



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

April 17, 2018

Ordinance 18709

Proposed No. 2018-0113.2

Sponsors Upthegrove

1 AN ORDINANCE to create an appeal process for transit
2 rider suspensions; and amending Ordinance 18230, Section
3 77, and K.C.C. 4A.780.010, Ordinance 4461, Section 2, as
4 amended, and K.C.C. 20.22.040, Ordinance 18230, Section
5 16, and K.C.C. 20.22.070 and Ordinance 11950, Section 18
6 (part), as amended, and K.C.C. 28.96.430 and adding a new
7 section to K.C.C. chapter 20.22.

8 PREAMBLE:

9 The King County council passed Motion 14441 in October 2015, which
10 addressed a number of key elements concerning transit violations on
11 Metro Transit. Those elements included decriminalizing juvenile fare
12 evasion, improving equity, revising due process in the suspension of use
13 procedure, making courts more accessible for those cited for fare evasion
14 by having their hearing closer to their home and increasing transit
15 personnel's competency in working with juveniles.

16 Metro Transit responded to the motion with a work plan outlining its
17 intention to address each area of concern.

18 The King County council accepted the work plan via Motion 14675.

19 The portion of the work plan which identified recommended changes to

20 the policies governing suspension of use of Metro Transit services has
21 been advanced to such a degree that it is now ready for implementation,
22 the result of such an implementation is anticipated to provide due process
23 protections for those issued suspensions, and the impacts of such
24 suspensions can be more readily mitigated to achieve the desired
25 outcomes.

26 The cooperation and input of parties key to achieving these outcomes has
27 been secured, resulting in a process that will provide suspended persons
28 and those who advocate on their behalf with the means to avoid
29 unintended and disparate outcomes.

30 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

31 SECTION 1. Ordinance 18230, Section 77, and K.C.C. 4A.780.010 are each
32 hereby amended to read as follows:

33 A. Except as otherwise provided in subsection B. of this section, the fee for filing
34 an appeal to the office of the hearing examiner under K.C.C. 20.22.080, is two hundred
35 fifty dollars.

36 B.1. The fee for filing an appeal to the office of the hearing examiner under
37 K.C.C. 20.22.080, of a permit fee estimate and billing under K.C.C. chapter 27.50 is fifty
38 dollars.

39 2. There is no fee for filing an appeal to the office of the hearing examiner of an
40 enforcement or penalty action under K.C.C. Title 6, K.C.C. Title 11 or K.C.C. Title 23, or
41 a transit rider suspension under K.C.C. 28.96.130.

42 C. The fee for filing an appeal to the council under section K.C.C. 20.22.230.D.

43 is two hundred fifty dollars.

44 SECTION 2. Ordinance 4461, Section 2, as amended, and K.C.C. 20.22.040 are
45 each hereby amended to read as follows:

46 The examiner shall issue final decisions in the following cases:

47 A. Appeals of orders of the ombuds under the lobbyist disclosure code, K.C.C.
48 chapter 1.07;

49 B. Appeals of sanctions of the finance and business operations division in the
50 department of executive services imposed under K.C.C. chapter 2.97;

51 C. Appeals of career service review committee conversion decisions for part-time
52 and temporary employees under K.C.C. chapter 3.12A;

53 D. Appeals of electric vehicle recharging station penalties of the department of
54 transportation under K.C.C. 4A.700.700;

55 E. Appeals of notice and orders of the manager of records and licensing services
56 or the director of permitting and environmental review under K.C.C. chapter 6.01;

57 F. Appeals of adult entertainment license denials, suspensions and revocations
58 under K.C.C. chapter 6.09;

59 G. Appeals of the fire marshal's decisions on fireworks permits under K.C.C.
60 chapter 6.26;

61 H. Appeals of cable franchise nonrenewals under K.C.C. 6.27A.060 and notices
62 and orders under K.C.C. 6.27A.240;

63 I. Appeals of notices and orders of the department of natural resources and parks
64 under K.C.C. chapter 7.09;

65 J. Appeals of decisions of the director of the department of natural resources and

66 parks on surface water drainage enforcement under K.C.C. chapter 9.04;

67 K. Appeals of decisions of the director of the department of natural resources and
68 parks on requests for rate adjustments to surface and storm water management rates and
69 charges under K.C.C. chapter 9.08;

70 L. Appeals of decisions on water quality enforcement under K.C.C. chapter 9.12;

71 M. Appeals of notices and orders of the manager of animal control under K.C.C.
72 chapter 11.04;

73 N. Certifications by the finance and business operations division of the
74 department of executive services involving K.C.C. chapter 12.16;

