

Department of Development and Environmental Services (DDES)

900 Oakesdale Avenue Southwest • Renton, Washington 98057-5212 • 206-296-6600 • TTY 206-296-7217

Laws and Rules Governing Building and Development

• FREQUENTLY ASKED QUESTIONS •

Visit the DDES Web site at www.kingcounty.gov/permits for more information

King County DDES has created customer information bulletins to inform the general public about the effect of codes and regulations on their projects. These bulletins are not intended to be complete statements of all laws and rules and should not be used as substitutes for them. If conflicts and questions arise, current codes and regulations are final authority. Because the codes and regulations may be revised or amended at any time, consult King County staff to be sure you understand all requirements before beginning work. It is the applicant's responsibility to ensure that the project meets all requirements of applicable codes and regulations.

DDES Customer Information Bulletin #

42

For alternate formats, call 206-296-6600.

What is the purpose of the Department of Development and Environmental Services?

The Department of Development and Environmental Services (DDES) is a permit processing and land use agency. As such, it is directed by laws and rules enacted by legislative and administrative bodies at the local, State, and Federal levels. For example, King County ordinances are written into code, or law, and govern certain activities at the local level. It is the responsibility of DDES to ensure that applications for building and development permits, as well as other land use applications, comply with King County Code and other laws originating at different levels of government.

In addition to implementation and enforcement the laws and rules often require interpretation by DDES. This bulletin explains the County's process for code development and rulemaking, the role of code interpretation by DDES, and the distinction between an agency's internal procedures and the laws or rules that govern it.

Introduction

Each level of government has a similar hierarchy of law. The "Separation of Powers" Doctrine ensures that each branch of government has a separate function that acts as a check, or balance, to the other. The Legislative Branch enacts statutes or ordinances, and the Executive Branch promulgates administrative rules. Promulgation (defined as "to make known, especially by public declaration") includes the public process by which an administrative agency adopts administrative rules.

On the national level, Congress enacts statutes, or public laws, which are codified in the United States Code (USC). The Federal administrative agencies, functioning as part of the Executive Branch, promulgate administrative rules that are compiled in the Code of Federal Regulations (CFRs).

On the Washington State level, the Washington Legislature passes statutes that are codified in the Revised Code of Washington (RCW). The State administrative agencies promulgate rules that are compiled in the Washington Administrative Code (WAC).

At the local level, the Metropolitan King County Council (King County's legislative branch) adopts ordinances that are codified in the King County Code (KCC). Administrative agencies, such as DDES, promulgate Administrative Rules that are kept in the agency's rules manual. The Rules are also filed with the Clerk of the Council, whose office is located in the King County Courthouse.

The following discussion describes the relationship between Legislation and Administrative Rules and sets forth the authority and/or limitations of each, focusing on King County. Implementation of regulations is also discussed, as well as agency interpretations and internal procedures.

Legislation

King County business, which includes the permit application process administered by DDES, is governed by ordinances adopted by the King County Council and enacted by the King County Executive. Operating as the Legislative Branch, the King County Council adopts ordinances that are codified in the King County Code (KCC).

When the Council adopts ordinances into law, it sets forth the broad policies and standards that are to be implemented. These ordinances and public policies are generally motivated by public concern about protecting the quality of life in the region. Some examples include the following:

- The Council decided it would be the policy of King County to increase protection of wetlands and other critical areas, as well as to increase protection of the public and its resources from injury and property damage that could result from flooding, erosion, and other natural hazards. The King County Council made this policy law by adopting the Sensitive (Critical) Areas Ordinance (Ordinance 9614), which became effective on November 27, 1990, and has been amended several times since then. This is now codified in Title 21A of the King County Code (KCC).
- The Council developed policies to ensure that school districts would have enough capacity to serve an increasing student population generated by new residential development. On November 18, 1991, the King County Council adopted the School Mitigation and Impact Fee Ordinance (Ordinance 10162) to establish concurrency standards and impact fees for public school districts. The ordinance became effective December 12, 1991, and is codified in Chapter 27.44 of the King County Code (KCC).

All legislative bodies operate within certain parameters, or limitations. For example, Council cannot pass laws that conflict with the following:

- The King County Charter (or Constitution); and/or
- State or Federal Laws, including State and Federal Constitutions.

Within DDES, various staff members research, write, and transmit legislation, proposed by the Executive, to the King County Council. This legislation relates to Titles in the King County Code (KCC) that pertain to the work done at DDES, such as permit review and processing, environmental review, etc.

What are Administrative Rules (also known as Public Rules)?

In King County government, administrative agencies such as DDES promulgate Administrative Rules that implement policies contained in legislation. Ordinances set forth broad outlines for regulation and give the agency power to adopt more specific rules to carry out the objectives of the ordinances. The responsibility for promulgating rules falls to the agency with the technical expertise necessary to implement legislative policies. This division of labor is consistent with the Separation of Powers Doctrine described in the introduction to this bulletin.

