

Permitting and Code Enforcement Reform

Presentation to Lauren Smith
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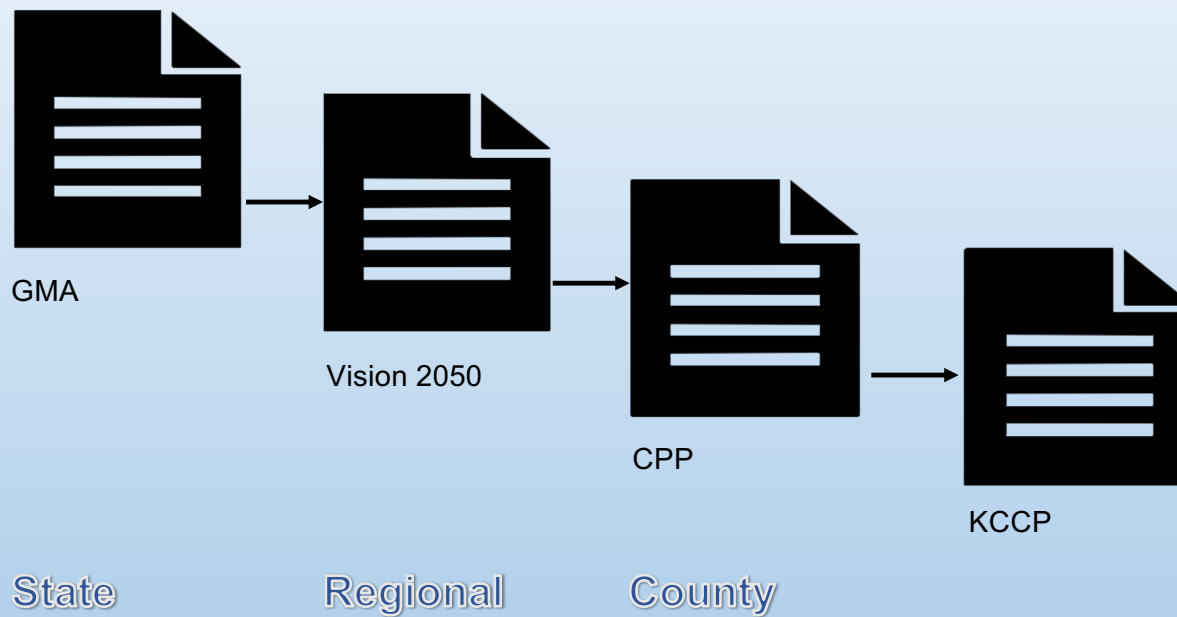
Joint Team

August 22, 2024

Agenda

- Big Picture Viewpoint
- Why Reform Needed Now
- Consequences of No Meaningful Action
- Problem: Key Observations and Issues
- Solution: Constraints and Recommendations
- Metrics Recommendations
- Appendices

Big Picture: Legal Policy Framework for Rural



- GMA informs downstream policies in cascading manner

Big Picture: Our View of P & CE

- In KC Unincorporated Rural area (A, F, M and RA zones), the Rule of Law for Land Use is Ignored
 - KC issues permits that should NOT be issued
 - KC does NOT effectively enforce the code
 - Public believes KC does not enforce code or play fair
 - Permitting and Code Enforcement are essential public services

Big Picture: Our View of P & CE

- Recent projects will make problem worse
 - The 2023 CE audit did not analyze many key issues and thus failed to recommend meaningful solutions
 - The current proposed code enforcement ordinance will increase violations
 - SB 5290 will likely increase violations
- KC has dug a huge hole that requires an initiative to correct
 - Backlog of cases, growing harm to people and environment, and rapidly increasing negative public perception
- Real progress can be made now without new legislation or huge budget increases

Big Picture: History of P & CE Issues

- Many documented P & CE issues since the 1970's
- Many audits (A4)
- Many callouts from various plans and citizens

"If current and future regulations to protect surface water features are not enforced adequately, the continued loss of and impact to these features will result in further ...habitat damage." "Additional enforcement and inspection staff should be hired to reduce development related code violations ..."

