AN ORDINANCE of the City of Kent, Washington, relating to the use and occupation of public streets, sidewalks and other public places; regulating the use and requiring permits therefor; defining offenses; providing penalties; amending Ordinance 1733 on political signs and repealing Ordinance 2518 on building moving permits.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 2 of Ordinance 1733 (Kent City Code Section 9.06.080) is amended to read as follows:

Section 2. PUBLIC PROPERTY-((POLITICAL-CAMPAIGN)) SIGNS PROHIBITED.

No person shall attach, place, paint, write, stamp or paste any sign, poster or bill upon any lamp post, electric light, railway, telephone or telegraph pole, or shade tree; on any bridge, pavement, street, sidewalk or cross-walk, public building or any ((property)) public place or anything belonging to the City or within public easements without obtaining a street occupation permit as provided for in Kent City Code Chapter 4.09.
Section 2. Section 6 of Ordinance 1733 (Kent City Code Section 9.06.024) is amended to read as follows:

Section 6. PENALTIES.

Any person willfully violating (any of the provisions) Sections 9.06.012, 9.06.016 or 9.06.200 of the Kent City Code (this ordinance) shall be punished in accordance with the general penalty provisions of Kent City Code Section 1.02.080. (guilty of a misdemeanor and upon conviction therefore, shall be subject to a fine not to exceed Three Hundred Dollars ($300.00) or thirty (30) days in the City Jail or both such fine and imprisonment.) Violations of Sections 9.06.080 shall be enforced and punished in accordance with the Street Occupation Code, Kent City Code Chapter 4.09.

Section 3. Ordinance 2518, entitled:

AN ORDINANCE of the City of Kent, Washington, relating to building codes; amending Chapter 14.08 of the Kent City Code, to delete the requirement for a performance bond, and amending the provisions relating to house moving permits is hereby repealed.

Section 4. There shall be a new chapter added to the Kent City Code, Chapter 4.09, entitled the "Street Occupation Permit Code," which shall read as follows:

4.09.020. TITLE. This chapter shall constitute the Street Occupation Permit Code of the City of Kent.
4.09.040. **EXERCISE OF POLICE POWER.** This subtitle is the City's exercise of police power for the public safety, health and welfare, and its provisions shall be liberally construed for the accomplishment of that purpose.

4.09.060. **DISCLAIMER OF CITY LIABILITY.**

A. Issuance of any permit pursuant to this chapter does not constitute the creation of a duty by the City to any person, nor indemnify any person for any wrongful acts of a permit holder against any person or the public, or to otherwise shift responsibility from the permit holder to the City.

B. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, its officers, officials, employees, or agents for any injury or damage resulting from the failure of a permit holder or permit applicant to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter, on the part of the City.

C. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by its terms.

D. It is the specific intent of this chapter to place the obligation of complying with its requirements upon the permit holder or permit applicant, and no provision of, nor term used in this chapter, is intended to impose any duty whatsoever upon the
City or any of its officers, officials, employees, or agents, for whom the enforcement of this chapter shall be discretionary and not mandatory.

4.09.080. **RIGHT TO PROSECUTE CIVIL ACTION.** Nothing in this chapter shall be construed to curtail or abridge the right of anyone to prosecute a civil action for damages by reason of injury to person or property resulting from the negligent use by any other person of any public place or the space above or beneath the same. Further, this chapter shall not be construed as relieving any person from liability, nor from any damages accruing to or suffered by anyone, which are caused by or result from the occupation, obstruction or encroachment of any public place.

4.09.100. **DEFINITIONS.**

A. Words and phrases, wherever used in this chapter shall have the meaning ascribed to them except where otherwise defined, and unless where the context shall clearly indicate to the contrary.

1. "Adjacent property" means and includes the property abutting the margin of a public place contiguous and with reference to said public place.

2. "Areaway" means and includes a sunken space, either covered or uncovered, or a court affording room, access or light to a building.

