ORDINANCE NO. 2718

AN ORDINANCE of the City of Kent, Washington, to provide funding for environmental review and community impact mitigation arising out of the cleanup of solid waste and hazardous waste disposal sites and siting of solid waste energy resource and recovery or incineration facilities in the City of Kent, amending Kent City Code Chapter 3.14 and adding Chapter 4.19.

WHEREAS, two polluting solid waste landfills and one hazardous waste site are located in the City of Kent, all of which are the subject of remedial cleanup actions required by the federal government or State Department of Ecology; and

WHEREAS, approximately fifteen (15) sites within the City of Kent have been identified by the State Department of Ecology as hazardous waste sites that may be subject to later enforcement and cleanup action by federal, state, and local governments; and

WHEREAS, the City is being studied as an area to site a solid waste energy resource and recovery or incineration facility for disposal of solid waste; and

WHEREAS, the scope and duration of cleanup actions related to such sites and facilities present unique and extraordinary financial, environmental, socio-economic, utility service and planning impacts upon the community unlike routine economic development activities that cannot be adequately anticipated or managed by the City. In many instances, the City becomes aware of a required cleanup or siting of a disposal facility only upon initiation of enforcement action by federal, state, or local governments or upon receipt of applications for City permits; and

WHEREAS, the siting of any new solid waste disposal landfill or any solid waste energy resource recovery or incineration facility, and any required or government ordered cleanup of hazardous waste sites will require City licenses and permits including, but not limited to, special use combining district permit, drainage permit, street use permit, grade and fill permit, and temporary use permit; and
WHEREAS, such applications for permits will necessitate environmental review of complex and technical issues and assessment of impacts upon the City of Kent affecting the health, safety and welfare of its citizens; and

WHEREAS, it is necessary that the City establish a system of initial and annual permit review to provide for independent monitoring, to recover costs associated with environmental review and permit processing, to institute planning related to government required and other cleanup of any solid waste disposal or hazardous waste site, and to assess community impacts from the siting of a new solid waste disposal site or solid waste energy resource recovery or incineration facility; and

WHEREAS, cleanup and siting of any disposal facility will require the City's participation at an intergovernmental level including, but not limited to, the Environmental Protection Agency, Washington State Department of Ecology, Washington State Department of Labor and Industries, Seattle-King County Health Department, King County, neighboring jurisdictions, Puget Sound Air Pollution Control Agency, and the Municipality of Metropolitan Seattle (METRO); and

WHEREAS, a Consent Decree has been lodged in the United States District Court for the Western District of Washington and provides for remedial cleanup work at the Western Processing site in a Scope of Work Appendix relating to the design, construction sequence, scheduling, maintenance, operation and monitoring of facilities and remedial actions, including provisions for addressing community-related impacts to the City of Kent; and

WHEREAS, the Responsible Governments and Consenting Defendants have agreed that the cleanup work is consistent with the National Contingency Plan and that amounts estimated at 46 million dollars are to be paid by the Consenting Defendants to perform said work reflect the magnitude of the needed environmental response, cleanup actions, and impacts upon the City of Kent; and

WHEREAS, cleanup required under the Consent Decree will include intensive on and off site soil sampling and analysis to define locations and levels of hazardous waste contamination, the excavation of any buried containers and removal of highly contaminated soils and wastes for offsite disposal, the design and placement of a permanent cap or cover system on the affected
property, testing and excavation of off-property soils found to be contaminated, construction and operation of ground water extraction and treatment system to reduce contamination in shallow and regional aquifers, including discharge of contaminants into Mill Creek, the potential release of airborne contaminants during all phases of cleanup activities, excavation of contaminated Mill Creek sediments, and intensive ground water and surface water monitoring; and

WHEREAS, the cleanup at the Western Processing site will continue over a minimum thirty-year (30) period, and is expected to cause direct and secondary impacts to the City of Kent on a long-term basis requiring ongoing and independent environmental monitoring and environmental/engineering expertise by the City; and

WHEREAS, the City of Kent has been identified as an affected jurisdiction in the Consent Decree providing that the use of ground water beneath property may be restricted and anyone seeking to use such ground water must comply with present and future restrictions required by the City of Kent; and

WHEREAS, the City Council has conducted a public hearing on the status of the Western Processing site cleanup, including providing comments to the lodged Consent Decree following notice published in the Federal Register on October 28, 1986; and

WHEREAS, the cleanup actions contemplated at the Western Processing site will cause direct and secondary impacts to Kent's land-use planning and development, groundwater and surface water protection, transportation planning, utility services, and emergency response services; and

