ORDINANCE NO. 3032

AN ORDINANCE of the City of Kent, Washington, relating to land use and zoning, amending the Zoning Code, Kent City Code (K.C.C.) Title 15, to repeal K.C.C. Section 15.09.100 relating to Zoning Code violations and enforcement, eliminating criminal penalties for such violations, adding a new Chapter 15.10 on the same subject which provides civil penalties for violations.

WHEREAS, the Kent Zoning Code presently contains an abbreviated procedure for the enforcement of violations, makes such violations a criminal offense with associated criminal penalties; and

WHEREAS, other cities have adopted civil penalties for zoning code violations and have found that imposition of a monetary penalty allows recovery of administrative costs of enforcement and is often an incentive to prompt compliance; and

WHEREAS, a change to civil from criminal penalties would also make prosecution of zoning code violations more effective, since "knowing and wilful" commission of a violation is necessary to obtain a criminal conviction; NOW, THEREFORE,

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

Section 1. KCC Section 15.09.100 of the Kent Zoning Code (Ordinances 2404 and 1827), is hereby repealed.
Section 2. The Kent Zoning Code, K.C.C. Title 15, is hereby amended to add the following new chapter:

CHAPTER 15.10
ENFORCEMENT OF THE ZONING CODE

15.10.002. VIOLATIONS.

A. It is a violation of the Kent Zoning Code, KCC Title 15, for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or property within the City of Kent without first obtaining the permits or authorizations required for the use by Title 15.

B. It is a violation of Title 15 for any person to use, construct, locate, or demolish any structure, land or property within the City of Kent in any manner that is not permitted by the terms of any permit or authorization issued pursuant to Title 15, provided that the terms or conditions are explicitly stated on the permit or the approved plans.

C. It is a violation of Title 15 to remove or deface any sign, notice, complaint or order required by or posted in accordance with Title 15 or Title 12.12A of the Kent City Code.

D. It is a violation of Title 15 to misrepresent any material fact in any application, plans or other information submitted to obtain any land use authorization.

E. It is a violation of Title 15 for anyone to fail to comply with the requirements of Title 15.
15.10.004. DUTY TO ENFORCE.

A. It shall be the duty of the Director of Planning to enforce Title 15. The Director may call upon the police, fire, health or other appropriate City department to assist in enforcement.

B. Upon presentation of proper credentials, the Director or duly authorized representative of the Director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the Zoning Code, or, Title 15 of the Kent City Code.

C. The Zoning Code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. It is the intent of this Zoning Code to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of this Code.

E. No provision of or term used in this Code is intended to impose any duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

15.10.006. INVESTIGATION AND NOTICE OF VIOLATION.

A. The Director or his/her representative shall investigate any structure or use which the Director reasonably
believes does not comply with the standards and requirements of this Zoning Code.

B. If after investigation the Director determines that the standards or requirements have been violated, the Director shall serve a notice of violation on the owner, tenant or other person responsible for the condition. The notice of violation shall state separately each standard or requirement violated, shall state what corrective action, if any, is necessary to comply with the standards or requirements; and shall set a reasonable time for compliance. The notice shall state that any subsequent violations may result in criminal prosecution as provided in Section 15.10.020.

C. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the Director makes an affidavit to that effect, then service of the notice upon such person or persons may be made by:

1. Publishing the notice once each week for two (2) consecutive weeks in the City's Official Newspaper; and

2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.

D. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.
E. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to Section 15.10.010 or Section 15.10.012.

F. The Director may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, Stop Work Order or Emergency Order and the applicable requirements and procedures.

G. A notice or an Order may be amended at any time in order to:
   1. Correct clerical errors, or
   2. Cite additional authority for a stated violation.

