Ordinance No. 3565

(Amending or Repealing Ordinances)

CFN=224 – Public Nuisances
CFN=122 – Police/Fire Departments
Passed – 7/3/2001
Code Enforcement

Repealing Ord. 3110 & Ord. 3320 (Sec. 1.04.080 {formerly 1.04.050})
Amended by Ord. 3690 (Sec. 1.04.130)
Ord. 3880 Repeals Ch. 1.04 and adds new Ch. 1.04 – Code Enforcement
AN ORDINANCE of the City Council of the
City of Kent, Washington, updating code provisions for
enforcement of civil violations of City codes by
repealing Chapter 1.04 of the Kent City Code in its
entirety and enacting a new Chapter 1.04 entitled “Code
Enforcement.”

WHEREAS, in 1993 the City Council enacted Chapter 1.04 of the Kent
City Code to provide provisions for enforcement of civil violations of City codes; and

WHEREAS, the City Council desires to update these enforcement
provisions for code violations to provide for more effective and efficient code
enforcement; NOW THEREFORE,

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

SECTION 1. Chapter 1.04 of the Kent City Code entitled “Civil
Violations, Enforcement, and Abatement” is hereby repealed in its entirety.

SECTION 2. A new chapter, Chapter 1.04, entitled “Code
Enforcement,” is hereby added to the Kent City Code to read as follows:
CHAPTER 1.04.
CODE ENFORCEMENT.

Sec. 1.04.010. Purpose. The purpose of this chapter is to establish an efficient system to enforce regulations of the city, providing an opportunity for a prompt hearing and decision on alleged violations and establishing penalties for violations. This chapter shall apply to all regulations as defined in KCC 1.04.020(J); provided that a regulation that provides for criminal penalties in addition to or as an alternative to enforcement under this chapter may, at the discretion of the City, be prosecuted as a criminal violation.

Sec. 1.04.020. Definitions. As used in this chapter, unless a different meaning is plainly required:
A. *Abate* means to repair, replace, remove, destroy or otherwise remedy a condition that constitutes a civil violation by such means, in such manner, and to such an extent as the code enforcement officer or the hearing examiner determines is necessary in the interest of the general health, safety and welfare of the community.
B. *Act* means doing or performing something.
C. *City* means City of Kent.
D. *Civil violation or violation* means an act or omission contrary to a regulation as defined in subsection (J) of this section. A violation continues to exist until abated.
E. *Code enforcement officer* means the City’s code enforcement officers; building officials; building inspectors; construction inspectors; the fire chief, or his or her designee; fire inspectors; the public works director, or his or her designee; or any other person or persons assigned or directed by the Mayor, or his or her designee, to enforce the regulations subject to the enforcement and penalty provisions of this chapter.
F. *Hearing examiner* means the Kent hearing examiner and the office thereof established pursuant to Chapter 2.32 KCC.
G. *Omission* means a failure to act.
H. *Person* means any individual, firm, association, partnership, corporation or any entity, public or private.
I. **Person responsible for the violation** means any person who has titled ownership of the property or structure which is subject to the regulation, an occupant in control of the property or structure which is subject to the regulation, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to the regulation and/or any person who created or is responsible for the violation.

J. **Regulation** means and includes the following, as now enacted or hereafter amended:

1. All Kent city code provisions making reference to this chapter;
2. All standards, regulations and procedures adopted by the city that make reference to this chapter; and
3. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city pursuant to code provisions that make reference to this chapter.

K. **Repeat violation** means two or more violations of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two (2) years or for which a notice of civil violation has been issued within two (2) years.

**Sec. 1.04.030. Voluntary correction.**

A. **Applicability.** The provisions of this section may be utilized whenever the code enforcement officer or hearing examiner determines that a violation of a regulation has occurred or is occurring.

B. **General.** Prior to the issuance of a notice of violation, the code enforcement officer may, at his or her discretion, attempt to secure the voluntary correction of a violation of a regulation by contacting the person responsible for the violation, explaining the violation, and requesting correction. The failure of the code enforcement officer to seek voluntary correction shall not invalidate any code enforcement action taken by the code enforcement officer or the City of Kent.

C. **Issuance of voluntary correction agreement.** A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the code enforcement officer.
D. **Content of Agreement.** The voluntary correction agreement is a contract between the city and the person responsible for the violation under which that person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

1. The name and address of the person responsible for the violation; and
2. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
3. A description of the violation and a reference to the regulations which have been violated; and
4. An acknowledgement by the person responsible for the violation that the violation described in the correction agreement exists.
5. The necessary corrective action to be taken, the date or time by which correction must be completed, and an acknowledgement by the person responsible for the violation that he or she will correct the violation within the time specified in the voluntary correction agreement; and
6. Acknowledgement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and
7. Acknowledgement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses and/or a monetary penalty pursuant to this chapter from the person responsible for the violation if the terms of the voluntary correction agreement are not met; and
8. The time and place for a hearing before the hearing examiner in the event that the alleged violation is not abated by the person responsible for the violation.

