&O. | If penalties are higher than the cost of compliance, compliance will be more attractive. | Yes | Low | Low | Yes; combine with #17 | Pre/post timeline comparison may be possible. |
| **2** | Backlog | More hand holding through permit process | Code enforcement staff would hand off clients to Permitting SPOC instead of following cases through permitting. Permitting staff would provide a higher level of service than to self-motivated clients (e.g., reminder calls, etc.). Permitting resources could be an issue. Also, don't have to take N&O off the table during permitting process. Handoff at end of in-house meeting. Fresh start with new person could be helpful. Combine with threat of N&O, civil penalties, etc. if don't cooperate. | Code enforcement staff time freed up because they would no longer need to remain directly involved in cases once they enter permitting process. | No | High | High | Yes; combine with #3. | Backlog reduction |
| **3** | Backlog | Aggressive fees once cases enter the permit process | Tied to escalating penalties - e.g., if don't meet timelines outlined by permitting officers. | Increase incentive to get through permitting process quickly. | No | High | Low | Yes; combine with #2. | Backlog reduction |
| **4** | Backlog | First level notification from community (vio1/vio2) | Skyway Solutions CDA could play a role in facilitating first-level violation notification. It is unclear, however, if the work offloaded by CE staff would be greater than the amount of technical support they would need to provide. | Frees CE resources so that by the time cases are actually filed all they need to do is verify violation and file N&O. | No | Low | Low | Not at this time. | NA |
| **5** | Backlog | Different codes for different areas and circumstances | Revise code so that urban/rural parts of unincorporated KC have different code requirements. | Closer fit between community values and code requirements would reduce volume of low-priority cases. | Yes | Low | High | No; use de minimis charts instead; #9 | NA |
| **6** | Process-Heavy | Simplify citation process | Redesign citation process so that it is more useful for certain violation types, e.g. one-time violations such as noise complaint, unpermitted events. For example, skip the N&O for cases that have a citation issued because the appeal process would be duplicative. | Would not get repeat violations because they know next one would be worse. Provides a simple way to resolve without legal process. Potential for process simplification, unclear if it would affect backlog. | Yes | Low | Low | Yes | Reduction in repeat violations for noise and un-permitted events. |
| **7** | Backlog | Encourage violators to put voluntary notice on title/parcel after 180 days, and defer enforcement thereafter. | Defer action until sale/development/re-finance of property for certain cases. | Would save staff time required by N&O process for those violators that chose this option. | No | High | Low | Yes; combine with #10 | Qty of cases that choose this option, enter terminated status. |
| **8** | Backlog | Redefine what is good enough compliance/Palatable alternative endings | Create alternative resolution category that would allow CE to close cases in substantial compliance. One way would be to apply de minimis charts to ongoing cases. Alternate resolution category would likely require code change. | Would allow staff to close cases that would otherwise remain open and require attention. | No | Low | Low | Yes; combine with #9 | Qty cases terminated. |
| **9** | Backlog | Expand de minimis charts | Minimal effort, potential gain likely small. Can be done within existing code. | Would prevent a small number (2%?) of complaints from turning into CE cases. | No | Low | Low | Yes | Qty of cases closed as de minimis that would not have been otherwise. |
| **10** | Backlog | One time amnesty | Close cases open for X years, with no complaints for Y years, and no N&O issued. Would need clear criteria. New resolution status would be required. May require council action, at the very least DPER would need to be sure Council was supportive. | Clear portion of existing backlog. Would only be effective if coupled with other measures to prevent backlog from growing again. | Uncertain | High | Low | Yes; combine with #7 | Qty of old cases entering terminated status. |
| **11** | Backlog | Don't require compliance for some violations | Many of the cases that would be removed would likely already be covered by other solutions. |  | Yes | ? | High | No | NA |
| **12** | No Teeth | Make public all inquiries on code enforcement | Unclear if this was a serious alternative to begin with. All inquiries are already public records available upon request. |  | No | ? | Low | No | NA |
| **13** | Backlog | Hold harmless agreement after N&O so case can go straight to abatement. | Already possible within existing code - write into VCA | Would get cases resolved via abatement without court process (to the extent Abatement can afford anything). | No | Low | Low | Yes | Qty of cases abated prior to N&O |
| **14** | Backlog | Move to N&O on construction cases even if they enter permitting process | Would get it out of "backlog," but not close case. Would be one way to add pressure. |  | No | Low | High | Yes; combine with #2 and #3 | Backlog reduction |
| **15** | Backlog | DPER front cost of permitting consultants, add cost to tax bill. | Could make it part of VCA. | DPER finances permitting costs to make permitting feasible to violator. | No | Low | High | No; too expensive, wrong incentive | NA |
| **16** | No Reasonable Solution | Remove N&O so that owner can get a loan to do the work, then put the N&O back on. | Would complicate process, come back to bite them (e.g., property sells while N&O is off but problem is not addressed). |  | No | Low | High | No | NA |
| **17** | No Teeth | Different penalty scales for residential/commercial. | Make penalty for commercial cases high enough to incentivize compliance. | Commercial penalties are frequently not onerous enough to incentivize compliance. | Yes | High | Low | Yes; combine with #1 | Pre/post timeline comparison may be possible. |
| **18** | Backlog | Show violators what the cost may be in the future if they continue to ignore officers. | Could include sheet with possible penalties in Vio 2 letter, to demonstrate that dealing with issue sooner is cost-effective. |  | No | Low | Low | Yes; combine with #2 and #3 | Backlog reduction |
| **19** | No Teeth | Increase insurance requirements | Stiffer punishments would incentivize faster compliance |  | Yes | ? | High | No | NA |
| **20** | No Teeth | Garnish wages | Stiffer punishments would incentivize faster compliance |  | Yes | ? | High | No | NA |
| **21** | No Teeth | Foreclose property | Stiffer punishments would incentivize faster compliance |  | Yes | ? | High | No | NA |
| **22** | No Teeth | Red tag structures | Stiffer punishments would incentivize faster compliance |  | No | ? | High | No | NA |
| **23** | No Teeth | Enact criminal penalties | Stiffer punishments would incentivize faster compliance |  | Yes | ? | High | No | NA |

