Ordinance No. 2573

["Beginning July 1, 1998"]

(Amending or Repealing Ordinances)

Sec. 3.19 (formerly 3.09) amended by Ord. 3592
AN ORDINANCE of the City of Kent, Washington, imposing a one-quarter percent excise tax on the sale of real property in the City of Kent; providing for the use of such revenues; specifying a date of imposition and an effective date; creating a lien on subject property; prescribing procedures for collection, forfeiture and refund; and adopting Chapter 82.45 RCW by reference; adding a new Chapter 3.09 Kent City Code, Excise Tax on Real Estate Sales.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. There is hereby added to the Kent City Code a new Chapter 3.09 to be entitled EXCISE TAX ON REAL ESTATE SALES:

3.09.010. ONE-QUARTER PERCENT EXCISE TAX ON REAL ESTATE SALES.

A. Imposition. There is hereby imposed an excise tax on each sale of real property, constituting a taxable event as defined in Chapter 82.45 RCW and occurring within the corporate limits of the City of Kent. The tax imposed under this section shall be collected from persons who are taxable by the State under Chapter 82.45 RCW and such tax shall comply with all applicable rules, regulations, laws and court decisions regarding real estate excise taxes as imposed by the State under Chapter 82.45 RCW.

B. Rate of Tax. The rate of tax imposed by Section 3.09.010A shall be one-quarter of one percent of the selling price of all real property upon which this tax is imposed by said Section 3.09.010A.

C. Use of Proceeds. All proceeds from the tax imposed by this Chapter shall be placed in the Capital Improvement Fund and shall be used for capital improvements, including those listed in RCW 35.43.040.

D. Special Assessments Not Limited. This Chapter shall not limit the existing authority of the City of Kent to impose special assessments in the manner prescribed by law on property benefited thereby.
3.09.020. SELLER'S OBLIGATION. The taxes imposed in this Chapter are the obligation of the seller and may be enforced through an action of debt against the seller or in the manner prescribed for the foreclosure of mortgages. Resort to one course of enforcement is not an election not to pursue the other.

3.09.030. TAX LIEN ON REAL PROPERTY. The taxes imposed in this Chapter and any interest or penalties thereon shall constitute a specific lien upon each piece of real property sold from the time of sale until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages.

3.09.040. COUNTY COLLECTION--ADMINISTRATIVE FEE. The King County Treasurer shall place one percent of the proceeds of the taxes imposed by this Chapter in the County Current Expense Fund to defray costs of collection. The remaining proceeds from the City taxes imposed by this Chapter shall be remitted to the City on a monthly basis.

3.09.050. COLLECTION--COUNTY TREASURER AS AGENT. The taxes imposed by this Chapter shall be paid to and collected by the King County Treasurer. The Treasurer shall act as agent for the City of Kent. The Treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording, or to the real estate excise tax affidavit in the case of used mobile home sales. A receipt issued by the Treasurer for the payment of the tax shall be evidence of the satisfaction of the lien imposed by Section 3.09.030, above, and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax may be accepted by the County Auditor for filing or recording until the tax is paid and the stamp affixed thereto; in the case the tax is not due on the transfer, the instrument shall not be accepted until a suitable notation of this fact is made on the instrument by the Treasurer.

3.09.060. DATE PAYABLE--INTEREST. The taxes imposed by this Chapter shall become due and payable immediately at the time of sale, and, if not so paid within 30 days thereafter, shall bear interest at the rate of one percent per month from the time of sale until the date of payment.
3.09.070. REFUNDS. If, upon written application by a taxpayer to the County Treasurer for a refund, it appears a tax has been paid in excess of the amount actually due or upon a sale or other transfer declared to be exempt, such excess amount or improper payment shall be refunded by the County Treasurer to the taxpayer; provided, that no refund shall be made unless the State has first authorized the refund or an excessive amount or an improper amount paid, unless such improper amount was paid as a result of miscalculation. Any refund made shall be withheld from the next monthly distribution to the City.