E. **Extension; modification.** An extension of the time limit for correction or a modification of the required corrective action may be granted by the code enforcement officer if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.
F. **Abatement by the city.** In addition to any other remedy provided for in this Chapter, the City may seek abatement of the violation in accordance with KCC 1.04.110 if the terms of the voluntary correction agreement are not met.

G. **Penalties and costs.** If the terms of the voluntary correction agreement are not met, the person responsible for the violation may be assessed a monetary penalty in accordance with KCC 1.04.090, plus all costs and expenses of abatement, as set forth in KCC 1.04.110.

**Sec. 1.04.040. Notice of civil violation.**

A. **Issuance of Notice of Violation.** When the code enforcement officer determines that a violation has occurred or is occurring, and does not secure voluntary correction pursuant to KCC 1.04.030, the code enforcement officer may issue a notice of civil violation to the person responsible for the violation.

B. **Content of Notice.** The notice of civil violation shall include the following:
   1. The name and address of the person responsible for the violation; and
   2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
   3. A description of the violation and a reference to the code provisions and regulations that have been violated; and
   4. The required corrective action and the date and time by which the corrective action must be completed; and
   5. The date, time and location of a hearing before the hearing examiner; and
   6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the code enforcement officer approves the completed, required corrective action at least forty-eight (48) hours prior to the hearing; and
   7. A statement that the costs and expenses of abatement incurred by the city pursuant to KCC 1.04.110 and a monetary penalty in an amount per day for each violation as specified in KCC 1.04.090 may be assessed against the person to whom
the notice of civil violation is directed as specified and ordered by the hearing examiner.

8. A statement that the failure to attend the hearing before the hearing examiner may result in a default judgement against the person responsible for the violation, whereby the hearing examiner may enter judgement in favor of the city, assess fines, penalties and costs against the person responsible for the violation, and order the abatement of the violation at the expense of the person responsible for the violation.

C. Extension. Extensions of the time specified in the notice of civil violation for correction of the violation may be granted at the discretion of the code enforcement officer; the city attorney, or his or her designee; or by order of the hearing examiner.

D. Service of notice. The code enforcement officer shall serve or cause to be served the notice of civil violation upon the person responsible for the violation by personal service pursuant to KCC 1.04.040(E)1, or, in the event the person responsible for the violation cannot be personally served after reasonable attempt(s) to do so, by mail pursuant to KCC 1.04.040(E)2. If the person responsible for the violation cannot be personally served within King County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure pursuant to KCC 1.04.040(E)3 and/or publication pursuant to KCC 1.04.040(E)4.

E. Methods of Service Defined. The methods of service of notice as used in this Chapter are defined as follows:

1. Personal Service. Personal service on the person responsible for the violation shall mean handing the notice to the person responsible for the violation or leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or leaving it at his or her office or place of employment with a person in charge thereof; or

2. Mailing. Mailing shall mean mailing notice to the last known address of the person responsible for the violation shall be accomplished by placing one (1) copy of the notice of violation in the mails of the United States by ordinary first class mail, directed to the last known address of the person responsible for the violation, and by placing another copy in the mails of the United States in a form requiring a signed
receipt showing when and to whom it was delivered and directed to the last known address of the person responsible for the violation. The last known address shall include the address appearing on the last equalized tax assessment roll of the county assessor, or

3. Posting. Posting shall mean posting a copy of the notice in a conspicuous place on the property, with at least one (1) copy of such notice placed at the entry-way to the property or structure if an entry-way exists, or

4. Publication. Publication of notice shall mean publication as set forth in RCW 4.28.100.

F. Proof of Service. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting and/or publication in lieu of personal service or mail, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

Sec. 1.04.050. Stop work order. In addition to any remedy provided for in this chapter, the code enforcement officer may issue a stop work order whenever a continuing violation of a regulation will materially impair the code enforcement officer's ability to secure compliance, or when a continuing violation of the regulation threatens the health, safety, or welfare of any member of the public. The stop work order shall contain substantially the same information as required by KCC 1.04.040(B) and may be appended to, or incorporate by reference in, a notice of violation. Notice of the stop work order shall be deemed served upon posting of the notice as required by KCC 1.04.040(E)3, and shall be effective upon service. The violation of a stop work order shall constitute a misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars ($1,000), or by both such imprisonment and fine.