Ordinances are considered to be enabling legislation, authorizing agencies such as DDES to promulgate Administrative Rules. Chapter 2.98 of the King County Code (KCC) gives King County agencies general authority to promulgate rules and outlines the minimum requirements, or procedures, for promulgation. Chapter 2.98 of the King County Code (KCC) also provides that penalties can only be created by ordinances, not rules. Once promulgated, Administrative Rules have the force and effect of law.

What limitations are placed on King County agencies such as DDES in promulgating administrative rules?

- DDES cannot promulgate rules except to implement King County ordinances. For example, DDES has no authority to implement State Laws (WACs or RCWs) and cannot create rules where the King County Council has not first set policy in a properly adopted ordinance.
- Any rules promulgated by DDES cannot exceed the authority given it in the enabling ordinance, nor can the rules conflict with any ordinance.

DDES promulgates rules in consultation with the King County's Prosecuting Attorney. An Administrative Rule may be challenged by any citizen if that individual can prove that the rule does any of the following:

- Conflicts with statutory or constitutional authority;
- Goes beyond the agency's statutory authority;
- Has no justifiable basis; and/or
- Was not properly promulgated.

Administrative Rules generally provide specific criteria to guide DDES in making decisions during the permit review process. For example, Chapter 19.04 of the King County Code (KCC) contains broad provisions or requirements concerning what is known as a "Legal Lot," generally referred to when a piece of property is subdivided. The Administrative Rules for "Legal Lot" [Chapter 19-04 of the King County Code (KCC)] were later written to define the requirements for Legal Lot and to discuss circumstances associated with it.

Another example is the Administrative Rule [Chapter 20-44 of the King County Code (KCC)] written for SEPA consultant selection. This Rule implements the Environmental Impact Statement (EIS) selection provisions of Chapter 20.44.130 of the King County Code (KCC) for private development purposes. The Rule defines and gives qualifications and disqualifications for EIS consultants, lists the limitations of consultants and subconsultants, specifies requirements for the creation of a list of consultants, gives selection procedures, and outlines the procedures for payment.

The concept of King County's Administrative or Public Rules is derived from the Federal Administrative Procedures Act - the Federal Law upon which Chapter 2.98 of the King County Code is based. According to Federal Law, the intent of a rule is to implement, interpret, or prescribe law or policy. Regarding the rulemaking process, Chapter 2.98.010 of the King County Code (KCC) provides for the establishment of formal procedures through which ordinances adopted by the King County Council and enacted by the King County Executive are translated.

Chapter 2.98.020 of the King County Code (KCC) broadly defines a rule as "any agency order, directive or regulation of general applicability" that does any the following:

- Results in a violation for noncompliance;
- Involves payment of a fee;
- Pertains to hearing requirements; and
- Pertains to standards for permits and licenses.

Generally, the definition of an administrative rule is interpreted to include any requirement or standard that directly affects the public. Rules are distinguished from internal agency processes or procedures (see below).

Public process

The promulgation process for administrative rules, as required in Chapter 2.98 of the King County Code (KCC), guarantees a democratic process for lawmaking. The process includes a notice published in the newspaper and a public comment period. Sometimes the public notice and the comment period are combined with the similar notice and comment period required for SEPA (State Environmental Policy Act), for purposes of efficiency and cost-savings to the public. This combination occurs when the proposed Rules are subject to SEPA review.

DDES' normal procedure is to allow written comments about rules; however, the agency has the discretion to allow for oral comments presented in a public meeting. The Rules become effective 30 days after they are filed with the Clerk of the Council. There are provisions for emergency rulemaking, although DDES normally does not use this process. Emergency Rules are effective for only 90 days.

What interpretations are possible?

When a code or provision is "vague, conflicting, or complex" (as defined in the King County Zoning Code), an administrative interpretation is required. For example, the Sensitive (Critical) Areas Ordinance (SAO), which is codified in Title 21A of the King County Code (KCC), restricts development or other activities in critical areas such as wetlands or streams. A few years ago, a formal code interpretation was required for the following question:

Question: Is a Native American Tribe's occasional hand-gathering of medicinal plants in a wetland area subject to the SAO?

Answer: Staff at DDES decided that "the occasional gathering by hand of medicinal plants is an activity so limited in intensity that it does not constitute either a wetland 'alteration' that would be subject to SAO regulation or a 'land use' requirement authorized in a particular zone."

Chapter 2.98 of the King County Code (KCC) requires that formal administrative interpretations be filed with the Clerk of the King County Council.

Where can customers get help?

If customers have a question about the content of this bulletin, or specific questions concerning adopted or pending regulations, contact the Code Development Coordinator at DDES at 206-296-7132 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

Other DDES information bulletins are available via the department Web site at www.kingcounty.gov/permits.

206-296-6600 DDES Information
206-296-7132 Code Development Coordinator



Be sure to visit our Web site at:
www.kingcounty.gov/permits

King County complies with the Americans with Disabilities Act (ADA). If you require an accommodation to attend a meeting (two weeks' notice) or require this information in Braille, audiocassette, or large print, please call 206-296-6600 or TTY 206-296-7217.