Legislation Details (With Text)

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

Sponsors: Larry Phillips, Kathy Lambert, Dow Constantine, Bob Ferguson

Indexes: DDES/DPER, Fees, Permits, Procedure

Code sections: 20.24 -, 20.24.090 -, 20.24.450 -, 27 -, 27.04 -

Attachments: 1. 16026.1.pdf, 2. 2007-0619 Adoption Notice.doc, 3. 2007-0619 Checklist--Fee Appeal Ordinance.doc, 4. 2007-0619 Fee Appeal Procedures - Plain Language Summary.doc, 5. 2007-0619 Fiscal Note.xls, 6. 2007-0619 Hearing notice.doc, 7. 2007-0619 Regulatory Note.doc, 8. 2007-0619 Revised Staff Report - admin appeal.doc, 9. 2007-0619 Staff Report - admin appeal (12-11-07).doc, 10. 2007-0619 Transmittal Letter.doc

Date	Ver.	Action By	Action	Result
2/25/2008	2	Metropolitan King County Council	Hearing Held	
2/25/2008	2	Metropolitan King County Council	Passed	Pass
1/22/2008	2	Metropolitan King County Council	Reintroduced	
12/11/2007	1	Growth Management and Natural Resources Committee	Amended	Pass
12/11/2007	2	Growth Management and Natural Resources Committee	Recommended Do Pass Substitute	Pass
12/3/2007	1	Metropolitan King County Council	Introduced and Referred	

Clerk 12/13/2007

AN ORDINANCE relating to creating an appeal procedure for permit fee estimates issued by the department of development and environmental services under the project management program and for permit billings issued by the department of development and environmental services; amending Ordinance 4461, Section 3, as amended, and K.C.C. 20.24.090, Ordinance 13332, Section 7,

as amended, and K.C.C. 20.24.450; adding a new section to K.C.C. chapter 20.24, adding new sections to K.C.C. chapter 27.04 and adding a new chapter to K.C.C. Title 27.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. **Findings:**

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

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

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

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

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

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

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

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

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

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

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

D. 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 of appeal, subsequent to an agency ruling. If a department or division is unable to comply with these provisions, the hearing examiner may authorize

amendments to a statement of appeal to reflect information not made available to an appellant within a reasonable time due to a failure by a county agency to meet the foregoing requirements.

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

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

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

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

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

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

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

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

follows:

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

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

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

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

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

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

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

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

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

NEW SECTION. SECTION 11. An applicant disputing a fee estimate must do so in writing filed with the department not later than seventeen days after the date that the department mailed the fee estimate letter or estimate revision to the applicant. Within fourteen days after the applicant files the fee estimate dispute with

the department, the department shall mail the director's decision on the fee estimate dispute to the applicant. The director's decision shall be final unless the applicant then files a written combined notice and statement of appeal with the director, together with the required appeal fee, not later than seventeen days after the department mailed the director's decision to the applicant. The applicant may only appeal an adverse decision, in which the director has denied all or a portion of the applicant's dispute. The department shall forward a copy of the combined notice and statement of appeal to the hearing examiner. The department shall also preserve the record, and comply with the appeal provisions in K.C.C. 20.24.090.D.

NEW SECTION. SECTION 12. The examiner shall conduct a closed record hearing on the appeal of a fee estimate or estimate revision. The burden is on the 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.

NEW SECTION. SECTION 19.

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

B. For any project managed permit or approval, the applicant must, within the one-year period under subsection A. of this section, file a notice of appeal together with the required appeal fee. The applicant must

also file a statement of appeal no later than thirty days after filing the notice of appeal.

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

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

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

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