Ordinance No. 3031

(Amending or Repealing Ordinances)

CFN=738 – Midway Landfill Site/Solid Waste
Passed 2/18/1992
Solid Waste and Recycling

Amended by Ord. 3541;3832;3851
AN ORDINANCE of the City of Kent, Washington relating to solid waste handling and regulation; ratifying and confirming the City's commitment to waste reduction, recycling and waste stream control; regulating yard waste consistent with the King County Solid Waste Management Plan; authorizing liens under Chapter 35.21 RCW for failure to pay charges of solid waste services; amending Kent City Code sections 7.08.010 and 7.08.040; adding new section 7.08.220 KCC; providing for criminal and civil enforcement and abatement and providing penalties for violations of Chapter 7.08 KCC; adding new sections 7.08.230 - 7.08.280; and repealing section 7.08.180.

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

Section 1. Recitals and Findings.

1.1 By Ordinance 2870 the City of Kent ("City") reestablished its system of solid waste collection and disposal ("Solid Waste Utility"), and authorized contracts with private collection companies for collection of solid waste and recyclables and billing of consumers for such services.
1.2 Prior to and after Ordinance 2870, the City has required mandatory solid waste services by prohibiting private solid waste handling under Chapter 7.08 Kent City Code ("KCC").

1.3 The City was one of the first cities in the State to provide for comprehensive, residential recycling services. City residents have responded with enthusiasm to the program, resulting in substantial participation and increasing volume of recyclable materials.

1.4 As a participant in the King County Solid Waste System, the City must prohibit yard waste from entering the municipal solid waste stream or face increased fees for solid waste disposal ("tip fees").

1.5 Increased tip fees in the County Cedar Hills Landfill has been reflected in increased solid waste fees imposed by collection companies beginning January 1, 1992. Additional impact on solid waste rates will result from the implementation of a yard waste program.

1.6 In order to minimize the rate impact on City residents from persons failing to pay rates and charges for solid waste recyclables or yard waste services, it is appropriate to authorize liens against property for which solid waste or recyclable material collection service is rendered.

1.7 This ordinance is in furtherance of the City's constitutional and statutory authority to regulate and police in
the interests of the public health, safety, morals and general welfare.

Section 2. KCC 7.08.010 (as last amended by Ordinance 2870) is amended as follows:

7.08.010. DEFINITIONS. As used in this Chapter, the following definitions apply:

A. "Collection Company" means the persons, firms or corporations or combination thereof operating under a contract for solid waste, recyclables or yard waste collection with, or under the direction of, the City, including an authorized contractor for the collection of recyclable materials under this Chapter.

B. "Detachachable Container" means any garbage container compatible with the collection company's equipment that is not a garbage can, garbage unit, or mobile toter.

C. "Director" means the Director of the Public Works Department.

D. "Garbage" means all accumulations of solid waste (matter not intended for recycling or reuse and discharged as of no further value to the owner).

((1. "Refuse" means waste matter discarded as of no further value, including ashes, cinders, clinkers, lawn...))
cuttings, grass and leaves, broken-up 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 accumulations 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 recyclable materials intended for recycling under this Chapter, manure, sewage, dead animals over fifteen pounds, and cleanings from public and private catch basins, wash racks or sumps. Collection and disposal of matter excluded from the term "garbage" shall be as otherwise provided by law.)

E. "Garbage Can" means a watertight, galvanized, sheet metal, raised-bottom container or suitable plastic container not exceeding four cubic feet or thirty-two gallons in capacity, weighing not over twenty-two pounds when empty, fitted with two study handles, one on each side, and a tight cover equipped with a handle.
F. "Garbage Units" mean secure and tight bundles, none of which shall exceed three feet in the longest dimension and shall not exceed seventy-five pounds in weight. Garbage units may also mean small discarded boxes, barrels or bags, or in securely tight cartons or other receptacles not intended for recycling under this Chapter and able to be reasonably handled and loaded by one person onto a collection vehicle.

G. "Mobile Toter" means a movable container which holds at least sixty ((eight-five)) gallons or ((one-hundred eighty pounds)) of garbage, with a hinged-lid with a tight fit, thick skinned one-piece balanced weight body which sets on tires, which will be picked up at curbside with hydraulic dumpster. The Director may approve collection company use of alternative sizes of mobile toters.

