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Title: AN ORDINANCE relating to code enforcement penalties; and amending Ordinance 13263, Section 9, as amended, and K.C.C. 23.02.080, Ordinance 13263, Section 41, and K.C.C. 23.32.050, Ordinance 13263, Section 55, and K.C.C. 23.32.100, Ordinance 17191, Section 56, and K.C.C. 23.32.110 and Ordinance 17191, Section 57, and K.C.C. 23.32.120.

Sponsors: Joe McDermott, Kathy Lambert

Indexes:

Code sections: 23.02.080 - *, 23.32.050 -, 23.32.100 - *, 23.32.110 - *, 23.32.120 - *

Attachments: 1. Ordinance 17591.pdf, 2. 04-30-13 Staff Report, 3. 2013-0187 Staff Report - penalty waiver (5-7-13).doc, 4. Attachment 2 - Amendment 1 (5-7-13).docx, 5. 2013-0187 Staff Report - penalty waiver(5-21-13).doc, 6. 2013-0187 Revised Staff Report - penalty waiver.doc

Date	Ver.	Action By	Action	Result
5/28/2013	2	Metropolitan King County Council	Hearing Held	
5/28/2013	2	Metropolitan King County Council	Passed	Pass
5/21/2013	1	Transportation, Economy, and Environment Committee	Recommended Do Pass Substitute Consent	Pass
5/7/2013	1	Transportation, Economy, and Environment Committee	Deferred	
4/30/2013	1	Transportation, Economy, and Environment Committee	Deferred	
4/15/2013	1	Metropolitan King County Council	Introduced and Referred	

AN ORDINANCE relating to code enforcement penalties; and amending Ordinance 13263, Section 9, as amended, and K.C.C. 23.02.080, Ordinance 13263, Section 41, and K.C.C. 23.32.050, Ordinance 13263, Section 55, and K.C.C. 23.32.100, Ordinance 17191, Section 56, and K.C.C. 23.32.110 and Ordinance 17191, Section 57, and K.C.C. 23.32.120.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 13263, Section 9, as amended, and K.C.C. 23.02.080 are each hereby amended to read as follows:

A. Service of a citation, notice of compliance ~~((or))~~, notice and order or penalty waiver decision 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 or penalty waiver decision 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 or penalty waiver decision at that person's house of usual abode with a person of suitable age and discretion who resides there.

2. Service directed to either the landowner ~~((and/))~~ or occupant of the property, or both, may be made by posting the citation, notice of noncompliance ~~((or))~~, notice and order or penalty waiver decision 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 or penalty waiver decision 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))~~ the person's last known address, at the address of the violation~~((;))~~ or at the address of the person's 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 or penalty waiver decision 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 or penalty waiver decision shall not invalidate any proceedings as to any other person duly served.

SECTION 2. Ordinance 13263, Section 41, as amended, and K.C.C. 23.32.050 are each hereby amended to read as follows:

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 ~~((fines and 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 ~~finance~~ 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 ~~((fines or civil))~~ penalties were assessed in error; or
3. Notice failed to reach the property owner due to unusual circumstances.

~~((B-))~~ C. Civil ~~((fines and civil))~~ penalties, in whole or in part, may be waived by the director, with the concurrence of the director of the department of ~~((finance))~~ executive services or ~~((it's))~~ 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 ~~((or))~~, notice of noncompliance, stop work order or newly assessed penalty invoice was issued.

~~((C-))~~ 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.

SECTION 3. Ordinance 17191, Section 55, and K.C.C. 23.32.100 are each hereby amended to read as follows:

A. ~~((The invoice for civil penalties imposed under this title shall include a statement advising the person responsible for code compliance that there is a right to appeal any civil penalties assessed for any time period after achieving compliance with a notice and order, stop work order or voluntary compliance agreement.~~)) 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. ~~((The person billed in an invoice for civil penalties who believes that civil penalties were assessed for a time period after achieving compliance may file an appeal with the department.))~~ In order to be effective, a written notice and statement of appeal must be received by the department within fourteen days from ~~((the date of the invoice))~~ 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 violations for which civil penalties were assessed; and~~
- 4.)) 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 ~~((assessment of civil penalties))~~ director's penalty waiver decision within the applicable time limits renders the ~~((invoiced amount))~~ decision final.

SECTION 4. Ordinance 17191, Section 56, and K.C.C. 23.32.110 are each hereby amended to read as follows:

~~((The hearing examiner shall conduct a closed record hearing on the appeal of the assessment of civil penalties.))~~ The burden is on the appellant to demonstrate by a preponderance of the evidence that civil penalties were assessed after achieving compliance or that the penalties are otherwise erroneous or excessive under the circumstances. If the hearing examiner grants the appeal, the examiner shall modify the assessment of civil penalties accordingly. If the hearing examiner denies the appeal in whole or in part, assessed civil penalties shall be reinstated in full. The hearing examiner's decision is final.

SECTION 5. Ordinance 17191, Section 57, and K.C.C. 23.32.120 are each hereby amended to read as follows:

A. In an appeal of the assessment of civil penalties, the appellant may ~~((only challenge whether civil penalties were assessed for any time period after achieving compliance. The hearing examiner's determination is limited to finding whether civil penalties were assessed for any time period after achieving compliance and to establishing the proper penalty dates if the appeal is granted))~~ not challenge findings, requirements or other items, that could have been challenged during the appeal period for a citation, notice and order, notice of noncompliance, stop work order or earlier penalty.

B. The appeal of the assessment of civil penalties to the hearing examiner shall be governed by K.C.C. chapters 20.24 and 23.36, except that where specific provisions in this chapter conflict with KCC chapter ~~((s))~~ 20.24 or 23.36, the provisions of this chapter shall govern.

C. Upon the timely receipt of a statement of appeal, the assessment of civil penalties shall be tolled pending the hearing examiner's decision. New penalties may be assessed and liens issued as warranted, but interest shall not accrue on, and collection shall not be pursued for, penalties subject to a pending appeal. Should the hearing examiner deny or dismiss the appeal, the civil penalties shall be applied retroactively from the date that compliance was required in the notice and order, stop work order, voluntary compliance agreement or the compliance dates set in the hearing examiner's decision on an appeal of a notice and order.