



Legislation Text

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Clerk 10/16/2007

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

STATEMENT OF FACTS:

1. As of April 19 2007, five hundred eleven code enforcement actions were opened by the department of development and environmental services ("DDES") for the year 2007. Five hundred thirty-four code enforcement actions, spanning over several years, were closed this year.
2. The Voluntary Compliance Agreement is a tool utilized by the department to give citizens the opportunity to engage in voluntary abatement of activities that may constitute code violations on their properties.
3. Currently, only a limited number of voluntary compliance agreements have been entered

upon by citizens in violation of code compliance. As such, only a small percentage of all opened code enforcement actions are successfully resolved through the use of voluntary compliance agreements. Such a small fraction of cases resolved through the use of voluntary compliance agreements is an indication of the ineffectiveness of the tool in solving the issues it was created to resolve.

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

5. A subsequent analysis by the office of the county ombudsman has recommended that when the fulfillment of terms of a "voluntary compliance agreement" are in dispute, the right to administrative appeal may significantly improve its effectiveness as a tool for dispute resolution.

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

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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

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

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

follows:

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

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

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

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

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

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

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

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

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

C. The procedures set forth in this title are not exclusive. These procedures shall not in any manner limit or restrict the county from remedying civil code violations or abating civil code violations in any other

manner authorized by law. Ordinance 13263 shall not be construed to affect the authority of the King County board of health in enforcement of the King County board of health code or regulations.

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

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

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

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

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

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

J. The provisions of Ordinance 13263 authorizing the enforcement of non-codified ordinances are intended to assure compliance with conditions of approval on plats, unclassified use permits, zone

reclassifications and other similar permits or approvals which may have been granted by ordinances which have not been codified, and to enforce new regulatory ordinances which are not yet codified. Departments should be sensitive to the possibility that citizens may not be aware of these ordinances, and should give warnings prior to enforcing such ordinances, except in high risk cases.

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

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

A. ~~((Field verification.~~

~~Except in emergencies and for low risk case complaints, field verification should be made if possible prior to, concurrent with or shortly after notifying the owner, occupant, and/or other person responsible for code compliance of the potential or alleged violation. Low risk case complaints should be acknowledged by sending an informal letter to the person(s) responsible for code compliance. The letter should state that a violation may have occurred, but has not been verified, and should ask the recipient to contact the department issuing the letter.))~~ Before conducting a field verification, code enforcement personnel shall notify the owner, occupant, or other person responsible for code compliance of a possible violation through any combination of phone, posting and/or mail, that a field verification is to occur. Code enforcement personnel shall not cross a parcel boundary line onto private property without such prior notification, except in emergencies that pose an imminent threat to environmental health or to the public safety or specifically for the purpose of posting a notice.

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

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

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

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

D. The department shall check its own records and the records of other agencies for previous violations on the site of the alleged violation or by the owner or occupant of the site or such other person as may be responsible for code compliance. Each department (~~(should)~~) shall develop and/or maintain a database system for tracking violations of its codes that is designed, to the extent possible, to be used in coordination with other departments.

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

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

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

B. Except as provided in subsection D₂ of this section, a warning shall be issued verbally or in writing promptly when a field inspection reveals a violation, or as soon as the department otherwise determines that a violation has occurred. The warning shall inform the person determined to be responsible for code compliance

of the violation and shall include a reference to the applicable permit or zoning condition, ordinance or code related to the violation. The warning shall also allow the person an opportunity to correct ~~((#))~~ the violation or enter into a voluntary compliance agreement as provided for by this title. Verbal warnings shall be logged and followed up with a written warning within two weeks, and the site shall be reinspected within thirty days.

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

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

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

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

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

H. If the violation is not corrected or a voluntary compliance agreement is not achieved within a reasonable time period, a citation, notice and order or stop work order should be issued. As a guideline, citations should be issued within sixty days from receipt of a complaint, and notice and orders should be issued within one hundred twenty days from receipt of a complaint. Stop work orders should be issued promptly upon

discovery of a violation in progress.

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

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

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

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

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

1. The name and address of the person responsible for code compliance;
2. The address or other identification of the location of the violation;
3. A description of the violation and a reference to the provision or provisions of the ordinance,

resolution or regulation that has been violated;

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

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

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

7. An acknowledgment that if the department determines that the terms of the voluntary compliance agreement are not met, the department may issue a notice of noncompliance, and if the notice of noncompliance is not successfully appealed pursuant to K.C.C. 20.24.090, that the county may without issuing a citation, notice and order or stop work order, impose any remedy authorized by this title, which includes the assessment of the civil penalties identified in the voluntary compliance agreement, abatement of the violation, assessment of the costs incurred by the county to pursue code compliance and to abate the violation, including legal and incidental expenses, and the suspension, revocation or limitation of a development permit;

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

9. An acknowledgment that by entering into the voluntary compliance agreement the person responsible for code compliance (~~((waives the right to administratively appeal, and))~~) thereby admits~~((s))~~ that the conditions described in the voluntary compliance agreement existed and constituted a civil ~~((code))~~ violation,

and (~~(that if the department determines that the terms of the voluntary compliance agreement are not met))~~) that the person responsible waives the right to administratively appeal the existence of the conditions and the fact that they constituted a civil code violation, and that if a notice of noncompliance is issued and not successfully appealed, the person is subject to and liable for any remedy authorized by this title, which includes the assessment of the civil penalties identified in the voluntary compliance agreement, abatement of the violation, assessment of the costs incurred by the county to pursue code compliance and to abate the violation, including legal and incidental expenses, and the suspension, revocation or limitation of a development permit; and

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

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

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

original conditions unattainable.

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

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

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

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

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

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

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

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

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

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

If the department determines that the terms of the voluntary compliance agreement are not completely met, the director may issue a notice of noncompliance. A notice of noncompliance shall include a description of all incomplete or untimely corrective or abatement action required under the voluntary compliance agreement. The notice of noncompliance shall also include the civil penalty to be imposed based upon the failure to comply with the voluntary compliance agreement. The person or persons responsible for code compliance may appeal the facts and conclusions described in the notice of noncompliance as provided by K.C.C. 20.24.090. If the director issues a notice of noncompliance, and the notice of noncompliance is not successfully challenged through administrative appeal, the department may abate the violation in accordance with this title, and the person responsible for code compliance may, without being issued a citation, notice and order, or stop work order, be assessed a civil fine or penalty, in accordance with the penalty provisions of ((this title)) the voluntary compliance agreement, plus all costs incurred by the county to pursue code compliance and to abate the violation, including legal and incidental expenses as provided for in this title, and may be subject to other remedies authorized by this title. Penalties imposed what a voluntary compliance agreement is not met accrue from the date that the ((terms of the voluntary compliance agreement were violated)) notice of noncompliance was issued.

SECTION 8. Ordinance 4461, Section 2, as amended, and K.C.C. 20.24.080 are each hereby amended

to read as follows:

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

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

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

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

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

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

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

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

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

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

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

B. The examiner's decision may be to grant or deny the application or appeal, or the examiner may

grant the application or appeal with such conditions, modifications and restrictions as the examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including chapter 43.21C RCW, and the regulations, policies, objectives and goals of the comprehensive plan, the community plans, subarea or neighborhood plans, the zoning code, the subdivision code and other official laws, policies and objectives of King County. In case of any conflict between the King County Comprehensive Plan and a community, subarea or neighborhood plan, the King County Comprehensive Plan shall govern.

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