3.09.080. STATE LAW ADOPTED BY REFERENCE. Chapter 82.45 RCW and any and all subsequent amendments to said statute are hereby adopted by this reference as if set forth in full herein. The City Clerk is hereby directed to maintain one copy of Chapter 82.45 RCW as currently enacted or as subsequently amended on file for public use and examination during regular City business hours.

Section 2. The City Clerk is hereby directed to transit a certified copy of this ordinance to the King County Department of Records and the King County Treasurer immediately upon passage and further notifying the County of the effective date of this ordinance.

Section 3. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivisions, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the ordinance, or the validity or its application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law, provided, however, that the tax herein established shall be imposed on sales of real property from and after the first day of September 1985.

ISABEL HOGAN, MAYOR
ATTEST:

[Signature]
MARIE JENSEN, CITY CLERK

APPROVED AS TO FORM:

[Signature]
P. STEPHEN DIJULIO, CITY ATTORNEY

PASSED the 5 day of Aug, 1985.
APPROVED the 6 day of Aug, 1985.
PUBLISHED the 9 day of Aug, 1985.

I hereby certify that this is a true copy of Ordinance No. 2573, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature] (SEAL)
MARIE JENSEN, CITY CLERK

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and become inoperative and of no force or effect whatsoever. [1961 c 15 § 82.44.900. Prior: 1943 c 144 § 17; Rem. Supp. 1943 § 6312-131.]

Chapter 82.45

EXCISE TAX ON REAL ESTATE SALES

Sections

82.45.010 "Sale" defined.
82.45.020 "Seller" defined.
82.45.030 "Selling price" defined.
82.45.032 "Real estate", "used mobile home" and "mobile home" defined.
82.45.035 Determining selling price of leases with option to purchase—Mining property—Payment, security when selling price not separately stated.
82.45.060 Tax imposed on sale of property—Additional tax imposed.
82.45.070 Tax is lien on property—Enforcement.
82.45.080 Tax is seller's obligation—Choice of remedies.
82.45.090 Payment of tax—Evidence of payment—Recording.
82.45.100 Tax payable at time of sale—Interest, penalty, on unpaid or delinquent taxes—Prohibition on certain assessments or refunds.
82.45.105 Single family residential property, tax credit when subsequent transfer of within nine months for like property.
82.45.120 Standards for reporting, application and collection of tax—Real estate excise tax affidavit form, contents, use.
82.45.150 Applicability of general administrative provisions—Departmental rules, scope—Departmental audit.
82.45.180 Disposition of proceeds—Support of common schools.

Savings—Audits, assessments, and refunds—Disposition of certain funds—1982 c 176; 1980 c 154: "Chapter 154, Laws of 1980 shall not be construed as invalidating, abating, or otherwise affecting any existing right acquired or any liability or obligation incurred under the provisions of the statutes amended or repealed, nor any process, proceeding, or judgment involving the assessment of any property or the levy or collection of any tax thereunder, nor the validity of any certificate of delinquency, tax deed or other instrument of sale or other proceeding thereunder, nor any criminal or civil proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder: Provided, That the department of revenue may conduct audits, make assessments, and grant refunds under RCW 82.45.100 and 82.45.150 with respect to any sale. Funds received by the county treasurer as payment of a tax liability incurred under a statute repealed by chapter 154, Laws of 1980 shall be paid and accounted for as provided in RCW 82.45.180."
[1982 c 176 § 3; 1980 c 154 § 15.]

Purpose—1980 c 154: "It is the intent of this 1980 act to simplify the bookkeeping procedures for the state treasurer's office and for the school districts but not to impact the amount of revenues covered by this new act to the various counties and other taxing districts." [1980 c 154 § 16.]

Effective dates—1980 c 154: "Sections 17, 18, and 19 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of this act shall take effect on September 1, 1981." [1980 c 154 § 20.] Sections 17, 18 and 19, respectively, of 1980 c 154 are amendments of RCW 28A.47.073 and 28A.47.801 and an appropriation section, which being of a temporary nature, is not codified; for RCW disposition of remaining sections see below.