**Appendix D: King County Code**

**23.20.070 Mitigating circumstances hearing - notice - conduct - determination - finding.**

A. If a person requests a hearing in response to a citation to explain mitigating circumstances surrounding the commission of the violation, the department shall notify the hearing examiner that a mitigation hearing has been requested. The office of the hearing examiner shall:

1. Schedule a hearing to be held within thirty days after the department provides notice of the request; and

2. At least ten days before the date of the hearing, provide notice of the time, place and date of the hearing by first class mail to the address provided in the request for hearing.

B. The hearing examiner shall conduct an informal nonevidential hearing. The person cited may produce witnesses, but witnesses may not be compelled to attend. A representative of the department may also attend and provide additional information, but no such attendance is required.

C. The hearing examiner shall determine whether the person's explanation justifies reduction of the civil penalty or restitution. In considering whether to reduce the civil penalty or restitution, the hearing examiner may consider mitigating factors necessary to achieve an equitable result and further the legitimate interests of the department.

D. After hearing the explanation of the person cited and any other information presented at the hearing, the hearing examiner shall enter an order finding that the person cited committed the violation and assessing civil penalties and cleanup restitution payment, if applicable, in an amount determined by the hearing examiner. The hearing examiner's decision constitutes the final agency action. (Ord. 16278 § 17, 2008).

**23.20.080 Violation contest hearing - notice - conduct - determination - finding.**

A. If a person requests a hearing in response to a citation to contest the finding that a violation occurred or to contest that the person issued the citation is responsible for the violation, the department shall notify the hearing examiner that a contested hearing has been requested. The office of the hearing examiner shall:

1. Schedule a hearing to be held within sixty days after the department provides notice of the request; and

2. At least twenty days before the date of the hearing, provide notice of the time, place and date of the hearing by first class mail to the address provided in the request for hearing.