15.10.008. TIME TO COMPLY.

A. When calculating a reasonable time for compliance, the Director shall consider the following criteria:

   1. The type and degree of violation cited in the notice;
   2. The stated intent, if any, of a responsible party to take steps to comply;
   3. The procedural requirements for obtaining a permit to carry out corrective action;
   4. The complexity of the correction action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
   5. Any other circumstances beyond the control of the responsible party.
B. Unless a request for review before the Director is made in accordance with Section 15.10.014, the notice of violation shall become the final order of the Director. A copy of the notice shall be filed with the Department of Records and Elections of King County. The Director may choose not to file a copy of the notice or Order if the notice or Order is directed only to a responsible person other than the owner of the property.

15.10.010. STOP WORK ORDER. Whenever a continuing violation of this Code will materially impair the Director's ability to secure compliance with this Code, or when the continuing violation threatens the health or safety of the public, the Director may issue a Stop Work Order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a Stop Work Order shall constitute a violation of this Zoning Code.

15.10.012. EMERGENCY ORDER. Whenever any use or activity in violation of this Code threatens the health and safety of the occupants of the premises or any member of the public, the Director may issue an Emergency Order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The Emergency Order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an Emergency Order shall constitute a violation of this Zoning Code.

Any condition described in the Emergency Order which is not corrected within the time specified is hereby declared to be a public nuisance and the Director is authorized to abate such nuisance summarily by such means as may be available. The cost
of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

### 15.10.010. REVIEW BY THE DIRECTOR.

A. Any person significantly affected by or interested in a notice of violation issued by the Director pursuant to Section 15.10.006 may obtain a review of the notice by requesting such review within fifteen (15) days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five p.m. (5:00 p.m.) on the next business day. The request shall be in writing, and upon receipt of the request, the Director shall notify any persons served the notice of violation and the complainant, if any, of the date, time and place set for the review, which shall be not less than ten (10) nor more than twenty (20) days after the request is received, unless otherwise agreed by all persons served with the notice of violation. Before the date set for the review, any person significantly affected by or interested in the notice of violation may submit any written material to the Director for consideration at the review.

B. The review will consist of an informal review meeting held at the Department. A representative of the Director who is familiar with the case and the applicable ordinances will attend. The Director's representative will explain the reasons for the Director's issuance of the notice and will listen to any additional information presented by the persons attending. At or after the review, the Director may:

1. Sustain the notice of violation;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for receipt of additional information; or
4. Modify the notice of violation, which may include an extension of the compliance date.

C. The Director shall issue a Final Order of the Director containing the decision within seven (7) days of the date of the completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation, mailed to the complainant, if possible, and filed with the Department of Records and Elections of King County.

15.10.016. EXTENSION OF COMPLIANCE DATE. The Director may grant an extension of time for compliance with any notice or Order whether pending or final, upon the Director's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.

An extension of time may be revoked by the Director if it is shown that the conditions at the time the extension was granted have changed, the Director determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date.

15.10.018. CIVIL 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 Title 15 shall be subject to a cumulative penalty in the amount of Seventy-five Dollars ($75.00) per day for each violation from the date set for compliance until the order is complied with.
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 City Attorney shall, with the assistance of the Director, take appropriate action to collect the penalty.

C. The violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the willful act, or 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 materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

15.10.020. CRIMINAL PENALTIES.

A. Any person violating or failing to comply with any of the provisions of this Zoning Code and who has had a judgment entered against him or her pursuant to Section 15.10.018 or its predecessors within the past five (5) years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding Five Thousand Dollars ($5,000.00) or be imprisoned in the City Jail for a term not exceeding one (1) year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of this Zoning Code shall constitute a separate offense.
B. A Criminal penalty, not to exceed Five Thousand Dollars ($5,000.00) per occurrence, may be imposed:
   1. For violations of Section 15.10.002D;
   2. For any other violation of this Code for which corrective action is not possible;
   3. For any willful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this Code.

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

Section 3. 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 4. 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:

BRENDA JACOBER, CITY CLERK
APPROVED AS TO FORM:

[Signature]

ROGER A. LUBOVICH, CITY ATTORNEY

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

I hereby certify that this is a true copy of Ordinance No. 3632, 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]
BRENDA JACOBER, CITY CLERK

(SEAL)