Page 41, Bear Creek Basin Plan transmitted to Council July 1990.

- November 2022 Proviso by KC Council
 - Focus on shortening case resolution timeline
 - Resulted in current proposed code enforcement ordinance
- Recent pressure from KC LS&LU committee to reduce caseload (1800+)
 - Resulted in 2023 code enforcement audit
- Problems persist and are escalating today

Why Reform Needed Now

Current Macro Influences

- Escalating Climate Change and Biodiversity Loss Crises
 - Impacts food security, clean water, physical and mental health
- Population Increase (PSRC estimates 872k growth in KC by 2050)
 - Creates pressure to sprawl, impacting critical rural and resource zones
- Social Equity & Justice
 - Marginalized people suffer the most

Consequences of No Meaningful Action

- At a tipping point - KC Rural will be wiped out if no action taken
- Drives up cost of agricultural land and rural residential housing
- Reduces ability to meet Climate Action Plan
- Defeats goals of coordinated state, regional, and county laws and policies – GMA, MPP, CPP, KCCP
- Undercuts key KC initiatives and programs – FPP, APDs, CFT, Waterways 2000, Land Conservation, Equity, Local Food, Social Justice, Salmon Recovery
- Rapidly increasing public awareness of issue escalates violations
- Increases taxpayer and private dollars spent on lawsuits

Consequences of No Meaningful Action

- Angers citizens
 - Expect rule of law to be upheld; required for civil society
 - Know harms environment
 - Know harms property rights
 - Zoning defines property rights and enforcement protects them
 - Diminishes quality of life
 - Increases bad will
 - Resource preservation tax dollars being flushed; increases resistance to new requests
 - Cost and effort to fight the county in court
 - Social justice issue for those who can't afford to fight

Problems: Code Enforcement

- Two major types of commercial CE cases
 - Permit Conditions ignored and papered over with additional permits
 - Land use violations ignored, and businesses entrenched by KC requesting permits for secondary issues
- Most environmental & safety issues stem from CUP violations and unchecked land use violations
- Most egregious violations are repeats by same violators
- Questionable priorities – go after little guys for permits but ignore commercial violators
- Most egregious violators knowingly violate

Businesses Knowingly Violate for Lower Costs

- Tenhulzen appeals to Hearing Examiner a KC Notice and Order to shut down illegally operating offices for their construction businesses on an RA 5 property where no one was living onsite
- Exchange with Hearing Examiner pro tem Alison Moss:

HE: "When did your businesses move to the [RA 5] property?"

Mike Tenhulzen: "We had a lease at a different location in Bellevue through June 30, 2021. We operated there until they jacked up the rates so high that we couldn't justify affording any of that."

HE: Did you know at that time [when you moved to the RA 5 property] that businesses were allowed in the RA 5 zone only as a Home Occupation or Home Industry?"

Mike Tenhulzen: "Yes"

- HE Moss ordered the businesses closed
- Mike Tenhulzen and Shari Tenhulzen (2023 President, Master Builders Assoc of King and Snohomish Counties) are the business owners of the violating businesses in this hearing
- Dec 15, 2022 hearing video on KC public record. Exchange starts at minute 40:30

Problems: Code Enforcement

- Gross inefficiencies in processes – some workload issues self-inflicted
- Internal policies block effective use of existing tools in Title 23 to encourage compliance and recover more costs
 - E.g., Code says: Penalties outlined in a Notice & Order or Stop Work Order are to accrue until a violation case is resolved
 - Department adopted policy: Freeze accruals at 60 days
 - See (A7) for more examples
- P & CE emphasizes serving violator, not public. Violator is “customer,” public is “complainer”