B. Except as otherwise provided in this section, contested hearings shall be conducted pursuant to K.C.C. 20.24.170 and the rules of procedure of the King County hearing examiner. The hearing examiner may issue subpoenas for witnesses and order limited discovery. The requirements of K.C.C. 20.24.145 relating to pre-hearing conferences do not apply to the contested hearing.

C. If the rights of the alleged violator to receive notice that meets due process requirements are not prejudiced:

1. A citation shall not be deemed insufficient by reason of formal defects or imperfections, including a failure to contain a detailed statement of the facts constituting the specific violation which the person cited is alleged to have committed; and

2. A citation may be amended prior to the conclusion of the hearing so as to conform to the evidence presented.

D. The burden of proof is on the county to establish by a preponderance of the evidence that the violation was committed. The hearing examiner shall consider the citation and any other written report made as provided in RCW 9A.72.085, submitted by the person who issued the citation or whose written statement was the basis for the issuance of the citation in lieu of that person's personal appearance at the hearing as prima facie evidence that a violation occurred and that the person cited is responsible. The statement and any other evidence accompanying the report shall be admissible without further evidentiary foundation. Any additional certification or declarations authorized under RCW 9A.72.085 shall also be admissible without further evidentiary foundation. The person cited may rebut the evidence and establish that the violation did not occur or that the person contesting the citation is not responsible for the violation.

E. If the citation is sustained at the hearing, the hearing examiner shall enter an order finding that the person cited committed the violation. If an ongoing violation remains uncorrected, the hearing examiner shall impose the applicable penalty. The hearing examiner may reduce the penalty as provided in K.C.C. 23.20.070 if the violation has been corrected. If the hearing examiner finds by a preponderance of the evidence that the violation did not occur, an order shall be entered dismissing the citation.

F. The hearing examiner decision is a final agency action.

G. A cited person's failure to appear for a scheduled hearing shall result in an order being entered that the person cited is the person responsible for code compliance and assessing the applicable civil penalty and if applicable, cleanup restitution payment. (Ord. 16278 § 18, 2008).

**23.32.050 Waivers.**

A. The invoice for newly assessed civil penalties imposed under this title shall include a statement advising the person responsible for code compliance that there is a right, within twenty-one days from service of the invoice, to request a waiver from the director of some or all of the penalties.

B. Civil penalties, in whole or in part, may be waived or reimbursed to the payer by the director, with the concurrence of the director of the department of executive services, under the following circumstances:

1. The citation, notice and order, notice of noncompliance or stop work order was issued in error;

2. The civil penalties were assessed in error; or

3. Notice failed to reach the property owner due to unusual circumstances.

C. Civil penalties, in whole or in part, may be waived by the director, with the concurrence of the director of the department of executive services or its successor agency, under the following circumstances:

1. The code violations have been cured under a voluntary compliance agreement;

2. The code violations which formed the basis for the civil penalties have been cured, and the director finds that compelling reasons justify waiver of all or part of the outstanding civil penalties; or

3. Other information warranting waiver has been presented to the director since the citation, notice and order, notice of noncompliance, stop work order or newly assessed penalty invoice was issued.

D. In cases where additional penalties may be assessed and liens issued, or where compliance or other factors may provide a later ground for waiver, the director may postpone consideration of the waiver request. New penalties may be assessed as warranted, but interest shall not accrue on, and collection shall not be pursued for, penalties subject to a pending waiver request.

E. When the director reaches a final determination on a waiver request, the department shall provide a written decision to the person filing the waiver request, either in person or by mail. The written decision shall inform the person of the right to appeal the waiver decision and shall provide notice of the appeal deadlines and requirements established in this chapter.

