

# **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), ((T))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	<u>D.</u> Department or division staff shall:

- 1. Be available within a reasonable time to persons wishing to file a statement of appeal subsequent to an agency ruling and to respond to queries concerning the facts and process of the county decision; and
- 2. Make available within a reasonable time a complete set of files detailing the 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

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

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

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

#### **NEW SECTION. SECTION 15.**

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

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

### NEW SECTION. SECTION 16.

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

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

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

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

section 16 of this ordinance.

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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

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

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 1 day of March, 2008.

Ron Sims, County Executive

Attachments None

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