Problems: Permitting

- Department of Permitting appear to be incentivized to issue permits
 - Due to self-funding accounting structure for permitting
 - Indirectly due to tax revenues to county from businesses permitted in Rural. See (A5)
- Approve new (non enforcement related) permit requests when they shouldn't
 - E.g., Ignore lot size requirements, issue TUPs for urban serving businesses
 - See (A2) – KC required to follow law when issuing permits
- Issue permits resulting from code enforcement cases where;
 - Primary land use activity zoning violation is ignored, while county seeks permits for secondary issues such as building improvements, parking lot grading, etc.
 - TUP, CUP, SUP violations are papered over with new permits allowing violations

Problems: P & CE Summary

- P & CE has an engrained culture of ignoring code and papering over violations for commercial operators
- Driving forces not entirely clear, but may stem from goal to generate permitting revenue, desire to “make it work for customer” (violator), and/or an unwillingness to take on commercial players
- Some workload and budget issues are self-inflicted
- Not effectively using existing enforcement tools

Solution

- **Launch new Executive-led initiative** to tackle long-term, ingrained P & CE problems

Initiative Constraints

- Massive backlog, engrained culture and perceptions, limited budgets, overworked and limited staff, and limited PAO and court resources
- Must follow laws
- Can't fix everything at once
 - Needs to recognize it's a multi-step process to clear backlog and get to a workable steady state
- New factors could emerge requiring changes in strategy and tactics (e.g. pandemic)

Initiative Recommendation

- Focus on effective enforcement of a limited number of harm-causing and high-profile for-profit business cases in a timely fashion, using all available tools
 - To gain and show meaningful traction
 - To shift public perception about county willingness to uphold rule of law
 - To demonstrate cost and pain of being a violator
 - Local organizations can support KC in shifting public perceptions
 - See (A6) for recommended list of priority cases to consider
- Select cases that are meaningful and achievable

Initiative Recommendation Details

- No new permits allowed on TUP/CUP/SUP violation cases
 - Must be resolved with fines, abatement and other means
- Land use business activity violations on a parcel must be prioritized and fully addressed before any permits for secondary violations are pursued
- Use abatement process, not permits, for building/grading issues outside legal limits

Initiative Recommendation Details

- Move priority cases through enforcement/notices timeline on schedule
 - May need manual tracking (excel) short term if existing tools not adequate
- Fully use enforcement tools and leverage available in Title 23
- Increase fines and collection for priority violators
 - Adopt clarifications to citation and civil penalty authority and increased fines in proposed code enforcement ordinance

Initiative Recommendation Details

- Book and notify, but do not actively pursue, cases not in priority list until adequate staff time available to fully pursue
- Do not close cases until compliance is achieved
- Establish procedures to utilize citations for simple violations
 - Only 4% of cases since 2015 had any penalty assessed
- Fix handful of issues with KC code as part of Comp Plan update

Initiative Recommendation Details

- No processing of new conditional permits if staff time not available to adequately monitor
- No processing of permit requests for new activities from violators that have outstanding violations on other activities/parcels, until:
 - Outstanding violations are resolved, and abatement occurred
- No processing of new permits for serial violators (x strikes rule)
 - Or if not allowed by law, steep fees should be added
- Explicitly identify the customer as the citizens of KC and their shared environment, not the violators
- Provide air cover to Department Heads when they say no

Metrics Recommendations

- Metric emphasis right now should NOT be on reducing number of open cases (1,800+)
 - Encourages closing of cases that are not adequately resolved or low priority
 - Encourages tackling more cases that can be effectively handled
 - Doesn't allow for needed shifts in culture and practices
 - Only add as key metric once P & CE reaches a reasonable steady state
- Add metric for effective resolution on selected priority cases
- Add metric for timeliness on selected priority cases

Metrics Recommendations

- For Head of Permitting position:
 - Remove top-line revenue responsibility
 - Add metric for cost recovery on individual permits issued (as per code allowance)
 - Add key metric for compliance with rule of law / code
 - Add metrics for communication, timeliness, and efficiency of permitting process
- For Head of Code Enforcement position:
 - Add metric for fully resolving cases (no papering over or premature closure)
 - Add metric for following established rules and processes
 - Add metric for following rule of law
 - Add metric for adhering to timeline for top priority cases