Severability—1980 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 154 § 21.]

1980 c 154 consists of (1) the 1982 amendments to RCW 28A.45.020 (recodified as 82.45.020), 28A.45.060 (recodified as 82.45.060), 28A.45.080 (recodified as 82.45.080), 28A.45.090 (recodified as 82.45.090), 28A.41.130, 28A.47.073, 28A.47.801, 36.33.110, 54.28.050, 54.28.090, and 76.12.120; (2) the enactment of RCW 28A.41.143, 82.45.150, 82.45.180, the sections footnoted above, and an appropriation section; and (3) the repeal of RCW 28A.45.050 and 28A.45.100.

82.45.010 "Sale" defined. As used in this chapter, the term "sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person by his direction, which title is retained by the vendor as security for the payment of the purchase price.

The term shall not include a transfer by gift, devise, or inheritance, a transfer of any leasehold interest other than of the type mentioned above, a cancellation or forfeiture of a vendees interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage or the assumption by a grantee of the balance owing on an obligation which is secured by a mortgage or deed in lieu of forfeiture of the vendees interest in a contract of sale where no consideration passes otherwise or the partition of property by tenants in common by agreement or as the result of a court decree, any transfer, conveyance, or assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement incident thereto, the assignment or other transfer of a vender's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vender's interest in the real property involved, transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation, a mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof, any transfer or conveyance made pursuant to an order of sale by the court in any mortgage or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage, a conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration, nor a transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed, nor the sale of any grave or lot in an established cemetery, nor a sale by or to the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

The term sale shall further not include a transfer to a corporation or partnership which is wholly owned by the transferor and/or the transferors spouse or children:
The term shall not include the amount of any outstanding lien or incumbrance in favor of the United States, the state, or a municipal corporation for the taxes, special benefits, or improvements. [1969 c 223 § 28A.45.030. Prior: 1951 2nd ex.s. c 19 § 2; 1951 1st ex.s. c 11 § 8. Formerly RCW 28A.45.030, 28.45.030.]

82.45.032 "Real estate", "used mobile home" and "mobile home" defined. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Real estate" means real property but includes used mobile homes.

(2) "Used mobile home" means a mobile home which has been previously sold at retail and the immediately preceding sale has already been subject to tax under chapter 82.08 RCW, or which has been previously used and the immediately preceding use has already been subjected to tax under chapter 82.12 RCW, and which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

(3) "Mobile home" means a mobile home as defined by RCW 46.04.302, as now or hereafter amended. [1979 ex.s. c 266 § 1. Formerly RCW 28A.45.032.]

82.45.035 Determining selling price of leses with option to purchase—Mining property—Payment, security when selling price not separately stated. The state department of revenue shall provide by rule for the determination of the selling price in the case of leases with option to purchase, and shall further provide that the tax shall not be payable, where inequity will otherwise result, until and unless the option is exercised and accepted. A conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee—buyer has the right to terminate the lease and option at any time, shall be taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract, but the rule shall further provide that the tax due on any additional consideration paid by the buyer and received by the seller shall be paid to the county treasurer (1) at the time of termination, or (2) at the time that all of the consideration due to the seller has been paid and the transaction is completed except for the delivery of the deed to the buyer, or (3) at the time when the buyer unequivocally exercises an option to purchase the property, whichever of the three events occurs first.

The term "mining property" means property containing or believed to contain metallic minerals and sold or leased under terms which require the purchaser or lessee to conduct exploration or mining work thereon and for no other use. The term "metallic minerals" does not include clays, coal, sand and gravel, peat, gyspise, or stone, including limestone.

