

## Legislation Text

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**File #:** 2018-0113, **Version:** 2

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

### PREAMBLE:

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

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

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

The portion of the work plan which identified recommended changes to the policies governing suspension of use of Metro Transit services has been advanced to such a degree that it is now ready for implementation, the result of such an implementation is anticipated to provide due process protections for those issued suspensions, and the impacts of such suspensions can be more readily mitigated to achieve the desired outcomes.

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

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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

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

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

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

C. The fee for filing an appeal to the council under section K.C.C. 20.22.230.D. is two hundred fifty dollars.

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

The examiner shall issue final decisions in the following cases:

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

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

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

D. Appeals of electric vehicle recharging station penalties of the department of transportation under

K.C.C. 4A.700.700;

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

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

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

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

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

J. Appeals of decisions of the director of the department of natural resources and parks on surface water drainage enforcement under K.C.C. chapter 9.04;

K. 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 under K.C.C. chapter 9.08;

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

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

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

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

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

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

- R. Appeals of decisions regarding mitigation payment system, commute trip reduction and intersection standards under K.C.C. Title 14;
- S. Appeals of suspensions, revocations or limitations of permits or of decisions of the board of plumbing appeals under K.C.C. chapter 16.32;
- T. Appeals of all Type 2 decisions under K.C.C. chapter 20.20, with the exception of appeals of shoreline permits, including shoreline substantial development permits, shoreline variances and shoreline conditional uses, which are appealable to the state Shoreline Hearings Board;
- U. Appeals of SEPA decisions, as provided in K.C.C. 20.44.120 and public rules adopted under K.C.C. 20.44.075;
- V. Appeals of completed farm management plans under K.C.C. 21A.30.045;
- W. Appeals of decisions of the interagency review committee created under K.C.C. 21A.37.070 regarding sending site applications for certification under K.C.C. chapter 21A.37;
- X. Appeals of citations, notices and orders, notices of noncompliance, 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;
- Y. 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;
- Z. Appeals of decisions not to issue a citation or a notice and order under K.C.C. 23.36.010.A.2;
- AA. Appeals of permit fee estimates and billings by the department of permitting and environmental review, as provided in K.C.C. chapter 27.50;
- BB. Appeals from decisions of the department of natural resources and parks related to permits, discharge authorizations, violations and penalties under K.C.C. 28.84.050 and 28.84.060;
- CC. Appeals of transit rider suspensions under K.C.C. 28.96.430;
- DD. Appeals of department of public safety seizures and intended forfeitures, when properly designated by the chief law enforcement officer of the department of public safety as provided in RCW 69.50.505; and

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

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

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

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

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

NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 20.22 a new section to read as follows:

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

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

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

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

A. Violation of a rule or provision of this chapter or any federal, state or local law shall be cause for suspension of a person's privileges to enter upon transit property and use the transit system. Such a suspension may be ordered by the transit division in the department of transportation personnel authorized by the director or by the authorized personnel of a contracted service provider in accordance with the terms of the applicable service contract. Notice of such a suspension shall be in writing and shall inform the person suspended of the cause, the period of the suspension, and that failure to comply shall be grounds for criminal prosecution. Service of the suspension notice may be accomplished by personal delivery or by mailing a copy, addressed to the person's last known address, by certified U.S. mail. Unless otherwise specified on the notice, the suspension shall take effect immediately upon actual or constructive receipt of the notice by the person being

excluded. A person may not defeat the effectiveness of a suspension by refusing to accept the notice. Receipt of the notice is construed to have been accomplished if the person knew or reasonably should have known from the circumstances that the person's privileges to enter upon transit property and use the transit system have been suspended. Receipt of the notice is also construed to have been accomplished two days after a suspension notice is placed in the U.S. mail. Failure to immediately comply with such a suspension order shall be grounds for prosecution for criminal trespass.

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

1. In accordance with an intake process the transit division shall publish, the suspended person may request mitigation through a rider contract between the person and the division that would allow the individual to enter upon transit property and use the transit system during the suspension period under certain conditions delineated in the contract. Upon receiving a timely mitigation request, the ~~((director shall designate a person to review the suspension.))~~ division's policy for mitigation reviews shall apply. The suspension shall be reviewed within five business days and a decision rendered within two days of the review's conclusion. If the request is not eligible for mitigation or is initially declined, it shall be referred to a mitigation panel for a hearing to occur within seven days, or later if requested by the suspended person. The suspended person may orally present the suspended person's reasons why the suspension should not be served, by phone or in person at a time and location mutually agreed upon ~~((with the reviewer))~~. Within ten ~~((calendar))~~ days after the ~~((suspended person presents the suspended person's reasons, the reviewer))~~ proceeding, the mitigation panel shall make a decision affirming, modifying or terminating the suspension. The ~~((reviewer's))~~ mitigation panel's decision to either issue or not issue a rider contract mitigating the suspension shall be final and unreviewable.

2.a. The suspended person may challenge the facts or the legal basis for the suspension by filing an

appeal in accordance with K.C.C. 20.22.080, except that the filing deadline in K.C.C. 20.22.080.B. and the filing fee in K.C.C. 20.22.080.D. do not apply.

b. The hearing examiner shall process appeals in accordance with section 4 of this ordinance.

Because of the processing timeline K.C.C. 20.22.100.B. sets for appeals, a suspended person who has appealed or intends to appeal the suspension may request mitigation through a rider contract temporarily allowing the privilege to enter upon transit property and use the transit system during the appeal process.

c. The hearing examiner's decision shall be final and unreviewable. However, a suspended person who has had the privilege to enter upon transit property and use the transit system suspended who has unsuccessfully appealed the suspension to the hearing examiner may still seek mitigation through a rider contract from the division following the hearing examiner's decision.