F. The director shall document the circumstances under which a decision was made to waive penalties and such a statement shall become part of the public record unless privileged. (Ord. 17591 § 2, 2013: Ord. 14309 § 7, 2002: Ord. 13263 § 41, 1998).

**23.32.100 Appeal of penalty waiver decision - process - notice - failure renders decision final.**

A. A person who filed a penalty waiver request under K.C.C. 23.32.050 may appeal the director's decision denying all or a portion of the request waiver.

B. In order to be effective, a written notice and statement of appeal must be received by the department within fourteen days from service of the director's penalty waiver decision. The statement of appeal must include:

1. The identity of the person filing the appeal;

2. The address of the property where the violations were determined to exist;

3. A description of the actions taken to achieve compliance and, if applicable, the date of compliance; and

4. Any other reasons why the person believes the penalties are erroneous or excessive under the circumstances.

C. Failure to effectively appeal the director's penalty waiver decision within the applicable time limits renders the decision final. (Ord. 17591 § 3, 2013: Ord. 17191 § 55, 2011).

**Appendix E: Media Report – Home Occupation in Violation**

**Some illegal businesses in rural areas operate for years without King County action**

Originally published September 8, 2015 at 9:57 pm Updated September 11, 2015 at 1:36 pm



This tree cutting business outside Fall City violates zoning rules and has been issued several violation notices. (Dean Rutz / The Seattle Times)

**County officials say the process for handling code violations errs on the side of leniency to give the violator every opportunity to correct the problems. That long process has led to frustration for the neighbors of such businesses.**

Section Sponsor

By [Lynn Thompson](http://www.seattletimes.com/author/lynn-thompson/)

*Seattle Times staff reporter*

For 27 years, Jacalyn and Larry Holsted enjoyed the tranquility of their home in rural King County, outside of Fall City, up a private dirt drive and surrounded by trees.

Last summer, their next-door neighbor brought in a bulldozer and started cutting trees and clearing his backyard. When dump truck after dump truck dropped loads of crushed rock, Larry Holsted said to himself: “This isn’t going to be grass.”

Instead the neighbor, Matt Rengo, cleared and graded a parking lot for half a dozen heavy trucks and parking for about 10 employees at his tree-removal and landscaping business, Eastside Tree Works.

County officials acknowledge the operation violates rules that allow some home occupations in rural areas, but not large-scale ones that haven’t been approved.

Eastside Tree Works isn’t the only business in unincorporated King County operating outside of the regulations. Because county code-enforcement officers mostly respond to complaints — and because of a lengthy appeals process — illegal enterprises operate in rural and agricultural areas, sometimes for years.

“It’s frustrating,” Jacalyn Holsted said of the tree-removal business. “He’s in a residential neighborhood, there’s noise, traffic, and strangers coming and going. The county has issued repeated ‘stop work orders,’ but there’s no follow-through.”

The county issued its first “stop work order” for clearing and grading without a permit in March 2013. Since then, it has issued five other violation notices, including for converting a house into an office and running a landscaping business as a home occupation.

Still, Rengo — who says he is the victim of harassment and exaggerated allegations from his neighbors — hasn’t reduced the size of his business or paid any county fines. On Aug. 14, two days after the county fined him a third time, he submitted an application for a permit that could allow him to continue to operate as a home industry.

County officials say the process for handling code violations errs on the side of leniency to give the violator every opportunity to correct the problems.

“Other jurisdictions will bring down the hammer sooner,” said John Starbard, director of the Department of Permitting and Environmental Review. He said the timelines for compliance are long, appeals can be appealed, violators can ask for more time and they can defer the payment of penalties.

“If someone wants to game the system, they can,” Starbard said.

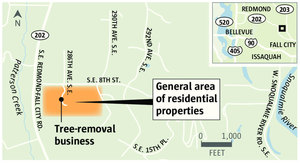
Starbard, who took over the department in 2010, said he and his staff have transformed the department’s permitting process. But code enforcement, which he described as a “spaghetti” of rules and procedures, is just now getting scrutinized.

