



**CITY OF KIRKLAND**  
**Planning and Community Development Department**  
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225  
www.ci.kirkland.wa.us

---

**MEMORANDUM**

**To:** Marilynne Beard, Interim City Manager  
**From:** Eric Shields, Planning Director  
**Date:** June 24, 2010  
**Subject:** Complaint about Ford of Kirkland submitted by Dale Knapinski

**RECOMMENDATION**

Review and approve the draft response letter to Mr. Knapinski.

**BACKGROUND DISCUSSION**

On June 8, 2010, Mr. Knapinski filed a complaint with the Department of Planning and Community Development about activities conducted in the 124<sup>th</sup> Ave. NE right of way abutting the Ford of Kirkland dealership (attachment 1). On the same date, he sent an e-mail message to the City Council (although addressed to me) expressing his concerns about this issue (attachment 2). Prior to filing a formal complaint, Mr. Knapinski presented his concerns to Public Works via e-mail (attachment 3). Mr. Knapinski later forwarded a letter from Mr. Frederick Ockerman attached to which were aerial photos of the Ford of Kirkland site in 2002 and 2007 (attachment 4). More recently, he has discussed his concerns with Marie Stake, Communications Program Manager, who serves as the City's ombudsman, and forwarded to her a blog posting on this topic (attachment 5).

Mr. Knapinski has raised several concerns about the parking of vehicles by Ford of Kirkland in the unimproved right of way next to the dealership. Public Works staff responded to concerns about safety impacts to pedestrians and drivers by directing Ford to park vehicles away from the sidewalk and away from areas that would block the visibility of drivers exiting driveways onto 124<sup>th</sup> Ave. NE. Ford has complied with these requirements.

Mr. Knapinski has indicated that these restrictions do not go far enough and has asked that all vehicles be removed from the right of way, citing Municipal Code Section 19.04.050 which states:

***19.04.050 Private use of street right-of-way or fairway without permit prohibited.***

*It is unlawful for any person to either temporarily or permanently use or utilize any portion of a street right-of-way (whether or not improved and including sidewalk or walkway) or fairway, as defined in Section [14.16.020\(b\)](#), for personal use, place of business or other private use, without first obtaining from the city a street use permit; provided, however, that this section shall not be construed to prohibit the incorporation of the unused right-of-way portion of an improved street into the landscaping design of the abutting private property. (Ord. 3840 § 7, 2002; Ord. 3761 § 1 (part), 2000; Ord. 2725 § 1, 1983)*

Vehicles associated with the current and previous automobile dealerships have been parked in the right of way for many years, though apparently not continuously. The aerial photos included in the letter from Mr. Ockerman show cars in the right of way in 2007, but not in 2002 (attachment 4). A City aerial photo from 1985, prior to the annexation of the dealership, shows cars in the right of way in 1985 (attachment 6).

Parking of the cars in the "landscape design" of the unused right of way may be construed to comply with KMC 19.04.050, particularly given the historical use of the property.

Mr. Knapinski also brought to the City's attention the display of several portable "A-board" signs in the unopened right of way along the frontage of the Ford of Kirkland site. The City allows only one portable sign per block per business, and they may be located on-site or in the landscape strip located on either side of the sidewalk.<sup>1</sup> Staff is in the process of working with Ford to achieve compliance.

Footnote:

1. The Department of Planning and Community Development has been enforcing portable signs consistent with the Zoning Code regulations for "off-site real estate signs," based on state and federal first amendment case law stating that cities may not regulate signs based on the message of the signs, except in narrow circumstances. The Kirkland Zoning Code, however, does contain some regulations that differentiate portable signs based on the message or purpose of the sign. Consequently, to be consistent with the court rulings on the topic, City staff has been enforcing the code consistently for all signs, regardless of the message displayed, using the off-site real estate sign regulations, which are generally more liberal than the regulations for other portable signs.