Sec. 1.04.060. Stop use order. In addition to any remedy provided for in this chapter, the code enforcement officer may issue a stop use order whenever a continuing violation of a regulation threatens the health, safety, or welfare of any member of the public. The stop use order shall contain substantially the same information as required by KCC 1.04.040(B) and may be appended to, or incorporate by reference in, a notice of violation. Notice of the stop use order shall be deemed served upon posting of the notice as required by KCC 1.04.040(E)3, and shall be effective upon service. The violation of a stop use order shall be a misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars ($1,000), or by both such imprisonment and fine.
member of the public. The stop use order shall contain substantially the same information as required by KCC 1.04.040(B), and may be appended to, or incorporate by reference in, a notice of violation. Notice of the stop use order shall be deemed served upon posting of the notice as required by KCC 1.04.040(E), and shall be effective upon service. The violation of a stop use order shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars ($1,000), or by both such imprisonment and fine.

Sec. 1.04.070. Removal of stop work or stop use order - misdemeanor. The removal of a stop work order or stop use order posted in conformity with the requirements of KCC 1.04.050 or KCC 1.04.060, without the authorization of the code enforcement officer or hearing examiner, shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars ($1,000), or by both such imprisonment and fine.

Sec. 1.04.080. Hearing before the hearing examiner.

A. Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten (10) calendar days from the date of service of the notice of violation or entrance into a voluntary correction agreement. In the event that the hearing is held after the person responsible for the violation enters a voluntary correction agreement, the date of the hearing shall be the date specified in the voluntary correction agreement. An extension for the time for compliance with the correction requirements of a notice of violation or a voluntary correction agreement, as well as the date and time for a hearing before the hearing examiner, may be granted at the discretion of the code enforcement officer; the city attorney, or his or her designee; or the hearing examiner.

B. Prior correction of violation. The hearing will be canceled and no monetary penalty will be assessed if the code enforcement officer or the city attorney, or his or her designee, approves the completed corrective action at least forty-eight (48) hours prior to the scheduled hearing.
C. **Procedure.** Except as otherwise provided for herein, the hearing examiner shall conduct a hearing on the civil violation pursuant to ch. 2.32 KCC. The city and the person to whom the notice of civil violation was directed may participate in the hearing and each party, or its legal representatives, may call witnesses and present evidence. The city shall have the burden of proving, by a preponderance of the evidence, that a violation has occurred and that the corrective action required by the code enforcement officer is reasonably calculated to correct the violation. Formal rules of evidence shall not apply to any such hearing.

D. **Decision of the hearing examiner.**

1. In the event that the hearing examiner determines that a violation occurred or is occurring, the hearing examiner shall issue an order to the person responsible for the violation which contains the following information:
   a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
   b. The required corrective action;
   c. The date and time by which the correction must be completed;
   d. The monetary penalties and costs, if any, assessed pursuant to KCC 1.04.090;
   e. The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

E. **Notice of decision.** The hearing examiner shall mail a copy of the decision by first class regular mail to the person to whom the notice of a civil violation was issued and to the code enforcement officer within ten (10) working days of the hearing, unless the hearing examiner determines that more time is necessary.

F. **Failure to appear.** If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the hearing examiner may issue at the City's request, or upon his or her own ruling, an order of default, assess the appropriate penalty pursuant to KCC 1.04.090, and serve notice of the default and penalty assessment on the person responsible for the violation. The city may enforce the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person. Within seven (7) days after
service of the default order, the party against whom it was entered may file a written motion requesting that the order be vacated. The Hearing examiner may, at his or her discretion, based upon a showing of good cause, vacate the order of default, and remand the matter for hearing. In the event that the default order is vacated, the person against whom it was entered shall pay all costs attributable to his or her failure to appear prior to the hearing examiner remanding the matter for hearing.

G. Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with the Superior Court within twenty-one (21) calendar days of the issuance of the decision.

Sec. 1.04.090. Violations – Monetary penalty.
A. Assessment of monetary penalty. The hearing examiner shall, upon finding that a violation of a regulation has occurred, assess a monetary penalty in an amount of up to five hundred dollars ($500) for each violation, per day, or a portion thereof. The monetary penalty shall, at the discretion of the hearing examiner, be assessed as of:

1. The date of the issuance of the notice of civil violation; or
2. The date on which the matter was heard by the hearing examiner; or
3. The date upon which the person responsible for the violation is or was to have corrected the violation.

B. Costs. In addition, the hearing examiner may assess costs incurred related to enforcement under this chapter, including, but not limited to costs of service of notice, and such costs shall have the same meaning as the terms "penalties" or "monetary penalties" in this section and may be assessed and collected in the same manner as "penalties" or "monetary penalties" are assessed and collected in this section.