3. "Awning" means a temporary shelter supported entirely from the exterior wall of a building.
4. "Banner" means any pliable canvas or cloth sign material stretched over or across any public place.

5. "Building" is any structure used or intended for supporting or sheltering any use or occupancy.

6. "Business property" means and includes all properties not included in "residence property" defined in this section.

7. "Canopy" means a nonrigid, collapsible, nonretractable, protective covering located at an entrance to a building.

8. "City Engineer" means the Kent City Engineer and his authorized representatives.

9. "Department" means the Public Works Department of the City of Kent.

10. "Director" means the Public Works Director and his authorized representatives.

11. "Driveway" means and includes that portion of a public place which provides access to an off-street vehicular facility through a depression in the constructed curb or, when there is no constructed curb, that area in front of such vehicular facility as is well defined or as is designated by authorized signs or markings.
12. "Improved public place" means any public place, as defined in this chapter, which contains overhead or underground utilities or a driving or walking surface.

13. "Marquee" means a permanent, roofed structure attached to and supported by the building and projecting over public property.

14. "Marquee sign" means a sign placed on, constructed in, or attached to a marquee.

15. "Newsstand" means any stand, box structure, rack or other device which is designed or used for the sale and/or distribution of newspapers, periodicals, magazines or other publications, or any combination thereof.

16. "Public place" means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, planting (parking) strips, squares, triangles and other rights-of-way open to the use of the public, and the space above or beneath the surface of same. This definition specifically does not include streets, alleys, ways, planting strips and sidewalks which have not been deeded, dedicated or otherwise permanently appropriated to the public for public use.

17. "Sidewalk cafe" means a portion of sidewalk area in which are placed tables and chairs for the use of the public while consuming food and/or beverages, including alcoholic beverages, served by a cafe or restaurant located on adjoining property.
18. "Sign" means any medium, including its structure and component parts, which is used or intended to be used out of doors to attract attention to the subject matter for advertising purposes.

19. "Sign, portable" means a sign which is not permanently affixed and is designed for or capable of being moved, except those signs explicitly designed for people to carry on their persons or which are permanently affixed to motor vehicles.

20. "Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

21. "Use" means and includes: to construct, store, erect, place upon, or maintain, or operate in, upon, over or under any public place, any areaway, marquee, awning, clock, newsstand, sign, sidewalk elevator or door, fuel opening, sidewalk cafe or restaurant, staging, swinging scaffold, elevator or other structure or material, machinery or tools used or to be used in connection with the erection, alteration, repair or painting of any building; or to move any building across or along any public place; or to use or occupy any public place for the storage or placement of any material, equipment or thing; or to operate any cleated or tracked vehicle in any public place; or to allow any vehicle to be in or upon any public place other than that portion used as a roadway; or to allow any vehicle to be upon that portion of roadway designated as parking or curb space for purposes of selling or soliciting in addition to merely parking; or to remove, injure, or destroy any tree, flower, plant or shrub in any public place; or to open,
excavate, or in any manner disturb or break the surface or foundation of any permanent pavement of a public place, or to alter the established grade of any street, or to disturb the surface of, dig up, cut, excavate or fill in any public place; or to construct, reconstruct, maintain or remove any sidewalk or crosswalk, pavement, sewers, water mains, grading, street lighting, or appurtenances thereto, except when permitted by ordinance, or to do any work in, or erect any structure under, along or over any public place.

B. Words in the present tense shall include the future tense, words in the masculine gender shall include the feminine and neuter genders, and words in the singular shall include the plural and plural words shall include the singular.

4.09.120. SAFETY CODE, BUILDING CODE AND WASHINGTON CLEAN ACT COMPLIANCE. All work to be done under the authority of this chapter shall be accomplished in compliance with all applicable rules, regulations, ordinances and statutes, including the Uniform Building Code as adopted by the City, the State Safety Code, the Washington Clean Air Act and the rules and regulations of the Puget Sound Air Pollution Control Agency, and shall diligently proceed without undue delay or inconvenience to the public.