WHEREAS, as an affected jurisdiction providing for the health, welfare, and safety of its citizens, the City of Kent must adequately fund and recover costs related to the assessment and mitigation of impacts from the cleanup and siting of such facilities; and

WHEREAS, it is the intent of the City that such system of fees for environmental review and assessment of community impacts not conflict with but complement regulatory requirements of the State's Hazardous Waste Management Act and State's Hazardous Waste Fee Act.
NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The Council finds that approximately fifteen (15) specific sites in the City have been designated as hazardous waste repositories by the Washington State Department of Ecology that may require future environmental cleanup or monitoring by federal, state, and local governments. Two polluting solid waste landfills and the Western Processing Site are located in the City of Kent and will require extended and thorough environmental monitoring and planning by the City. Both the landfills and the Western Processing Site are in various stages of remedial cleanup required by the Washington State Department of Ecology.

Section 2. The Council finds that certain areas of the City of Kent and Green River Valley are now being examined for siting of a solid waste energy resource recovery or incineration facility by King County. The Council incorporates as findings all facts contained in King County's Energy/Resource Recovery Project and Solid Waste Management Plan relating to the examination of siting of a facility within or outside the City of Kent. The Council further finds that any such facility and siting process will cause direct and secondary impacts to the City of Kent and require City permits to site and operate such a facility.

Section 3. The Council finds that the scope and duration of any required or government ordered cleanup activities at solid waste and hazardous waste sites in the City of Kent including the siting of any solid waste energy resource recovery or incineration facility, will provide direct and secondary impacts upon public facilities and streets, utility and emergency response services, and socio-economic impacts related to municipal finance, land-use planning, transportation planning, drainage and water quality plans in its drainage basins and ground waters; and

Section 4. The Council finds that in order to adequately assess and recover administrative costs of processing permit applications, reviewing cleanup plans and performing environmental review under RCW 43.21C, a single, comprehensive permit will be required through an annual permit fee system. The Council further finds that adequate annual permit fees will be required from owners of the site or disposal facility. The Council finds that reasonable and adequate fees, as established herein, are needed to recover costs of providing environmental review and assessment of community related...
impacts, processing of applications for City permits and recovering extraordinary costs for use of City property, interdepartmental services, consultant and legal fees, equipment and supplies.

**Section 5.** The Council finds that a single permit for remedial cleanup and siting activities will expedite environmental cleanup and siting review. The Council further finds that a system of annual permit review will facilitate monitoring of any new disposal facilities and assist federal, state and local coordination of complex cleanups and facility siting.

**Section 6.** The records and files as contained in the case of the United States of America and the State of Washington, et al. v. The Western Processing Company, Inc., et al., U.S. District Court for the Western District of Washington Cause No. C-83-252M, and the Community Relations Plan for the Western Processing site under Environmental Protection Agency Contract 68-01-7251, are hereby incorporated by reference and the findings are concurred with for purposes of this Ordinance. All minutes and records of the Public Works Committee of the City of Kent and Council workshops concerning the City's participation in maintaining an independent environmental monitoring and engineering/planning capability to determine and deal with costs of environmental review, providing necessary permits, and dealing with community-related impacts upon municipal utility services, land-use, transportation, emergency services, and legal services are hereby ratified. The Council ratifies the City's November 1986 comments to the lodged Consent Decree in the Western Processing case.

**Section 7.** The Council finds that the City needs an independent monitoring and assessment capability with environmental and engineering expertise to better determine the impact of cleanup activities and siting of new solid waste disposal sites and solid waste energy resource recovery or incineration facility in the City of Kent.

**Section 8.** The Council further finds that the fee requirement does not constitute regulation of the location, construction, or operation of hazardous waste facilities or sites but relates solely to the independent environmental review and monitoring of cleanup activities at solid waste and hazardous waste site, and the siting of any solid waste disposal landfills.
and solid waste energy resource and recovery or incineration facilities.

Section 9. Kent City Code Chapter 3.14 is amended to add new sections which read as follows:

3.14.1070. ENVIRONMENTAL REVIEW AND COMMUNITY IMPACT MITIGATION FUND. An Environmental Review and Community Impact Mitigation Fund is established for the receipt of all permit fees received for environmental review and mitigation of impacts resulting from cleanup of designated solid waste and hazardous waste sites by federal, state or local governments, and the siting of a solid waste energy resource and recovery or incineration facility in the City of Kent. Such expenses shall be recovered as provided under K.C.C. Chapter 4.19.