**From:** City Webmaster [mailto:ironpointadmin@ci.kirkland.wa.us]  
**Sent:** Tuesday, June 08, 2010 9:06 PM  
**To:** PCDcomplaints  
**Subject:** Complaint Investigation Request (response #369)

## Complaint Investigation Request (response #369)

### Survey Information

Site:	City Website
Page Title:	Complaint Investigation Request
URL:	<a href="http://www.ci.kirkland.wa.us/depart/Planning/Code_Enforcement/Complaint_Investigation_Request.htm">http://www.ci.kirkland.wa.us/depart/Planning/Code_Enforcement/Complaint_Investigation_Request.htm</a>
Submission Time/Date:	6/8/2010 9:05:57 PM

### Survey Response

IDENTIFICATION OF PROBLEM	
Address: <small>(Specific address needed in order to investigate complaint)</small>	11800 124th Avenue NE
Occupant/Business:	Business
City/State/Zip:	Kirkland, WA 98034
Phone Number:	
Does this complaint involve a permit or license issued by the City of Kirkland?	No
If yes, please specify permit number and type.	
Details of Complaint (Be specific as to time, duration, location of violation,	Vehilces owned by the Ford dealership are parked in the right-of-way and on the sidewalk in such a manner as to impede

identities of responsible parties, actions of parties, and nature of complaint, continue on back if needed).

pedestrian traffic and violate the sight distance standards for driveways. See Kirkland Municipal Code 19.04.010 Obstructions in right-of-way and 19.04.050 Private use of street right-of way. Ford of Kirkland is using the right-of-way as a sales and display floor, which is a practice banned by the city except for two specific uses, both of which require a permit, and neither permitted use provides for running a used car lot. Use of the right-of way by a private party was never a legal use prior to annexation of the dealership location. Use of the right-of-way for the display and sale of vehicles by the Ford dealership did not begin prior to annexation. No agreement between King County and the Ford dealership allowing use of the right-of-way for a car lot exists. Parking vehicles in the right-of-way negates the usefulness of the required 5 foot buffer between parking areas and the right of way. Use of the right-of-way as a sales floor and display area puts the city at risk of lawsuits. The dealerships use of the right-of-way as a sales floor does not seem to fit even the most elemental requirements for non-conforming use.

**COMPLAINANT**

Name:

Dale Knapinski

Phone Number:

206-715-5200

Address:

18803 156th Avenue NE

City/State/Zip:

Woodinville, WA, 98072

E-mail Address:

[khsinc@verizon.net](mailto:khsinc@verizon.net)

Has this complaint been reported previously?

Yes

<p>If yes, by whom and to whom specifically was the complaint reported?</p>	<p>Complaint was sent via e-mail to Kirkland Police Department and Public Works. Complaint was forwarded to Eric Shields and was reviewed by the city attorney per e-mail response by Public Works.</p>
<p>What action resulted from the complaint?</p>	<p>My complaint was forwarded to the business owner Amy Walen in some manner and Amy contacted me to say that the city told her that the vehicles could stay. A meeting was scheduled with the public works department and the dealership to discuss sight distance issues but I haven't received a statement regarding the outcome of the meeting yet. I was sent an email by public works but the initial city response regarding my complaint was confusing, incomplete, and based on a very liberal, if not totally incorrect, interpretation of city codes and regulations. The city response included a reference to "Research" of past use of the right-of-way that isn't supported by fact or evidence.</p>
<p>Would you like to be contacted to know the kind of action that will be taken?</p>	<p><input type="text" value="Yes"/></p>
<p>Have you or your neighbors spoken with the individual(s) in question in order to resolve the problem?</p>	<p><input type="text" value="Yes"/></p>
<p>This complaint will constitute a public record upon submittal to the City and may be subject to disclosure under the public records act (RCW 42.56)."</p>	

**From:** khsinc@verizon.net [mailto:khsinc@verizon.net]

**Posted At:** Tuesday, June 08, 2010 8:41 AM

**Posted To:** Kirkland Council

**Conversation:** Ford of Kirkland

**Subject:** Fw: Ford of Kirkland

Eric:

Please add the attached photos to my complaint file regarding Ford of Kirkland. These photos were taken in the last few weeks. Note that the vehicles are blocking the sidewalk and block the view of pedestrians on the sidewalk.

You may also want to review a previous complaint that was made in about 2001 regarding the dealership installing 3 gravel parking strips in the right of way near the north entrance. When the dealership had the grass removed from the hill to the east of the sidewalk and began parking 3 vehicles there, I called the city and the vehicles were promptly removed. There are now additional gravel parking strips in the right of way. As my previous photos indicate, those parking spots were installed after 2002.