4.09.140. OCCUPATION PERMIT REQUIRED. It shall be unlawful for anyone to use any public place for private purposes, without having first obtained a written permit from the Director, and without complying with all the provisions of this chapter in relation thereto; provided that nothing herein shall apply to street, drainage, water or sewer maintenance work performed by the City, including street, drainage, water or sewer installation and
improvement work authorized by ordinance, or street, drainage, water or sewer improvement projects under contract with the City.

**4.09.160. PERMIT APPLICATION.** Applications for permits under this chapter shall be filed with the Director, upon a form furnished by the Department. Such applications shall contain:

A. An accurate description of the public place or portion thereof desired to be used;

B. The use desired to be made of such public place by the applicant;

C. The plans and specifications for any utility or structure desired to be constructed, erected or maintained by the applicant in or on a public place;

D. Where it is desired to construct a fuel opening, sidewalk elevator or door, a certificate from the City Property Manager showing the applicant to be the record owner of the premises abutting and in connection with which such fuel opening, sidewalk elevator or door is to be constructed; and

E. If a building or structure is being moved from a location in the City, the applicant shall verify that the sewer is capped, the septic tank removed, or that the septic tank has been filled within inert material. The applicant shall also verify that all utility charges have been paid at the location from which the building is to be moved. Complete plans and specifications showing the method of travel, dimensions of the object to be moved, weight,
route of travel and the date and time of move shall be filed with the permit application.

**4.09.180. PROCESSING OF APPLICATIONS.**

A. The City Engineer shall examine each application submitted to determine if it complies with the provisions of this chapter. In order to ascertain any facts which may aid in determining whether a permit shall be granted, the City Engineer or his representative may inspect the premises which are desired to be used under the permit. The City Engineer's findings shall be endorsed upon such application and transmitted to the Director.

B. Any application for a permit to construct, erect or maintain any awning, marquee, sign, or any structure in a public place shall be first transmitted to the Building Official of the City, who shall ascertain if the plans and specifications conform to the regulations pertaining to safety, material and design of the Uniform Building Code as adopted by the City. The Building Official shall then endorse his findings on the application and transmit the same to the City Engineer.

C. Any application to move a building or structure shall be transmitted by the City Engineer to the Building, Fire and Planning Departments of the City for review. No permit shall be issued under this chapter until all other permits required by the City have been issued.

D. If the Director finds that the application presented to him for approval conforms to the requirements of this chapter, and also that the proposed use of such public place will not unduly interfere with the rights of the public, he may approve such
application. The Director shall then fix the period of time for which the permit shall be granted, which shall in no case be longer than one (1) year, and approve such permit for issuance, upon the applicant's compliance with the terms of this chapter.

4.09.200. **INDEMNITY DEPOSIT -- SURETY BOND -- LIABILITY INSURANCE.**

A. If the Director determines that there is a probability of injury, damage or expense to the City arising from an applicant's proposed use of any public place, the applicant shall provide a cash indemnity deposit to the Public Works Department. The amount of the cash indemnity deposit shall be determined by the Director, be governed by the anticipated amount and extent of injury, damage or expense to the City, and determined at the time of application approval. Such indemnity deposit shall be used to pay the cost of inspections, surveys, plans and other administrative services performed by the City, of restoring the street and removing any earth or other debris from the street, the replacement of any utility interrupted or damaged, or the completion of any work left unfinished, the cost of filing of an indemnity agreement with the Public Works Department, if such an agreement is required with the permit, and any other expense the City may sustain in conjunction with the permitted work. The balance of the cash indemnity deposit, if any, after the foregoing deductions, shall be returned to the applicant. If the indemnity deposit be insufficient, the applicant will be liable for the deficiency. If the City Engineer or Director determines that engineering studies must be made prior to the approval of any application for permit, the cost of such study shall be paid for by the applicant, or deducted from his indemnity deposit.
B. The applicant may, in lieu of or in addition to the cash indemnity deposit, file with the Department a surety bond which has been approved as to surety and as to form by the City Attorney; which shall meet all the requirements provided in Section 4.09.200(A) above relative to a cash indemnity deposit; shall run for the full period of the permit; and shall be in an amount to be fixed by the Director and conditioned such that the applicant shall faithfully comply with all the terms of the permit, all the provisions of this chapter, all other ordinances of the City, and indemnify and save the City free and harmless from any and all claims, actions and damages of every kind and description which may accrue to, or be suffered by, any person by reason of the use of any public place.