3.14.1071. PURPOSE. The purpose of the Environmental Review and Community Impact Mitigation Fund is to establish an orderly method of providing for adequate funding of administrative costs resulting from a required or ordered government cleanup of solid waste or hazardous waste sites or siting of solid waste energy resource and recovery or incineration facilities in the City of Kent. Permit fees are intended to assist affected departments, to support adequate environmental review, intergovernmental coordination, long-term planning, processing of permit applications, environmental monitoring capability, inspection and review of plans resulting from the cleanup of sites and facilities, and the hiring of expert consultants.

3.14.1072. DISBURSEMENTS. Monies shall be dispersed from the Fund for expenses relating to departmental services, consultant fees, legal fees, equipment and supplies related to the annual environmental review and assessment of community impacts.

3.14.1073. ADMINISTRATION. The Fund shall be administered by the Public Works Department in consultation with the Planning Department and Law Department. The Public Works Department shall be responsible for keeping and maintaining all proper books, accounts, disbursements, and records of transactions involving the Fund.

3.14.1074. INTEREST. Accumulated interest shall accrue solely for the benefit of the Fund.

3.14.1075. DISSOLUTION OF FUND. In the event that the Environmental Review and Community Impact Mitigation Fund shall at
any time be dissolved, all unused funds and assets shall revert back to the current expense fund of City of Kent.

Section 10. Title IV of the Kent City Code is amended to provide for a new Chapter 4.19 as follows:

CHAPTER 4.19
ENVIRONMENTAL REVIEW AND COMMUNITY IMPACT MITIGATION PERMIT

4.19.010. PURPOSE OF CHAPTER. The purpose of this chapter is to establish a single permit process and annual system of fees for the siting of solid waste disposal sites and solid waste energy resource recovery or incineration facilities, and required or government ordered cleanup of solid waste or hazardous waste sites in the City of Kent.

4.19.020. DEFINITIONS. For purposes of this Chapter, the following definitions apply. These definitions exclude any permit fee, siting, or regulatory requirement for preempted hazardous waste facilities under RCW Chapter 70.105 and RCW Chapter 70.105A.

A. "Applicant" or "application" means a written request submitted under K.C.C. 4.19.040 by the owner of real property upon which a remedial cleanup is to occur or property upon which a solid waste energy resource and recovery or incineration facility is sought to be located.

B. "Cleanup" or "remedial cleanup" includes all onsite and offsite remedial actions at solid waste or hazardous waste sites undertaken by any person to protect the health, safety, and welfare of citizens of the City of Kent. This term excludes routine servicing, shutdown, or maintenance of solid waste or hazardous waste sites, and any solid waste energy resource and recovery or incineration facility.

C. "Garbage" means all accumulations of refuse, swill, and other waste matter discarded as of no further value to the owner as defined in Kent City Code Section 7.08.010.

1. "Refuse" means waste matter discarded as of not further value, including ashes, cinders, clinkers, lawn cuttings, grass and leaves, broken household furnishings and equipment, discarded hot water tanks, bottles, barrels, cartons, shrubs, small trees, small tree limbs, paper and scraps of wooden crates and boxes; but shall exclude large trees, earth, sand, gravel, rock, broken concrete, plaster, brick and other building materials, automobile bodies, large auto parts, building waste, fire refuse and waste.
2. "Swill" means all accumulation of animal, fruit, or vegetable matter, liquid or otherwise, that attends the preparation, use, dealing in or storing of meat, fish, fowl, fruit and vegetables.

3. The term "garbage" excludes manure, sewage and sewage sludge, dead animals over fifteen (15) pounds, and cleaning from public and private catch basins, wash racks or sumps.

D. "Hazardous waste" means and includes all dangerous and extremely hazardous wastes as defined by RCW 70.105.010 and 70.105A.020 and as implemented in the Washington Administrative Code.

E. "Moderate risk waste" is defined to mean any waste which exhibits any of the properties of hazardous waste but is exempt from regulation under RCW Chapters 70.105 and 70.105A solely because it is generated in quantities below the threshold for regulation by the State of Washington.

F. "Person" means individual, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

G. "Site" or "disposal site or facility" means a landfill or disposal facility or part of a facility at which solid waste is placed in or on land and which may or may not be a land treatment facility. This term includes the location of a solid waste energy resource and recovery or incineration facility where treatment, utilization, processing, or disposal of solid wastes or hazardous wastes occurs.

H. "Solid waste" shall be defined by RCW 70.95.030 and shall include "garbage" and "moderate risk waste" defined above.

I. "Solid waste disposal" means the management, storage, collection, transportation, treatment, utilization, processing and final disposal of solid wastes including the recovering and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes through incineration or other methods to more useful forms or combinations thereof.