If our codes allow a business to take over city property for use as an auto sales floor and display center based on your interpretation of KMC 19.04.050 "...the incorporation of the unused right-of-way portion of an unimproved street into the landscaping design of the abutting private property" we need to change the code. Your assertion that this practice has been going on since prior to annexation is not supported by hundreds of existing photographs, and even if your research did support your claim, the practice was illegal and does not qualify as a legal non-conforming use as you indicated.

I did speak to the dealership owner, Amy Walen, to try to resolve this issue. Amy indicated that this case was resolved and the city is allowing the vehicles to remain based on your statements.

We need a review of this complaint by city staff and the codes need to be examined to determine if changes need to be made so that Kirkland doesn't end up with an auto row that looks like the one on Highway 99.

Thank you,  
Dale Knapinski



















**From:** khsinc [mailto:khsinc@verizon.net]  
**Sent:** Monday, May 17, 2010 10:19 PM  
**To:** David Godfrey  
**Subject:** Ford of Kirkland

Hello David:

Kindly fill me in on a few things regarding the parking of vehicles near the Ford dealership.

Are the vehicles that are parked between the east side of sidewalk on 124th Avenue NE and the dealership lot parked on any portion of the public right of way? From the eastern edge of the SIDEWALK, how far does the public right of way extend eastward?

Are the vehicles parked in the described area in violation of 12.45.160 which states "It is a civil infraction to park a vehicle upon any roadway, public right of way, publicly owned and operated parking facility, or other public property for the principle purpose of: (1) Displaying such vehicle for sale or for advertizing services for vehicles;" If this is not a violation, please direct me to the exemption to the rule. I understand that the City has the option of not enforcing certain restrictions on parking, but can you explain why the rule is selectively enforced with regard to private citizens?

If the described area is public property, does the Ford dealership enjoy exclusive rights to use the property for their own purpose? If so, how did they obtain that right? Can the right of way be used by any citizen? I have an old car that I would like to sell. Is there any reason that I would be prevented from using that area for my personal vehicle?

I was told that there has been at least one pedestrian that was hit by a vehicle exiting the Ford dealership at the north entrance in the past. Having vehicles parked so close to the entrance blocks the veiw of people on the sidewalk. It seems that there should be a reasonable sight distance maintained for public safety. Vehicles are being driven on the sidewalk to access the parking spaces adjacent to the sidewalk. There is no other way to get the vehicles up the hill and onto the grass. It doesn't seem safe to have vehicles sharing the sidewalk with pedestrians. Does the Kirkland Building Code allow businesses to use public property for a sales floor?

I believe this situation is a safety issue. In addition to that, there needs to be some clarification as to how the city allows public property to be used.

Thank you in advance for responding to each of my concerns and questions.

Dale Knapinski

Frederick H. Ockerman  
Attorney at Law  
9757 NE Juanita Dr. #100  
Kirkland, WA 98034

Email: [ockermanlaw@yahoo.com](mailto:ockermanlaw@yahoo.com)

(p) 425-820-6658  
(f) 425-823-9860

**RECEIVED**

JUN 21 2010  
CITY OF KIRKLAND  
CITY MANAGER'S OFFICE

June 18, 2010  
By Email  
khsinc@verizon.net

Mr. Dale Knapinski  
18803 – 156<sup>th</sup> Ave NE  
Woodinville, WA 98072

Re: **History of use of Right of Way NE 124<sup>th</sup> (Ford of Kirkland)**

Dear Mr. Knapinski;

In the early 1990's I represented the United Consumer League of Washington which was engaged in picketing at the then Thomason Ford Toyota on NE 124<sup>th</sup>. There were a number of incidents that occurred during the picketing that resulted in the Hon. Jim Bates issuing contempt orders against the Thomason dealership and its employees. One of those issues related, tangentially, to the **right of way adjacent to the sidewalk.**

I think you remember that Alan Jobes was one of the individuals picketing the dealership and that he was struck by a vehicle driven by one of the dealership's employees while Mr. Jobes was on the sidewalk at one of the entrances of the dealership. This was partially the result of the dealership placing vehicles on the right of way so as to obscure the picketers and their signs from any customers on the dealership property. Because it was unsafe and because **the right of way could not be used by the dealership to park vehicles, the Kirkland Police ordered the dealership to remove the vehicles from the right of way.** The Kirkland City Police officer involved was Chuck Lackey.