H. "Person" means every person, firm, partnership, business, association, institution, or corporation in the City of Kent accumulating garbage requiring disposal or generating, accumulating, and collecting recyclable materials. The term shall also mean the occupant and/or the owner of any premises for which service herein mentioned is rendered.

I. "Recycle Container" means designated 90 gallon mobile toters in which recyclable materials can be stored and later placed at curbside, alleyside, or other location designated by the Director or collection company with the concurrence of the
Director. This term also includes but is not limited to designated commercial front load boxes, drop boxes and compactors at locations as may be specified by the Director. The Director may approve collection company use of alternative sizes of recycle containers.

J. "Recyclable Materials" means waste materials generated in the City of Kent capable of reuse from a waste stream as designated by the Director, including but not limited to sorted or unsorted newsprint, glass, aluminum, ferrous and non-ferrous cans, plastic materials, mixed paper, and cardboard accumulated and intended for recycling or reuse and collection by a collection company or authorized contractor. This term excludes all dangerous wastes and hazardous wastes defined in RCW 70.10 and 70.105A, and solid wastes intended for disposal in a landfill, incinerator, or solid waste disposal facility under WAC 173-304. All recyclable materials intended for collection by a City authorized collection company or contractor shall remain the responsibility and ownership of participants until such materials as contained in designated recycle containers are placed out for collection for the authorized contractor. Such materials then become the responsibility and property of the collection company or authorized contractor subject to the right of the participant to claim lost property of value.
K. "Solid Waste" shall be as defined by RCW 70.95.030 and WAC 173-304-100(73), with the exception of sludge from waste water treatment plants and septage, from septic tanks, extremely hazardous waste, hazardous waste, dangerous waste, and problem wastes as defined in WAC 173-303 and 173-204, and RCW 70.105 and 70.105A.

L. "Solid Waste Utility" shall be the City system of solid waste handling under Chapters 35.21 and 35.67 RCW and this Code.

M. "Yard Waste" means plant material including leaves, grass, branches, brush, flowers, tree wood waste and other biodegradable waste that may be designated by the Director. Yard waste includes sod not over four (4) inches in diameter and limbs and branches not over four (4) inches in diameter or four (4) feet in length. Yard waste does not include demolition debris such as concrete, wallboard, lumber or roofing materials.

Section 3. KCC 7.08.040 (as last amended by Ordinance 2689) is amended as follows:

7.08.040. ((GARBAGE-ACCUMULATION.)) SOLID WASTE HANDLING-MANDATORY SERVICE

A. All persons accumulating garbage in the City of Kent shall place and accumulate same in garbage cans, or garbage units, mobile toters, or detachable containers as
required by this Chapter. Except as provided in KCC 7.08.020B and C, all persons and properties within the City shall use the solid waste, recyclable material and yard waste system and service of the Solid Waste Utility under contract with collection companies. All persons and occupied property shall be subject to and responsible for the minimum level of service and associated charges, whether or not such persons and property use the service. The Director may, upon a showing that a person or property produces no solid waste, determine not to enforce the provisions of this section.

B. It shall be unlawful to deposit, throw, or place any garbage in any land, alley, street or other public place, or to deposit, throw or place any garbage on any private property regardless of ownership, unless the garbage is placed in garbage cans, containers, or toters, the covers of which shall not be removed except when necessary for the depositing or removing of garbage; provided, that boxes, small barrels, cartons, ((shrubs, small trees, small tree limbs)), yard waste, scraps of wooden crates and boxes, broken up household furniture and equipment, paper, hollowware and rubbish in general, may be broken up or cut up and placed in garbage units, ((as defined in KCC 7.08.010(e)) consistent with this Chapter or as approved by the Director.)
C. Any garbage can when filled shall not weigh more than seventy-five pounds and shall be so packed that the contents thereof will dump out readily when the can is inverted. All garbage cans and garbage units shall be placed in convenient, accessible locations upon the ground level or ground floor and as near as practicable to the approximate rear of the building or near the alley, street or road at which collection trucks are to be loaded; all walks, paths, and driveways to the place of loading shall have a overhead clearance of not less than eight feet.

