ORDINANCE NO. 4215

AN ORDINANCE of the City Council of the city of Kent, Washington, amending section 7.14.150 of the Kent City Code relating to the City’s illicit discharge code provisions and entitled “Violations and Enforcement.”

RECITALS

A. The city of Kent has codified its regulations concerning prohibited discharges into the city of Kent’s municipal separate storm sewer system (“MS4”) in Chapter 7.14 of the Kent City Code (“KCC”). Included within this chapter is KCC 7.14.150 which provides the remedies available to the city of Kent should a prohibited discharge occur.

B. Currently, KCC 7.14.150 provides that a violation of the illicit discharge provisions may be enforced through either criminal or civil code enforcement proceedings. These two options, however, are not appropriate in all situations. Civil code enforcement proceedings are often appropriate when an ongoing code violation exists and the responsible party has not responded to the City’s request to voluntarily remove or abate the violation. That civil code enforcement process is not a good fit when the violation is completed, any resulting injury is slight, or when immediate corrective action must be taken by the City to mitigate potential damage or injury to the environment or the City’s MS4 system. Similarly,
criminal charges are most appropriate when the violation is egregious, when the violator is a repeat offender, or when other avenues have proven ineffective. Criminal charges are often not appropriate for smaller violations or those whose impact is not far reaching. Without another option available, the City occasionally finds itself in a position where a violator is not held accountable for his or her illegal conduct.

C. This ordinance amends KCC 7.14.150 to make a third remedy available to the city of Kent—a civil infraction. By adding an option for a civil infraction, a police officer will be able to use his or her discretion to determine whether criminal charges or a civil infraction is most appropriate depending upon the particular situation's circumstances. Additionally, this ordinance expressly provides that a violator must reimburse the City of Kent for any costs it incurs as a result of the prohibited discharge. Failure to contest, mitigate, or pay the City’s costs within fourteen (14) calendar days of invoice is also a violation for which an officer may issue a civil infraction.

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

ORDINANCE

SECTION 1. - Amendment. Section 7.14.150 of the Kent City Code, entitled “Violations and Enforcement,” and related to prohibited discharges into the city of Kent’s municipal separate storm sewer system, is amended as follows:

Sec. 7.14.150. Violations and enforcement—Penalties. Any violation of any provision of this chapter may be enforced as provided for in this section. Each separate date, or portion thereof, during which any violation occurs shall constitute a separate violation.

Amend KCC 7.14.150—Violations and Enforcement for Illicit Discharges
A. **Recovery of costs incurred by the City.** In addition to any penalty provided for in KCC 7.14.150(B) through KCC 7.14.150(D), a person who violates any of the provisions of this chapter shall be liable for all costs incurred by the City as a result of the violation. The City will issue an invoice to the person responsible for the violation advising him or her of the amount of costs incurred by the City as a result of the violation. The person to whom the invoice was directed must respond within 14 calendar days of the date the invoice is served upon that person by: (i) paying the invoice, (ii) requesting a hearing before the City's hearing examiner to mitigate the amount of the invoice, or (iii) requesting a hearing before the City's hearing examiner to contest the amount of the invoice. Failure to timely respond shall result in the invoice being deemed valid and the City may seek collection of the invoice through the process provided for in Chapter 3.10 of the Kent City Code, including the use of a collection agency. Payment of any invoice issued shall not alleviate the person responsible for the violation from complying with this chapter.

1. **Service of notice.** Service of an invoice issued under KCC 7.14.150(A) shall occur and is deemed complete in the same manner and under the same provisions as provided for in KCC 1.04.060.

2. **Process to mitigate or contest invoice.** The process through which a person may request a hearing to contest or mitigate an invoice issued to him or her as a person responsible for the violation is the same as that provided for Notices of Violation under KCC 1.04.120 through KCC 1.04.190. The hearing examiner's decision as to any invoice issued under KCC 7.14.150(A) is final and may not be further appealed.