C. Modification of monetary penalty. Upon a finding that the person responsible for the violation will correct the violation within a reasonable time of the hearing, the hearing examiner may postpone the assessment of the monetary penalty for a reasonable period. If, prior to the expiration of the period of postponement the code enforcement officer or the city attorney or his or her designee is satisfied that the violation has been corrected, the hearing examiner or the city attorney may relieve the person responsible for the violation of the duty to pay all or a portion of the monetary
penalty. If, after the period of postponement, the violation has not been corrected, the penalties assessed against the person responsible for the violation shall be assessed from the date of the violation, and payment shall be due.

D. Monetary penalty for repeat violations. The hearing examiner may, at his or her discretion, double the monetary penalty set forth in subsection (A) herein, if the violation is a repeat violation.

E. Collection of monetary penalty. The monetary penalties assessed pursuant to KCC 1.04.090 constitute a personal obligation of the person to whom the notice of civil violation is directed or the person responsible for the violation. In addition, the monetary penalties assessed pursuant to this subsection may be assessed against the property that is the subject of the enforcement action. Any monetary penalty assessed must be paid to the city within ten (10) calendar days from the date of mailing of the hearing examiner’s decision or a notice from the city that penalties are due. The city attorney, or his or her designee, is authorized to take legal action to collect the monetary penalty.

F. Use of collection agency. The city, at its discretion, may, pursuant to Chapter 19.16 RCW, use a collection agency for the purposes of collecting penalties assessed pursuant to this chapter. The City shall add a reasonable fee, payable by the person responsible for the debt, to the outstanding debt for the collection agency fee incurred or to be incurred as a result of the use of the collection agency. No debt may be assigned to a collection agency until at least thirty (30) days have elapsed from the time that the City attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to a collection agency for collection if the debt is not paid.

G. Continued duty to correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person responsible for the violation of the duty to correct the violation.

Sec. 1.04.100. Subsequent repeat violation; failure to abate - misdemeanor.
The commission of a subsequent violation or the failure or refusal to abate a violation pursuant to an order of the hearing examiner after receipt of written notice of such order shall constitute a misdemeanor punishable by imprisonment in jail for a maximum term

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fixed by the court of not more than ninety (90) days or by a fine in an amount fixed by
the court of not more than one thousand dollars ($1,000) or by both such imprisonment
and fine. The city attorney, or his or her designee, shall, at his or her discretion, have
authority to file a subsequent violation as either a civil violation pursuant to this chapter
or a misdemeanor. All misdemeanor charges filed under this section shall be filed with
the Kent Municipal Court and shall bear the signature of the Kent city attorney or his or
her designee. When the city files a criminal offense pursuant to this subsection, it shall
have the burden of proving, beyond a reasonable doubt, that the violation occurred.

Sec. 1.04.110. Abatement.
A. In general. At the hearing before the hearing examiner, the code enforcement
officer or the city attorney or his or her designee may request that an order of
abatement issue in the event that the hearing examiner determines that a violation of a
regulation exists. The order of abatement shall require the person responsible for the
violation to abate the violation and permit the City to abate the violation in the event
that the person responsible for the violation fails so to do. The City may seek such
judicial process as it deems necessary to effect the removal or correction of such
condition causing the violation.

B. Costs of abatement in general. The costs of any abatement action taken by the
City shall become a charge to the person responsible for the violation. These charges
may be assessed against the person responsible for the violation or the property upon
which the violation occurred. The City may use any lawful means to collect charges,
including but not limited to those set forth in KCC 1.04.090(E) and KCC 1.04.090 (F).

C. Other abatement proceedings not precluded. Nothing in this section shall
prohibit the City from pursuing abatement pursuant to any other laws of the State of
Washington or the City of Kent.

Sec. 1.04.120. Additional enforcement procedures. The provisions of this
chapter are not exclusive, and may be used in addition to other enforcement and
penalty provisions authorized by the Kent City Code or state law.
Sec. 1.04.130. Conflicting code provisions. In the event a conflict exists between the enforcement provisions of this chapter and the enforcement provisions of any uniform code, statute, or regulation that is adopted in the Kent City Code that are subject to the enforcement provisions of this chapter, the enforcement provisions of this chapter will prevail, unless the enforcement provisions of this chapter are preempted or specifically modified by said code, statute, or regulation.

Sec. 1.04.140. Duty not creating liability. No provision or term used in this title 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.

SECTION 4. Severability. If any one or more sections, subsections, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.

SECTION 5. 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.

JIM WHITE, MAYOR

BRENDA JACOBER, CITY CLERK

ROGER LUBOVICH, CITY ATTORNEY

I hereby certify that this is a true copy of Ordinance No. 3565 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 (SEAL)
BRENDA JACOBER, CITY CLERK