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The state department of revenue shall further provide by rule for cases where the selling price is not separately stated or is not ascertainable at the time of sale, for the payment of the tax at a time when the selling price is ascertained, in which case suitable security may be required for payment of the tax, and may further provide for the determination of the selling price by an appraisal by the county assessor, based on the full and true market value, which appraisal shall be prima facie evidence of the selling price of the real property. [1969 ex.s. c 223 § 28A.45.035. Prior: 1967 ex.s. c 149 § 1; 1959 c 208 § 1; 1951 2nd ex.s. c 19 § 3. Formerly RCW 28A.45.035, 28A.45.060.]

82.45.060 Tax imposed on sale of property—Additional tax imposed. (1) There is imposed an excise tax upon each sale of real property at the rate of one percent of the selling price.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 20; 1982 1st ex.s. c 35 § 14; 1980 c 154 § 2; 1969 ex.s. c 223 § 28A.45.060. Prior: 1951 1st ex.s. c 11 § 5. Formerly RCW 28A.45.060, 28A.45.060.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Purposse—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

82.45.070 Tax is lien on property—Enforcement. The tax herein provided for and any interest or penalties thereon shall be a specific lien upon each piece of real property sold from the time of sale until the tax shall have been paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. [1969 ex.s. c 223 § 28A.45.070. Prior: 1951 1st ex.s. c 11 § 9. Formerly RCW 28A.45.070, 28A.45.070.]

82.45.080 Tax is seller's obligation—Choice of remedies. The tax levied under this chapter shall be the obligation of the seller and the department of revenue may, at the department's option, enforce the obligation through an action of debt against the seller or the department may proceed in the manner prescribed for the foreclosure of mortgages and resort to one course of enforcement shall not be an election not to pursue the other. [1980 c 154 § 3; 1969 ex.s. c 223 § 28A.45.080. Prior: 1951 1st ex.s. c 11 § 10. Formerly RCW 28A.45.080, 28A.45.080.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

82.45.090 Payment of tax—Evidence of payment—Recording. The tax imposed by this chapter shall be paid to and collected by the treasurer of the county within which is located the real property which was sold, said treasurer acting as agent for the state. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfaction of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer. [1980 c 154 § 4; 1979 ex.s. c 266 § 2; 1969 ex.s. c 223 § 28A.45.090. Prior: 1951 2nd ex.s. c 19 § 4; 1951 1st ex.s. c 11 § 11. Formerly RCW 28A.45.090, 28A.45.090.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Applicability of general administrative provisions—Departmental rules, scope—Departmental audit: RCW 82.45.150.

82.45.100 Tax payable at time of sale—Interest, on unpaid or delinquent taxes—Prohibition on certain assessments or refunds. (1) The tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within thirty days thereafter shall bear interest at the rate of one percent per month from the time of sale until the date of payment.

(2) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department shall assess against the taxpayer the additional amount found to be due plus interest as provided in subsection (1) of this section. If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable under this chapter, a penalty of fifty percent of the additional tax found to be due shall be added.

(3) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of fraud or of misrepresentation of a material fact by the taxpayer or a failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer. [1982 c 176 § 1; 1981 c 167 § 2.]

Audits, assessments, and refunds—1982 c 176: See note following chapter digest.

Effective date—1981 c 167: See note following RCW 82.45.150.

82.45.105 Single family residential property, tax credit when subsequent transfer of within nine months for like property. Where single family residential property is being transferred as the entire or part consideration for the purchase of other single family residential property and a licensed real estate broker or one of the parties to the transaction accepts transfer of said property, a credit for the amount of the tax paid at the time of the transfer to the broker or party shall be allowed toward the
amount of the tax due upon a subsequent transfer of the property by the broker or party if said transfer is made within nine months of the transfer to the broker or party: Provided, That if the tax which would be due on the subsequent transfer from the broker or party is greater than the tax paid for the prior transfer to said broker or party the difference shall be paid, but if the tax initially paid is greater than the amount of the tax which would be due on the subsequent transfer no refund shall be allowed. [1969 ex.s. c 223 § 28A.45.105. Prior: 1967 ex.s. c 149 § 61. Formerly RCW 28A.45-.105, 28.45.105.]