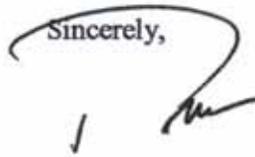
After Mr. Thomason sold the dealership, the new dealer put in three gravel pads on the right of way and began to park vehicles there in approximately 1994. My understanding is that an adjacent owner complained and, again, the vehicles were removed. As I drive by that location frequently, I noted that only within the past few years has a subsequent dealer began parking vehicles on the right of way. Frankly, this surprises me as given the past history, should a pedestrian being struck by an exiting vehicle again, I would think the City would have the **potential of liability for failing to keep the right of way clear.**

Letter to Mr. Knapinski  
June 18, 2010  
Page Two

I have looked to see if I have any photographs of the time but have been unable to located any. Ms. Teri Worley, past VP of the United Consumer League, may have some photographs or video of the area and I have contacted her to request her assistance on your behalf. You can reach Teri at 503-267-1597. Mr. Jobs now lives in Arizona. His phone number is 623-879-0408. Although I have not talked with him in about a year, I think this number is still a good number.

I hope this answers your questions and provides you the information you need as to the history of this location. If you have any further questions, please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to be 'F. Ockerman', written over the word 'Sincerely,'.

Frederick H. Ockerman

FHO:ro

---

iMAP

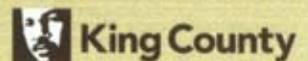


(C) 2010 King County

COMMENTS: 2007 iMAP King County

The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

Date: 6/15/2010 Source: King County iMAP Property Information (<http://www.metrokc.gov/GIS/iMAP>)



2007 Photos show multiple vehicles parked in the right of way.



**RECEIVED**

JUN 22 2010

CITY OF KIRKLAND  
CITY MANAGER'S OFFICE

Are these your unclaimed comments? **Claim this profile** in order to verify and manage these comments, including the ability to edit or delete them.



anonymous

Guest

**Names Used**

anonymous

Poster

Dale Knapinski

**Subscribe to feed**[Comments](#)[Comments with Replies](#)**Letter | Totem Lake business crosses the line**

31 minutes ago

Tax money needed...ask your council to change the rules!