J. "Solid waste energy resource recovery or incineration facility" means reducing the volume of wastes by use of an enclosed devise using controlled flame combustion for solid waste disposal.
4.19.030. PERMIT REQUIRED. No person shall undertake any remedial cleanup of a solid waste or hazardous waste site or undertake siting or construction of a solid waste energy resource and recovery or incineration facility without first being issued a permit from the Public Works Department under this Chapter. Such permit incorporates for purposes of this Chapter all other permit and fee requirements, except compliance with the State Environmental Policy Act, RCW Chapter 43.21C, the City of Kent's Environmental Policy Requirements as contained in Kent City Code Chapter 12.12A and K.C.C. Chapter 4.14 relating to public improvements.

4.19.040. APPLICATION. To obtain a permit under this Chapter, an applicant shall file an application on a form furnished by the Public Works Department. The application shall identify the following:

A. General description of the nature and scope of work.

B. The property by a full, accurate and complete legal description and address for which the environmental cleanup and community impact mitigation permit is being sought;

C. All known or anticipated transportation routes to be utilized to and from the property.

D. The applicant's name. The term "applicant" is defined for purposes of this Chapter to mean the owner of real property upon which a remedial cleanup is to occur or property upon which a solid waste energy resource and recovery or incineration facility is sought to be located.

E. The contractor(s) and subcontractor(s) responsible for the remedial cleanup or siting or construction of the site or facility.

F. A Washington State Contractor's number, including related State Subcontractor number(s).

G. The City of Kent business license number of such contractor or subcontractor(s).

H. A certified copy of any final Court Order, Administrative Order, or other governmental directive, whether adjudicatory, legislative, or executive order, requiring the cleanup or the community impact mitigation of the specific site.

I. Any and all contract documents, including award of contract, performance bond, and estimated or actual costs of
cleanup or construction, including a description of any reserve or contingency fund.


K. Evidence of an insurance binder with policy coverage including the City of Kent as a co-insured for purposes of public liability, bodily injury, and property damage for no less than one-million dollars ($1,000,000) per occurrence.

L. Be signed by the applicant and persons who will actually be responsible for the environmental cleanup and community impact mitigation actions on and off the designated site.

4.19.050. INCORPORATION OF OTHER PERMIT REQUIREMENTS. An application for a permit issued under this Chapter shall constitute an application for all required permits and licenses otherwise required by the City. Provided that, every permit issued by the Public Works Department under the provisions of this Chapter shall not excuse compliance with other substantive and procedural requirements of the Kent City Code.

4.19.060. FEES DESIGNATED. The Public Works Department shall be responsible for application review, assessment of community impacts and anticipated municipal services, including but not limited to, streets, right-of-ways, water and sewage systems, stormwater drainage systems, transportation systems, emergency response plans, and comprehensive land-use plans. A permit fee shall be imposed annually based upon a percentage of estimated total construction or cleanup costs submitted by the applicant as follows:

A. The fee for the first or initial annual permit shall not exceed two percent (2%) of the first million dollars ($1,000,000) of the total estimated cost of cleanup or facility construction; plus an additional one-and-a-half percent (1.5%) of the total estimated actual costs of cleanup or facility construction over one million dollars ($1,000,000). Provided that, the fee shall not, under any circumstances, exceed two hundred thousand dollars ($200,000) for the initial or first year in which the application is received.

B. Following the submission of any subsequent annual application for a permit under this Chapter, the City shall establish annual permit fees based upon anticipated administrative costs and expenses which estimate the cost of continued
environmental review and assessment of community impacts. Such expenses shall include but are not limited to departmental services, intergovernmental coordination, consultant fees, legal fees, equipment, supplies and recovery of administrative costs. The fee shall not exceed the estimated costs. All fees shall be paid in full prior to issuance of any permit required under this Chapter. The Director may accept public improvements in lieu of fees pursuant to procedures provided for under procedures set forth in KCC Chapter 4.14. Other than provisions for public improvements in lieu of fees, annual fee requirements of this Chapter may be waived only by action of the City Council. Excepting public improvements received in lieu of fees, monies derived from both fees and charges shall be deposited in a designated Environmental Review and Community Impact Mitigation Fund.

4.19.070. VIOLATION--PENALTIES. It shall be unlawful for any person to undertake any cleanup of a solid waste or hazardous waste site or undertake the siting or construction of a solid waste energy resource and recovery or incineration facility without first having secured a permit under this Chapter. Any person violating any provision of this Chapter shall be deemed guilty of a misdemeanor punishable by five thousand dollars ($5,000) and incarceration in jail not to exceed one (1) year. Each and every day during which any violation of this Chapter is continued or permitted shall constitute a separate offense.

Section 11. 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.

Section 12. 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.

DAN BELLEHER, MAYOR

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I hereby certify that this is a true copy of Ordinance No. 2718, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.