Appendices

A1: Joint Team Organizations

- Enumclaw Plateau Community Association (EPCA)
- Friends of Sammamish Valley (FoSV)
- Greater Maple Valley Unincorporated Area Council (GMVUAC)
- Green River Coalition (GRC)
- Green Valley/Lake Holm Association (GV/LHA)
- Hollywood Hill Association (HHA)
- Soos Creek Area Response (SCAR)
- Upper Bear Creek Unincorporated Area Council (UBCUAC)

A1: Joint Team Leaders

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A2: GMA

**RCW [36.70A.120](#) Planning activities and capital budget decisions—
Implementation in conformity with comprehensive plan.**

Each county and city that is required or chooses to plan under
RCW [36.70A.040](#) shall perform its activities and make capital budget decisions
in conformity with its comprehensive plan.

A2: KC Required to Follow Code When Issuing Permits

Shall means required under law

21A.50.030 Violations defined. No building permit or land use approval in conflict with this title shall be issued. Structures or uses that do not conform to this title, except legal nonconformances specified in K.C.C. chapter 21A.32 and approved variances, are violations subject to the enforcement, penalty and abatement provisions of K.C.C. Title 23

21A.42.030 Code compliance review — decisions and appeals. A. The department shall approve, approve with conditions, or deny development proposals based on compliance with this title and any other development condition affecting the proposal.

A2: KC Required to Follow Code When Issuing Permits

21A.08.025 Accessory uses prohibited if not expressly permitted. Any accessory use not expressly permitted by this chapter or by the director shall be prohibited. The director may determine whether any accessory use on a site is incidental or subordinate to a principal use on the same site and whether uses not listed as accessory uses are customarily associated with a principal use. The director shall consider the purpose of the zone in K.C.C. chapter 21A.04 in making these determinations. (Ord. 17841 § 23, 2014).

21A.32.040 Nonconformance - abatement of illegal use, structure or development. Any use, structure or other site improvement not established in compliance with use and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal pursuant to the provisions of K.C.C. Title 23. (Ord. 10870 § 541, 1993).

A3: KC Goals and Public Expectation for Enforcement

23.01.010 Name and purpose.

A. This title shall be known as "Code Compliance". The purpose of this title is to identify processes and methods to encourage compliance with county laws and regulations that King County has adopted pursuant to Article XI, Section 11 of the Washington Constitution and other state laws to promote and protect the general public health, safety and environment of county residents. This title declares certain acts to be civil violations and establishes non-penal enforcement procedures and civil penalties. This title also declares certain acts to be misdemeanors.

B. **It is the intention of the county to pursue code compliance actively and vigorously in order to protect the health, safety and welfare of the general public.** This county intention is to be pursued in a way that is consistent with adherence to, and respectful of, fundamental constitutional principles.

C. While this title does authorize King County to take action to enforce county laws and regulations, it shall not be construed as placing responsibility for code compliance or enforcement upon King County in any particular case, or as creating any duty on the part of King County to any particular person or class of persons. (Ord. 13263 § 1, 1998).

23.01.020 Statement of goals. It is the policy of King County to emphasize code compliance by education and prevention as a first step. This policy is designed to ensure code compliance and timely action that is available to all persons and uniform in its implementation. While warnings and voluntary compliance are desirable as a first step, enforcement and civil penalties should be used for remedial purposes as needed to assure and effect code compliance. Abatement or remediation should be pursued when appropriate and feasible. Uniform and efficient procedures, with consistent application tailored by regulation to each department's mission, should be used to accomplish these goals. (Ord. 13263 § 2, 1998).