Five code-enforcement officers cover about 1,000 square miles, he said. Each has about 260 open cases. That’s meant some businesses fly under the radar.

In unincorporated King County just outside of Woodinville this spring and summer, for example, the county [cited eight wine-tasting rooms](http://www.seattletimes.com/life/food-drink/king-countys-wine-country-crackdown-targets-tasting-rooms/) for operating on land zoned rural or agricultural. One had been in business for two years.

But the Metropolitan King County Council has also determined that rural areas should accommodate a wider variety of uses than urban areas, Starbard said.

“The codes are written to reflect that what people do in more rural areas is different from what they’d do in Laurelhurst,” he said.

King County has cited the owner of a tree removal business for... (Stephanie Redding / The Seattle Times) **More**

King County allows home businesses in rural areas if they are limited in scale and “subordinate to the primary use of the site as a residence,” according to the department’s rules. They must have fewer than three employees working on site and no more than three who report to the site but work primarily elsewhere. A permit is required when a structure is built or the use of the property changes.

The county also allows home industries for businesses with more employees and more equipment, but those require a conditional-use permit, which is subject to public notice, public appeals and conditions set by the county, Starbard said.

Eastside Tree Works has been cited several times by the Department of Labor and Industries (L&I) for safety violations. One worker was killed in December 2010 when struck by a falling tree.

Rengo was fined $6,200 for three serious violations, said Elaine Fisher, L&I spokeswoman. He was cited again and fined $2,500 in March 2013 when a worker fell out of a tree and was seriously injured. Rengo said in an interview that the death occurred when a climber made an improper cut and a ground worker walked into the drop zone. Since then, Rengo said, the company has instituted rigorous safety procedures.

He disputed the characterization of the 2013 injury as “serious,” although L&I said he paid the fine and did not appeal the citation.

Rengo also said he has felt unfairly targeted by the county.

Within a 5-mile radius, he said, 20 landscaping and tree-removal businesses are being run in the same rural or agricultural zones.

Jim Chan, the county’s assistant permitting director, said the department is aware of only two other businesses in the area which have open code-violation cases, Rich Landscaping and Bear Creek Landscaping, both along the Redmond-Fall City Road.

Rich Landscaping, a much larger business than Eastside Tree Works, has been cited for exceeding the allowable size of a home occupation, using agricultural buildings for retail sales and processing materials, all without permits, said Chan.

He said Bear Creek has no permit for a retail nursery, which must be approved before a landscaping business is allowed. It’s also been cited for grading in a wetland.

Rich Landscaping has been in business for 35 years, Bear Creek for 20. Owners of both questioned why the county is telling them they lack the necessary permits.

Susie Richards, who owns Rich with her husband, called the county’s red tape and code enforcement “horrible.” She said that over the years the landscaping business has had to hire a wetland biologist and a hydrologist and pays a monthly retainer to a land-use attorney to respond to letters from the county.

“We’ve worked hard with King County over the years,” she said.

Mike Clifford, owner of Bear Creek, said the county has told him in the past that he is in compliance, but he also understands that if someone complains, the county has to investigate.

“Now I have to deal with it,” he said. “I almost consider it harassment.”

For the Holsteds and other neighbors of Eastside Tree Works, the county’s enforcement hasn’t been aggressive enough. Almost two years after first citing Rengo for clearing and grading without a permit, it fined him $1,500. He was fined another $6,100 in June and $8,370 this month. He hasn’t paid any of the fines, according to the permitting department.

The county’s Chan said the department does sometimes shut down a business, but only in cases of life safety or irreparable environmental harm. Those cited for operating in the wrong location can be ordered to close or move, but only after the owners exhaust their legal appeals.

To Jacalyn Holsted, it seems as if anyone could open any type of business in the unincorporated areas of the county, even next to single-family homes like their own, and continue to operate with few consequences.