D. Any mobile toter when filled shall not weigh more than one hundred eighty pounds, or as otherwise regulated by the Director, and shall be so packed that the contents thereof will dump out readily. All mobile toters shall be placed at curbside or alley before 7:00 a.m. and removed from curb or alley as soon as possible after collection, but no later than 7:00 p.m.

E. Any person accumulating garbage in the downtown or suburban business areas whose location requires the placing of cans, containers, or units on a sidewalk or alley for collection shall not place same on sidewalk or alley until the close of each business day, and shall remove cans from sidewalk or alley immediately after the opening for business each morning.

F. Dangerous - Other Waste.
1. No hot ashes or other hot material, dirt, sand, rocks, gasoline, solvents, oil, paint or dangerous or hazardous wastes shall be placed in any garbage can, garbage unit, detachable container, or mobile toter for collection or removal. All kitchen, table and cooking waste before being deposited in garbage cans, garbage units, detachable container, or mobile toters shall be drained and wrapped in paper or other material in such a manner as to prevent as nearly as possible moisture from such garbage from coming in contact with sides or bottoms of the containers.

2. As used in this section, "dangerous or hazardous wastes" means any solid waste designated as dangerous or hazardous waste by the State Department of Ecology, and such wastes shall be disposed of consistent with Department of Ecology rules and regulations.

G. When use of garbage cans is allowed or required, sufficient garbage cans must be provided for the collection of all garbage cans as defined in this Chapter. Worn out and improper cans shall be discarded.

H. Residential units shall use ((fully automated)) mobile toters unless otherwise authorized by the collection company. Mobile toters shall be provided by the collection company. All mobile toters shall remain the property of collection company and are provided and assigned to residences
for the health, safety, convenience, and general welfare of the occupants. The containers shall not be damaged, destroyed, or removed from the premises by any person; markings and identification devices on the containers, except as placed or specifically permitted by the collection company are expressly prohibited and shall be regarded as damage to the containers.

I. It shall be unlawful, except as authorized by the owner, collection company or the City to deposit any garbage or other material in any garbage can, garbage unit, detachable container, or mobile toter, or to remove the covers therefrom; said covers shall be securely placed on each can, toter, or unit at all times, except when it is necessary to remove same for deposit or at times of collection.

J. Following adoption of the City Yard Waste program, it shall be unlawful to dispose of yard waste in containers provided by collection companies for solid waste or recyclable materials. Yard waste shall be deposited in containers provided by collection companies, disposed of under KCC 7.08.020C, or as authorized by the Director. Nothing in this Chapter shall prohibit persons from composting yard waste on property owned or leased by such persons, provided, however, that compost facilities shall be operated and maintained consistent with other applicable law and regulation.
Section 4. A new section 7.08.220 is added to the Kent City Code, as follows:

7.08.220. LIEN FOR UTILITY SERVICES.

A. Pursuant to chapter 35.21 RCW, liens are authorized by this Code against property for which solid waste, recyclable materials, or yard waste collection services have been provided by collection companies operating under contract with the Solid Waste Utility.

B. Charges for solid waste collection and disposal, recyclable collection and disposal, and yard waste collection and disposal services are set by collection companies consistent with solid waste utility contracts with the City. Upon failure to pay the charges within the time provided for in invoices and/or bills issued by collection companies, the amount thereof shall become a lien against the property for which the solid waste, recyclable material, or yard waste collection service is rendered.

C. A notice of the lien authorized by this Section shall specify the charges, the period covered by the charges, and the legal description of the property sought to be charged. The notice shall be filed with the county auditor within the time required and shall be foreclosed in the manner and within the time prescribed for liens for labor and material.
D. Liens authorized by this Section shall be prior to all liens and encumbrances filed subsequent to the filing of the notice of lien with the county auditor, except the lien of general taxes and local improvement assessments whether levied prior or subsequent thereto.

E. Collection companies seeking to exercise rights under this Section shall have current, executed contracts for solid waste handling with the City authorizing the rights herein and providing for the method of such lien enforcement.