C. An applicant for a permit shall maintain in full force and effect public liability insurance in an amount sufficient to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or in connection with the permit. The Director shall establish the amount of such insurance, and a copy of the policy shall be provided to the City for review prior to issuance of the permit.

D. If the application is for the construction, reconstruction, repair, maintenance or removal of any sidewalk, pavement, sewers, water mains, grading, street lighting, or appurtenances thereto, the applicant shall file with the Department a surety bond approved as to surety and as to form by the City Attorney, which bond shall run for the full period of the permit plus one (1) year after the acceptance of the permitted work by the City, and shall be in an amount fixed by the Director, and conditioned such that the applicant shall faithfully complete all
portions of the work according to the Standard Plans and Specifications of the City, and the specific plans for the work as approved by the City Engineer.

E. The Director may require any permit holder to post a surety bond in the calendar year following the period of a permit when the extent of possible damage to a public place cannot be completely determined.

4.09.220. INDEMNITY TO SAVE CITY HARMLESS FROM CLAIMS.

In addition to the foregoing cash indemnity fund, the applicant; owner of the premises in front of which, and in connection with which, the permit is to be obtained; and any existing lessee, sublessee, tenant and subtenant using or occupying the basement of the premises in connection with which such structure is to be used; shall be required to execute a written agreement supplied by the City Attorney to forever hold and save the City free and harmless from any and all claims, actions or damages of every kind and description which may accrue to, or be suffered by, any person by reason of the use of such public place, or of the construction, existence, maintenance or use of any such structure. Such agreement shall also contain a covenant on the part of the persons or corporations executing the same, for themselves and their heirs, executors, administrators, successors, assigns, lessees, sublessees, tenants and subtenants, assuming the duty of inspecting and maintaining all structures, services, instrumentalities and facilities installed or to be constructed or occupied under authority of such permit, and assuming all liability for, and saving and holding the City harmless from any and all loss, damage or injury that may result to his or their own person or property, or the person or property of another, by reason of the
use or occupation of such structure, services, instrumentalities or facilities on or in a public place pursuant to this chapter.

4.09.240. PERMIT TO VEST NO PERMANENT RIGHT -- REVOCATION -- FEE SCHEDULE.

A. All permits authorized under this chapter shall be of a temporary nature, shall vest no permanent right whatsoever, and may in any case be revoked by the Director upon thirty (30) day's notice, posted on the premises, mailed to the permit holder, or without notice in the case where any such use or occupation shall become dangerous or any structure or obstruction permitted shall become insecure or unsafe, or shall not be constructed, maintained or used in accordance with the provisions of this chapter.

B. If any such structure, obstruction, use or occupancy is not discontinued on notice to do so by the Director, the City Engineer may remove such structure or obstruction from such place, or may make such repairs upon such structure or obstruction as may be necessary to render the same secure and safe, at the expense of the permit holder, or his successor, and such expense may be collected in the manner provided by law; and the Director may require a surety bond in such connection.