“This could happen to anyone,” she said.

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**Appendix F: Media Report – Wine-Tasting Businesses in Violation**

# King County’s wine-country crackdown targets tasting rooms

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Sal Leone sits outside his SilverLake wine-tasting room, just beyond the Woodinville limits. After running afoul of King County for operating in an area set aside for agriculture, he appealed and says if he doesn’t win, he’ll get stinky pigs and loud roosters for rural ambience. (Ken Lambert/The Seattle Times)

King County has cited eight winery tasting rooms for operating on rural- or agricultural-zoned land just outside Woodinville. Owners say they’re part of a booming wine and tourism industry.

Section Sponsor

By [Lynn Thompson](http://www.seattletimes.com/author/lynn-thompson/)

*Seattle Times staff reporter*

Sal Leone, the grandson of Italian immigrants, speaks expansively about the pleasures of being a winemaker. He’s opened two tasting rooms and a brew pub just north of Woodinville, not far from a dozen other tasting rooms and Chateau Ste. Michelle. Visitors can sip wine or beer outside on his slate patio with piped-in music, a bubbling water feature and a lush semicircle of landscaping that screens them from the arterial in front and the parking lot behind.

“We sell romance in the wine business,” said Leone, a retired periodontist whose SilverLake Winery was one of the first to open in Woodinville, in 1992, in the heart of what’s now a booming wine industry that attracts about 750,000 tourists a year.

But King County says the passion is being sold in the wrong spot, and that retail is trampling on land meant for agricultural uses.

Leone’s business and seven other tasting rooms were slapped with violation notices by King County between March and July for operating businesses, sometimes for years, on land zoned rural or agricultural.

The crackdown has divided residents of the area. Advocates of preserving the Sammamish Valley for farms and other agricultural uses say the encroachment by businesses threatens some of the region’s most productive lands by driving up property values and making it unaffordable to farmers.

Leone, for instance, paid almost $1 million for 1.5 acres in 2014, while just months earlier the property was assessed at $416,000 when it was still a single-family home with a repair shop for tractors and farm equipment.

Leone and the other owners and operators of the tasting rooms are unapologetic, saying wineries are an agricultural use, even if the grapes are grown hundreds of miles away. They say the small houses they’ve remodeled into tasting rooms fit well with the surrounding wineries and farmland. And they’re mostly located along the main thoroughfare between downtown Woodinville and the Hollywood wine district, where tasting rooms are allowed.

They say their properties are a reasonable extension of the popular wine-tourism trade, employing dozens of people and generating tax revenue for the county. Last month they organized into a group called SHOW — Stop Harassing Our Wineries — to press the county to find a way for them to stay in business.

Debbie Hansen, owner of Cougar Crest Estate Winery, whose tasting room has been cited, said, “I see a lot of land in the valley not being farmed at all. Are we going to leave it rural and agricultural or allow it to become part of the wine district?”

The other wineries cited for illegal tasting rooms are: Castillo de Feliciana, Patit Creek and Forgeron Cellars, Cave B, Winery Kitchen, Matthews and Cherry Valley. Each was given 45 days to shut down, relocate or apply for county permits, which could include an application to be considered a home occupation.

That’s a stretch for many of the tasting rooms because no one lives in the former houses and the county requires that a business run out of a home be “subordinate to the primary use of the site as a residence.”

If corrective action isn’t taken, the county can start legal proceedings to close the tasting rooms, said Jim Chan, assistant director of permitting for the county Department of Permitting and Environmental Review.

## Border fight

The fight over protecting agricultural and rural land also has become an issue in the Metropolitan King County Council race in which incumbent Jane Hague is being challenged by Bellevue Mayor Claudia Balducci. Hague scheduled a campaign fundraiser this summer at Leone’s tasting room but canceled after she was contacted by some Sammamish Valley farm advocates.