3. **Failure to pay—Civil infraction.** The failure to timely pay an invoice issued under KCC 7.14.150(A), or any mitigated invoice amount set by the hearing examiner, is a separate violation that may be enforced through the issuance of a civil infraction pursuant to KCC 7.14.150(B).
B. **Civil infraction.** A person who violates any provision of this chapter may be issued a class 1 civil infraction\(^1\) as set forth in RCW 7.80.120, as currently enacted or hereafter amended. An infraction issued pursuant to this section shall be filed in the Kent Municipal Court and processed in the same manner as other infractions filed in the Kent Municipal Court. In addition, a civil code enforcement action may be instituted in accordance with KCC 7.14.150(C) to effectuate any abatement or corrective action required by the person as a result of the violation.

C. **Civil code enforcement.** In addition to, or as an alternative to any other penalty provided for in this chapter or by law, a civil code enforcement action may be instituted under the provisions provided for in Chapter 1.04 KCC to effectuate any abatement or corrective action required as a result of a violation of this chapter, including the issuance of a stop use or stop work order under KCC 1.04.090 – KCC 1.04.110. The process through which the person responsible for the violation may contest a stop use or stop work order is the same as that provided for Notices of Violation under KCC 1.04.120 through KCC 1.04.190. Failure to timely abate the violation or take the required corrective action will result in the issuance of a fine in accordance with KCC 1.04.080 and KCC 1.04.200, which fine will be separate and apart from any fine that may have been issued under KCC 7.14.150(B).

D. **Criminal offense.** Except as may otherwise be provided, a person who:

1. Negligently violates a provision of this chapter is guilty of a misdemeanor, punishable by up to the maximum penalty established in RCW 9A.20.021(3) as now enacted or hereafter amended; or who

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\(^1\) Reference note for staff and Council, not to be codified: Class 1 - Base fine $250, total fine $513 ($277.44 local, rest to state); Class 2 - Base fine $125, total fine $257 ($133.28 local, rest to state); Class 3 - Base fine $50, total fine $103 ($46.24 local, rest to state); Class 4 - Base fine $25, total fine $52 ($34 local, rest to state).
2. Knowingly violates a provision of this chapter, or commits a repeated violation of this chapter, is guilty of a gross misdemeanor, punishable by up to the maximum penalty established in RCW 9A.20.021(2), as now enacted or hereafter amended.

   a. For purposes of this section "repeated violation" means, as evidenced by either a prior committed finding by the Kent Municipal Court of an infraction issued under this chapter, or a committed finding by the Hearing Examiner of a Notice of Violation issued under Chapter 1.04 KCC, or a committed finding by operation of law under KCC 1.04.130, that a violation of this chapter has occurred on the same property or that a person responsible for the violation has committed a violation of this chapter elsewhere within the city of Kent. To constitute a "repeat violation," the violation need not be the same violation as the prior violation.

3. If a person is found guilty of a criminal offense as provided for in this KCC 7.14.150(D), or pleads guilty to another offense on recommendation of the prosecutor, the court shall order the defendant pay restitution to the City of Kent, or any other victim of the offense, for the total suffered loss or damage by reason of the commission of the crime.

   A. Any violation of any provision of this chapter constitutes a civil violation under Chapter 1.04 KCC for which a monetary penalty may be assessed and abatement may be required as provided therein.

   B. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor pursuant to KCC 1.01.140.

SECTION 2. - Severability. If any one or more section, subsection, or sentence of this ordinance is 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 3. - Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

SECTION 4. - Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.

SUZETTE COOKE, MAYOR

ATTEST:

KIMBERLEY A. KOMOTO, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY
PASSED:    18th day of October, 2016.
APPROVED:  18th day of October, 2016.
PUBLISHED: 21st day of October, 2016.

I hereby certify that this is a true copy of Ordinance No. 4215 passed by the City Council of the city of Kent, Washington, and approved by the Mayor of the city of Kent as hereon indicated.

KIMBERLEY A. KOMOTO, CITY CLERK
(SEAL)