82.45.120 Standards for reporting, application and collection of tax—Real estate excise tax affidavit form, contents, use. The department of revenue is authorized and shall prescribe minimum standards for uniformity in reporting, application, and collection of the real estate excise tax imposed by this chapter.

The department of revenue shall also prescribe a real estate excise tax affidavit form which shall require the following:

(1) Identification of the seller and purchaser;
(2) Description of the property involved including the tax parcel or account number(s);
(3) Date of sale, type of instrument of sale, nature of transfer;
(4) Gross sales price;
(5) Whether or not the land is classified or designated as forest land under chapter 84.33 RCW; or classified as open space land, farm and agricultural land, or timberland under chapter 84.34 RCW; or at the time of sale exempt from property tax under chapter 84.36 RCW;
(6) Whether or not the property is land only, land with new building (new construction), or land with a previously used building; and

(7) The following questions, the responses to which are not required:
(a) Is this property at the time of sale subject to an elderly, disability, or physical improvement exemption?
(b) Does any building have a heat pump or solar heating or cooling system?
(c) Does this transaction divide a current parcel of land?
(d) Does this transaction include current crops or merchantable timber?
(e) Does this transaction involve a trade, a partial interest, corporate affiliates, related parties, a trust, a receivership, or an estate?
(f) Is the grantee acting as a nominee for a third party?
(g) Is the principal use of the land agricultural, apartments (four or more units), commercial, condominium, industrial, mobile home site, recreational, residential, or growing timber?

The affidavit form shall contain a statement of the potential compensating and additional tax liability under chapters 84.33 and 84.34 RCW, a statement of the collection of taxes under RCW 84.36.262 and 84.36.810, and a statement of the applicable penalties for perjury under chapter 9A.72 RCW.

Each county shall use the affidavit form prescribed and furnished by the department of revenue.

The affidavit shall be signed by either the seller or the buyer, or the agent of either, under oath attesting to all required information. [1981 c 167 § 5; 1980 c 134 § 1; 1969 ex.s. c 223 § 28A.45.120. Prior: 1967 ex.s. c 149 § 3. Formerly RCW 28A.45.120, 28.45.120.]

Reviser's note: RCW 82.45.120 above, appeared in 1981 c 93 as an amendment to RCW 28A.45.120; see notes following RCW 82.45.010. Effective date—1981 c 167; See note following RCW 82.45.150.

82.45.150 Applicability of general administrative provisions—Departmental rules, scope—Departmental audit. All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.040, 82.32.050, 82.32.140, and 82.32-.270 and except for the penalties and the limitations thereon imposed by RCW 82.32.090, applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue shall by rule provide for the effective administration of this chapter. The rules shall also include a manual which defines transactions which are taxable under this chapter. The department of revenue shall annually conduct audits of transactions and affidavits filed under this chapter. [1981 c 167 § 1; 1980 c 154 § 5.]

Effective date—1981 c 167: "This act shall take effect September 1, 1981." [1981 c 167 § 4.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Audits, assessments, and refunds: See note following chapter digest.

82.45.180 Disposition of proceeds—Support of common schools. The county treasurer shall place one percent of the proceeds of the tax imposed by this chapter in the county current expense fund to defray costs of collection and shall pay over to the state treasurer and account to the department of revenue for the remainder of the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. The proceeds of the tax on any sale occurring prior to September 1, 1981, when the proceeds have not been certified by an educational service district superintendent for school districts prior to September 1, 1981, shall be included in the amount remitted to the state treasurer.

The state treasurer shall deposit the proceeds in the general fund for the support of the common schools. [1982 c 176 § 2; 1981 c 167 § 3; 1980 c 154 § 6.]

Audits, assessments, and refunds—1982 c 176: See note following chapter digest.

Effective date—1981 c 167: See note following RCW 82.45.150.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

(1983 Ed.)