Balducci cited votes by Hague and other council members who caucus as Republicans to use rural lands for other purposes, including twice trying unsuccessfully to add nearly 50 acres of rural Duthie Hill to the urban-growth area adjacent to Sammamish and zone it for residential development.

“Councilmember Hague has been on the wrong side of the issue time and time again,” Balducci said.

Hague countered that the council majority (members of the nonpartisan council who caucus as Democrats) promised to initiate a joint planning effort with the city of Woodinville in 2012, the last time the controversy arose between the wine industry and agricultural users.

That pledge to work together followed the County Council leadership’s rejection of a Woodinville request to redraw the urban-growth boundary to allow more development at its borders.

The rural boundary wasn’t breached, but Hague said there was no follow-through on addressing the problems.

“We have a precious resource in our agricultural land that needs to be balanced with a growing wine economy and tourism industry,” Hague said.

## Urban sprawl

Advocates of preserving the farmland say it was protected decades ago precisely to create a bright line against urban sprawl.

Tom Quigley, president of the Sammamish Valley Alliance and manager of a 65-acre farm north of Leone’s land, said that over the years, he and other residents have fought off proposals for sports fields, a hotel and other retail uses on what’s now agricultural land.

Standing on his farm, where he also runs a small tree nursery, Quigley points out plots being worked by 11 other tenants, including three Hmong farmers and students at four community colleges.

“Agriculture is alive and well and it’s only going to get better as the demand for local produce continues to grow,” he said.

About the only thing the two sides agree on is that the county has been lax in enforcing the land-use codes. Cougar Crest’s tasting room, for example, had been operating just south of the Woodinville city limits for two years before being cited in June. And for four years before that, Hollywood Hill Vineyards ran its tasting room out of the same remodeled house, said property owner Steve Lee.

“I don’t know why anyone would complain. Woodinville revolves around wineries and tasting rooms,” he said. Lee said he feels particularly aggrieved because Woodinville built sidewalks on two sides of his property when it added a roundabout to handle the increasingly heavy traffic along the Woodinville-Redmond Road.

Now the county is telling him his tenants can’t operate there because the property is zoned rural.

## Pigs and roosters?

John Starbard, King County’s director of Permitting and Environmental Review, said the county has a long history of protecting agricultural lands for agricultural uses. The pressures from the wine industry, which stands to make a lot of money converting the land to retail and commercial uses, shouldn’t change the county’s enforcement of its rules.

He said enforcement officers respond primarily to complaints and wouldn’t necessarily know — even for several years — if a tasting room was operating in violation of the codes.

The county just added a planner to focus on unincorporated areas around cities, Starbard said. With more staff, the county can take on the joint planning effort with Woodinville promised in 2012. That initiative will include ongoing conversations with the wine industry and agricultural advocates, he said.

Even within the wine business, many oppose the wildcat tasting rooms. The vast majority of wineries and tasting rooms in the area have spent the time and money to go through the permitting process to make sure they’ve complied with all the regulations, said John Patterson, owner of Patterson Cellars and the vice chair of Woodinville Wine Country, a marketing and promotional group for the 108 wineries and tasting rooms around the valley.

“I don’t think anybody should be grandfathered in because they opened illegally,” he said.

Leone has appealed his violation notice from the county and asked for an extension until November to present his case. He’s suggested grazing alpacas or planting rows of grapes behind the brew pub to meet the county requirement that the primary use on agricultural land be agricultural.

And if the county turns him down, Leone said, he’s going to find the stinkiest pigs and the noisiest roosters, knowing that next door, in the city of Woodinville, the neighboring business owner, who is planning to add a 12-room hotel, is sure to complain.

“Which do you choose?” he said, gesturing to his pleasant patio and tasting rooms. He includes himself along with the other tasting-room owners and operators when he insists, “Every one of us firmly believes we’re doing what we’re allowed to do.”

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1. The distribution of case outcomes is shown in Appendix A. [↑](#footnote-ref-1)
2. King County Code sections are attached in Appendix D. [↑](#footnote-ref-2)