Section 5. New sections 7.08.240 through 7.08.340 are added to the Kent City Code, as follows:

ENFORCEMENT

7.08.240 VIOLATION-PENALTY.

A. Anyone violating or failing to comply with Section 7.08.020, 7.08.030, or 7.08.040 shall, upon conviction, be punishable by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment in the City Jail for a period of not exceeding one (1) year, or by both such fine and imprisonment.

B. Alternatively, anyone failing to comply with any provision of this chapter shall be subject to a civil penalty
in the amount of Fifty Dollars ($50.00) per day for each violation pursuant to Sections 7.08.240 through 7.08.320.

7.08.260 NOTICE OF VIOLATION.

A. If the Director determines after investigation that this Chapter has been violated, the Director may have a notice of violation served upon the owner, tenant or other person believed to be responsible for the condition. The notice shall be served by personal service or by United States mail addressed to the last known address of the owner, tenant or other person responsible for the condition. The notice shall state separately each violation of this Chapter and what corrective action is necessary to comply with the Chapter. A reasonable time for compliance shall be established in the notice.

B. The notice of violation shall not be amended by the Director to include additional violations as a result of any reinspection for compliance or other purposes except upon a clear showing that the amendment is necessary for the protection of public safety, health and general welfare and that the additional violation did not exist or could not reasonably have been discovered at the time of original inspection.

7.08.280 TIME TO COMPLY. When calculating a reasonable time for compliance, the Director shall take into consideration:
A. The type and degree of violation cited in the notice;

B. The intent of a responsible party to comply if an intent has been expressed.

7.08.300 EXTENSION OF COMPLIANCE DATE. An extension of time for compliance with a notice of violation may be granted in writing by the Director upon receipt of a written request therefor. The Director may without a written request grant an extension of time after finding that required actions have been started and that the work is progressing at a satisfactory rate.
7.08.320 CIVIL PENALTY.

A. In addition to any other sanction or remedial procedure which may be available, any person failing to comply with a notice of violation of this Chapter shall be subject to cumulative penalty in the amount of Fifty Dollars ($50.00) per day for each violation, from the date set for compliance until the notice of violation is complied with; provided persons failing to comply with a notice of violation in connection with a venture entered into for profit shall be subject to a cumulative penalty in the amount of One Hundred Dollars ($100.00) per day; and provided further that the penalty for failure to comply with a notice of violation where the City has removed the solid waste shall be increased to include the actual cost of such removal plus fifteen percent (15%).

B. The penalty imposed by this section shall be collected by 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 amount of the penalty and the City Attorney shall, with the assistance of the Director, take appropriate action to collect the penalty.

C. Whenever solid waste deposited, thrown or placed in violation of this Chapter contains three (3) or more items bearing the name of one (1) individual, or whenever a motor vehicle or trailer used in the activity is identified by its
license plate, it shall be presumed that the individual whose name appears or the items or to whom the vehicle or trailer is registered committed the unlawful act. The defendant shall have an opportunity to rebut the presumption and may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the wilful act, neglect, or abuse of another; or

2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary labor, inability to gain access to the subject property, or other condition or circumstances beyond the control of the defendant.

7.08.340 SUMMARY ABATEMENT.

A. The City Council may, after a report has been filed by the Director and the property owner, tenant or other person responsible for the condition has had an opportunity to be heard, by ordinance require such person to abate a nuisance by removal and proper disposal or refuse from the property at such person's cost and expense within a time specified in the ordinance; and if the removal and disposal is not accomplished within the time specified, the Director may abate the nuisance
and recover the cost and expense thereof plus fifteen percent (15%) in a civil action.

B. The Director may also seek relief in Superior Court to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this Chapter when the civil or criminal remedies provided herein are inadequate to effect compliance.

Section 6. Section 7.08.180 is hereby repealed.

Section 7. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and confirmed.

Section 8. 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 9. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication as provided by law.

Dan Kelleher, Mayor

ATTEST:

BRENDI JACOBVr, CITY CLERK

APPROVED AS TO FORM:

ROGER LUBOVITCH, CITY ATTORNEY

PASSED the 18 day of February, 1992.
APPROVED the 19 day of February, 1992.
PUBLISHED the 21 day of February, 1992.

I hereby certify that this is a true and correct copy of Ordinance No. 3031, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDI JACOBIV (SEAL)
BRENDI JACOBV, CITY CLERK