75 O. Appeals of orders of the office of civil rights under K.C.C. chapter 12.17,
76 K.C.C. chapter 12.18, K.C.C chapter 12.20 and K.C.C. chapter 12.22;

77 P. Appeals of noise-related orders and citations of the department of permitting
78 and environmental review under K.C.C. chapter 12.86;

79 Q. Appeals of utilities technical review committee determinations on water
80 service availability under K.C.C. 13.24.090;

81 R. Appeals of decisions regarding mitigation payment system, commute trip
82 reduction and intersection standards under K.C.C. Title 14;

83 S. Appeals of suspensions, revocations or limitations of permits or of decisions of
84 the board of plumbing appeals under K.C.C. chapter 16.32;

85 T. Appeals of all Type 2 decisions under K.C.C. chapter 20.20, with the
86 exception of appeals of shoreline permits, including shoreline substantial development
87 permits, shoreline variances and shoreline conditional uses, which are appealable to the
88 state Shoreline Hearings Board;

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

91 V. Appeals of completed farm management plans under K.C.C. 21A.30.045;

92 W. Appeals of decisions of the interagency review committee created under
93 K.C.C. 21A.37.070 regarding sending site applications for certification under K.C.C.
94 chapter 21A.37;

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

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

100 Z. Appeals of decisions not to issue a citation or a notice and order under K.C.C.
101 23.36.010.A.2;

102 AA. Appeals of permit fee estimates and billings by the department of permitting
103 and environmental review, as provided in K.C.C. chapter 27.50;

104 BB. Appeals from decisions of the department of natural resources and parks
105 related to permits, discharge authorizations, violations and penalties under K.C.C.
106 28.84.050 and 28.84.060;

107 CC. Appeals of transit rider suspensions under K.C.C. 28.96.430;

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

111 ~~((DD.))~~ EE. Other applications or appeals that are prescribed by ordinance.

112 SECTION 3. Ordinance 18230, Section 16, and K.C.C. 20.22.070 are each
113 hereby amended to read as follows:

114 A. K.C.C. 20.22.080 applies to all appeals to the office of the hearing examiner.
115 If there is a direct conflict between the appeal provisions in K.C.C. 20.22.080, and the
116 appeal provisions found in subsection B. of this section, the appeal provisions found in
117 subsection B. of this section shall control.

118 B. The provisions for appealing the following decisions are found in the
119 following chapters of the King County Code:

- 120 1. Career service review, K.C.C. chapter 3.12A;
- 121 2. Appeals under K.C.C. Title 6, except for for-hire transportation, K.C.C.
122 chapter 6.64, shall follow this chapter;
- 123 3. Discrimination and equal employment opportunity in employment by
124 contractors, subcontractors and vendors, K.C.C. chapter 12.16;
- 125 4. Unfair housing practices, K.C.C. chapter 12.20;
- 126 5. Regional motor sports facility, K.C.C. 21A.55.105;
- 127 6. Abandoned, wrecked, dismantled or inoperative vehicles, K.C.C. chapter
128 23.10;
- 129 7. Citations, K.C.C. chapter 23.20;
- 130 8. Penalty appeals, K.C.C. chapter 23.32;
- 131 9. Permit fee appeals, K.C.C. chapter 27.50; ((and))
- 132 10. Transit rider suspension appeals, K.C.C. 28.96.430; and
- 133 11. Other appeals that are prescribed by ordinance.

134 NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 20.22 a

135 new section to read as follows:

136 For rider suspension appeals under K.C.C. 28.96.430:

137 A. The examiner shall review the facts and the legal basis for the suspension.

138 The transit division in the department of transportation shall bear the burden of proving
139 by a preponderance of the evidence both the violation and that the sanction it has
140 imposed is consistent with King County ordinances and transit division policy. Absent
141 contrary evidence, the transit division officer's report is sufficient to fulfill the
142 requirements of K.C.C. 20.22.130 and meet the division's burden of proof. A criminal
143 conviction for the same conduct underlying the suspension will be dispositive of any
144 factual challenge to the suspension. A criminal conviction shall not be dispositive of any
145 other challenge, such as a jurisdictional challenge, to the suspension. Exoneration or a
146 finding of "not guilty" on a criminal charge for the same conduct underlying the
147 suspension shall result in the examiner finding that the suspension lacks a sufficient
148 factual basis and vacating the suspension. Dispositional continuances or deferred
149 prosecutions shall have no bearing on the examiner's factual findings.

150 B. Individuals appealing their suspensions may not challenge the constitutionality
151 of the suspension process through an examiner appeal.