C. The Director is authorized to renew such permits under the same procedures set forth in this chapter for initial permit applications, and further directed to prepare and adopt a schedule of fees applicable to all such permits heretofore or hereafter issued commensurate with the cost of administration, inspection and policing involved in the issuance and continuance of such permits and the use thereby granted, and any such schedule,
when approved by the City Council by resolution, shall govern the
amount of the fee for any such permit, which shall be collected by
the Public Works Department as a condition to the issuance or
renewal of any such permit. In order to effectuate the collection
of such fees, the Public Works Department may notify holders of
outstanding permits previously issued as a reminder to pay the
applicable fee or the permit will be revoked.

D. When the use requiring a permit is made of any
street or public area, without a permit being first obtained, the
fee shall be double that provided in the schedule of fees. The
double fee shall apply only to the first tenure of the permit.

4.09.260. **ISSUANCE OF PERMITS.** Upon approval of the
Director of an application for the use or occupation of a public
place, the Department shall issue a permit therefore. The original
permit shall remain in the Department's files and a copy shall be
given to the grantee.

4.09.280. **REFUND ON PERMIT FEE.** Whenever the fee paid
for any street use or occupation permit shall be erroneous for any
reason, and application is made for refund, the Director shall
certify the facts justifying such refund, the amount thereof, and
his approval of such refund, and upon presentation of such
certificate to the Finance Department to pay a warrant therefore in
the amount of such refund.

4.09.300 **PORTABLE SIGNS -- PERMIT -- REMOVAL.** It is
unlawful for any person to place, erect or maintain a portable sign
upon any public place unless a permit has been obtained pursuant to
this chapter. Permitted signs which are ten feet (10') or less in

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height as measured from street or driveway grade and which obscure the vision of motorists shall be located at least twenty feet (20') from intersections or driveways, or at any other location on the public place as determined by the Director. The existence of any such portable sign which has not been specifically permitted under this chapter shall be considered an obstruction existing unlawfully upon the public place, and the Department may proceed to effect its removal, and the removal thereof in no event constitutes a breach of the peace or a trespass.

4.09.320. PORTABLE SIGNS -- IMPOUND -- DESTRUCTION. Every portable sign removed under Section 4.09.300 of this chapter by the Department shall be impounded and held on the Department's premises for a period of ten (10) days. The owner or other person responsible may redeem such sign upon presentation of a monetary amount sufficient to cover the costs of removal and storage. Any portable sign not redeemed after ten (10) days will be stored or destroyed by the Department, at its option.

4.09.340. ENFORCEMENT. The Director is authorized to post notice on private property at or abutting the scene of any violation of this ordinance calling for compliance with the terms herewith.

4.09.360. REMOVING OR DESTROYING NOTICES PROHIBITED. It shall be unlawful for anyone to remove, mutilate, destroy or conceal any notice issued or posted under the authority of the Director pursuant to the provisions of this chapter.
4.09.380. VIOLATION -- PENALTY.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this chapter shall be subject to a cumulative penalty in the amount of seventy-five dollars ($75.00) per day from the date the Director shall set in a written notice for the removal of any obstruction or the discontinuance of any use or occupancy of any public place, until compliance with such notice.

B. The penalty imposed by this section shall be collected in a civil action brought in the name of the City. The Director shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the Director, take appropriate action to collect the penalty.

4.09.400. ADDITIONAL RELIEF. The Director may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this chapter when civil or criminal penalties are inadequate to effect compliance.

Section 5. Severability. The provisions of this ordinance are declared to be separate and severable, the invalidity of any clause, sentence, paragraph, subdivision, 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 this ordinance, or the validity of its application to other persons or circumstances.
Section 6. Effective Date. This ordinance shall take effect and be in force thirty (30) days from the time of its final approval and passage as provided by law.

DAN KELLEHER, MAYOR

ATTEST:

BRENDA JACOBER, DEPUTY CITY CLERK

APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY

PASSED the 3rd day of September, 1991.
APPROVED the 4th day of September, 1991.
PUBLISHED the 5th day of September, 1991.

I hereby certify that this is a true and correct copy of Ordinance No. 2998, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, DEPUTY CITY CLERK

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