A4: History: P & CE Reviews/Audits

Current Ongoing Permitting Audit

[2023 CE Audit](#)

[Department of Permitting & Environmental Review](#) — Local Services - Permitting (DLS-PER); Performance Audit: October 10, 2017; Follow-up report: August 2, 2021

[Performance audit of Code Enforcement, October 20, 2008](#)

[Performance audit of new construction assessments, June 13, 2006](#)

[Performance Audit of Department of Development and Environmental Services Workload and Staffing, September 28, 2004](#)

[Department of Development and Environmental Services – Permitting Best Practices Review – Special Study, March 2, 2004](#)

[Management Audit King County Permit Processes and Practices, October 3, 2000](#)

[SEPA Revenues and Accounts Receivable](#) — Local Services - Permitting (DLS-PER); Financial Review: February 5, 1993

[BALD Financial Guarantee Administration](#) — Local Services - Permitting (DLS-PER); Management Audit: September 25, 1992

[Sierra Permits System](#) — Local Services - Permitting (DLS-PER); Management Audit: May 29, 1992

[BALD Permit Fee Collection](#) — Local Services - Permitting (DLS-PER); Financial Review: February 7, 1985

[BALD Employee Questionnaire](#) — Local Services - Permitting (DLS-PER); Other: October 8, 1976

A5: County Tax Revenue Incentivizes Permitting Urban Serving Businesses in Rural

- Quotes from then KC Councilmember Kathy Lambert, Seattle Times, August 22, 2016

“And with the County facing a \$35 million to \$50 million budget deficit in 2017,” she said, “the additional sales-tax revenue from new tasting rooms or other retail ventures would be welcome.”

“The City of Woodinville wants all the money to come to them. I think we should share,” Lambert said.

A6: Top-Priority Parcels to Consider

- Quality Aggregates
- Elk Heights Gravel Pit
- Pacific Topsoils
- Cedar Shores Land
- Cedar Grove Composting
- Infinity Event Center
- Fox Hollow event center
- Taylor Mtn event center
- Reserve Silica
- Erickson
- Kangley Pit
- Cadman Black Diamond
- John Henry Coal Mine
- Milo version 2
- Red Barn event center
- Wong
- Hoffman
- TRF and Pacific Facilities Services
- Tenhulzen
- Enumclaw Recycling Center
- Aubel
- Pacific Raceways
- Franklin Ridge Minerals
- Hyde Extension
- Palmer Junction Gravel & event center

A7: Title 23 Tools Not Fully Utilized

- Penalties outlined in an N&O or Stop Work Order are to accrue until a violation case is resolved. DoP policy is to freeze accruals at 60 days.
- If penalties go unpaid, after 90 days, a lien can be placed against the real property involved. A lien can be subsequently updated if penalties continue to accrue. DoP rarely if ever utilizes this.
- If County costs of enforcement exceed penalty accrual, overage may be added to the bill and lien (staff time, PAO time, abatement costs, etc.)

A7: Title 23 Tools Not Fully Utilized by DoP

- Recovery of unpaid penalties and costs may be accomplished by exercising a lien at time of property sale or by foreclosure. DoP policy is to forgive any accrued penalties at sale of property or when compliance is compelled by court order
- Stop Work Orders (SWO) are rarely utilized. Instead, the internally developed Already Built Construction (ABC) policy is used to permit construction that might otherwise have not been approved due to non-compliance with building, zoning and/or resource protection codes
- Fines for violation of SWO can accrue as long as work continues in disregard to the order. Rarely utilized.

A8: Comments on 2023 CE Audit

- Too narrowly scoped
 - Did not include Permitting which is integral to Code Enforcement issues
 - Missed key top-of-funnel issues of culture, policies & practices, metrics, and impacts of public perceptions
- Misstated purpose of Title 23
 - T23 is enforcement tools, not zoning, building, critical areas, etc. code
 - Impacts framing of problem
- Missed key issue that commercial repeat violators are the major problem
- Some recommendations will have significant runways and costs (tools)

A8: Comments on 2023 CE Audit

- Focused mostly on back-office improvements (tools, data entry), communication (to council & violators) and processes (monitoring data)
 - Most are good, but don't get to key issues
- Agree that county should raise fines on commercial violators (Reco 19)
 - But not clear what other Title 23 changes needed per County response to audit
 - Focus should be on using tools already in Title 23 first
- Overall, some good stuff but down-in-weeds and missed big picture changes needed to effect real change and progress