152 SECTION 5. Ordinance 11950, Section 18 (part), as amended, and K.C.C.
153 28.96.430 are each hereby amended to read as follows:

154 A. Violation of a rule or provision of this chapter or any federal, state or local
155 law shall be cause for suspension of a person's privileges to enter upon transit property
156 and use the transit system. Such a suspension may be ordered by the transit division in
157 the department of transportation personnel authorized by the director or by the authorized

158 personnel of a contracted service provider in accordance with the terms of the applicable
159 service contract. Notice of such a suspension shall be in writing and shall inform the
160 person suspended of the cause, the period of the suspension, and that failure to comply
161 shall be grounds for criminal prosecution. Service of the suspension notice may be
162 accomplished by personal delivery or by mailing a copy, addressed to the person's last
163 known address, by certified U.S. mail. Unless otherwise specified on the notice, the
164 suspension shall take effect immediately upon actual or constructive receipt of the notice
165 by the person being excluded. A person may not defeat the effectiveness of a suspension
166 by refusing to accept the notice. Receipt of the notice is construed to have been
167 accomplished if the person knew or reasonably should have known from the
168 circumstances that the person's privileges to enter upon transit property and use the transit
169 system have been suspended. Receipt of the notice is also construed to have been
170 accomplished two days after a suspension notice is placed in the U.S. mail. Failure to
171 immediately comply with such a suspension order shall be grounds for prosecution for
172 criminal trespass.

173 ~~((A))~~ B. Before the expiration of the suspension period, a person whose ((use))
174 privileges to enter upon transit property and use the transit system have been suspended
175 may ~~((submit a written))~~ request ~~((for))~~ a review of or appeal the suspension ~~((, which~~
176 ~~request must be received by the director within ten calendar days after the effective date~~
177 ~~of the suspension))~~ in the following ways:

178 1. In accordance with an intake process the transit division shall publish, the
179 suspended person may request mitigation through a rider contract between the person and
180 the division that would allow the individual to enter upon transit property and use the

181 transit system during the suspension period under certain conditions delineated in the
182 contract. Upon receiving a timely mitigation request, the ~~((director shall designate a~~
183 ~~person to review the suspension.))~~ division's policy for mitigation reviews shall apply.
184 The suspension shall be reviewed within five business days and a decision rendered
185 within two days of the review's conclusion. If the request is not eligible for mitigation or
186 is initially declined, it shall be referred to a mitigation panel for a hearing to occur within
187 seven days, or later if requested by the suspended person. The suspended person may
188 orally present the suspended person's reasons why the suspension should not be served,
189 by phone or in person at a time and location mutually agreed upon ~~((with the reviewer)).~~
190 Within ten ~~((calendar))~~ days after the ~~((suspended person presents the suspended person's~~
191 ~~reasons, the reviewer))~~ proceeding, the mitigation panel shall make a decision affirming,
192 modifying or terminating the suspension. The ~~((reviewer's))~~ mitigation panel's decision
193 to either issue or not issue a rider contract mitigating the suspension shall be final and
194 unreviewable.

195 2.a. The suspended person may challenge the facts or the legal basis for the
196 suspension by filing an appeal in accordance with K.C.C. 20.22.080, except that the filing
197 deadline in K.C.C. 20.22.080.B. and the filing fee in K.C.C. 20.22.080.D. do not apply.

198 b. The hearing examiner shall process appeals in accordance with section 4 of
199 this ordinance. Because of the processing timeline K.C.C. 20.22.100.B. sets for appeals,
200 a suspended person who has appealed or intends to appeal the suspension may request
201 mitigation through a rider contract temporarily allowing the privilege to enter upon transit
202 property and use the transit system during the appeal process.

203 c. The hearing examiner's decision shall be final and unreviewable. However,

204 a suspended person who has had the privilege to enter upon transit property and use the
 205 transit system suspended who has unsuccessfully appealed the suspension to the hearing
 206 examiner may still seek mitigation through a rider contract from the division following
 207 the hearing examiner's decision.
 208

Ordinance 18709 was introduced on 2/5/2018 and passed by the Metropolitan King County Council on 4/16/2018, by the following vote:

Yes: 8 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr.
 McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles and
 Ms. Balducci
 No: 0
 Excused: 1 - Mr. Dunn

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

J. Joseph McDermott, Chair

ATTEST:

Melani Pedroza, Clerk of the Council



2018 APR 20 AM 9:30
CLERK
KING COUNTY COUNCIL

RECEIVED

APPROVED this 18 day of APRIL, 2018.

Dow Constantine, County Executive

Attachments: None