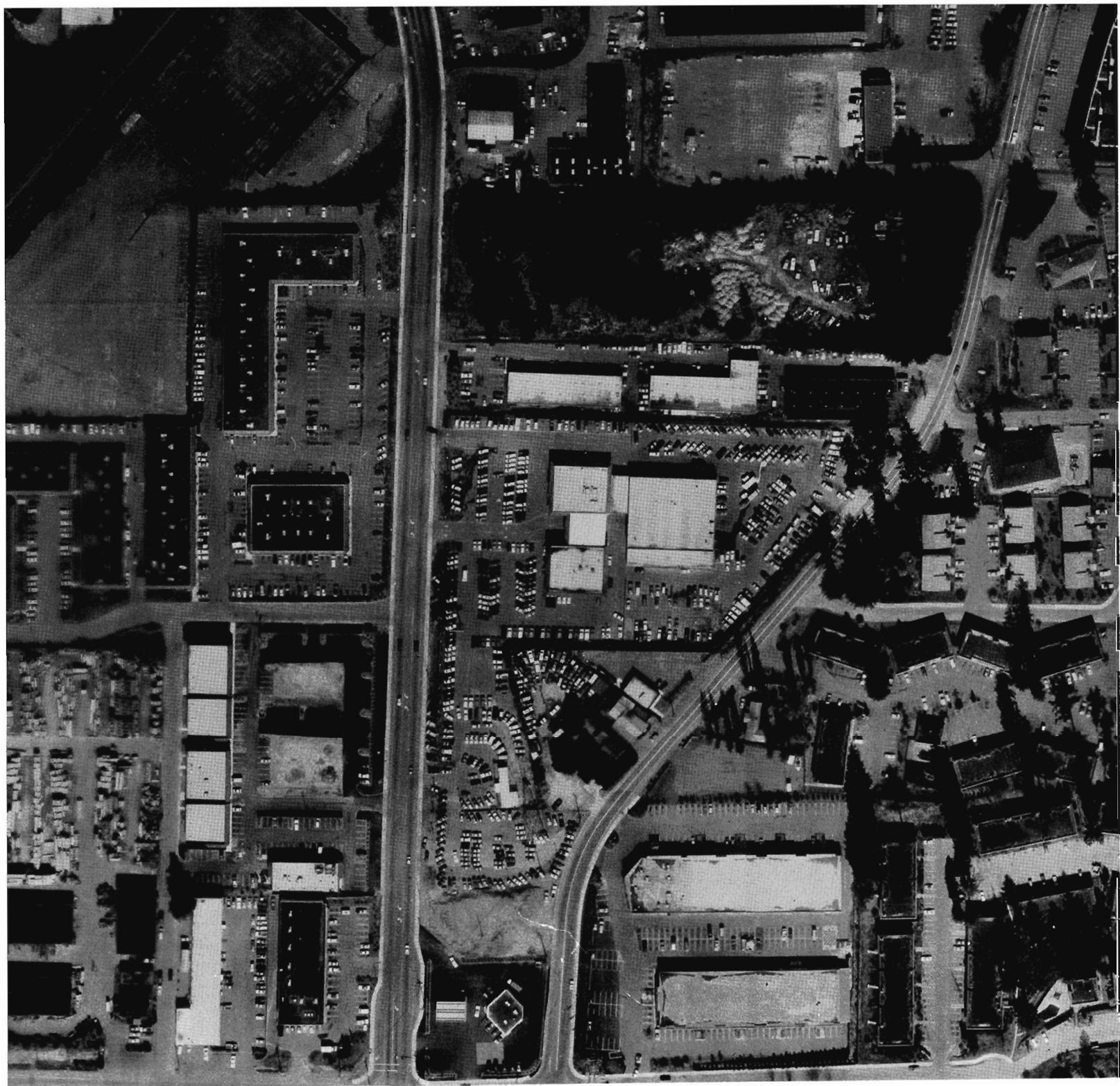
Kirkland businesses are suffering due to the bad economy. In order to improve sales that bring tax dollars to the city, businesses need to request the council to:

1. Change Kirkland Municipal Code 19.04.050. This code prevents businesses from using the publically owned right of way like streets, sidewalks, and adjacent areas, for private business.
2. Clarify KMC 19.04.050 with respect to allowing abutting businesses to use publically owned right of ways. The code now only allows the right of way to be used only as an extension of the landscaping design of an abutting business. The wording needs to be changed so that it clearly states that the right of way can be used for anything that an abutting business wants to use it for.
3. Eliminate the requirement for buffer zones. It is much more important for businesses to be visible from the street than for businesses to display trees, bushes, grass, and aesthetic screening. If people want to see trees they can go to a park, or to Molback's in Woodinville.
4. Change the definition of "Non-conforming use" so that it includes city owned property. It seems fair that if a private business has been violating the law for a long enough period of time by using public property as though they owned it, surely the city should allow the business some sort of "Ownership" interest in the property for the exclusive use of the lawbreaker.
5. Change Kirkland's tree preservation rules. Providing a display area for vehicles that need to be sold to generate tax revenues is more important than protecting tree roots from damage due to leaking oil, grease, and compaction damage to the soil.
6. Eliminate KMC 12.45.160 This code is just stupid. It was intended to prevent people from displaying "For sale" vehicles on city owned property. Since this rule would make it difficult for car dealers to use city owned and maintained property for a display area, and given the fact that it isn't enforced, except of course if you park your own private car on the right of way, we should just eliminate the rule.
7. Change the sign code. The best place for businesses to place advertizing signs is...on the sidewalk, of course! Businesses should be allowed to place as many signs as they want, anywhere they want to install them. Sidewalks are rarely used for their "Intended" purpose anyhow.
8. Disband the Design Review Board. Why not just allow business owners to do their own design? Business owners know what works best. Citizen involvement is not needed and is a waste of time.
9. Finally, we need to eliminate one Kirkland code enforcement officer. That would save the city some money, and would allow businesses to operate more freely without government interference.

*Dale Knapinski*

RETURNING?

Login



---

ORTHOPHOTOMAP  
of  
**Section 28**  
T26N R5E

---

July 6, 2010

**DRAFT**

Dale Knapinski  
18803 156th Avenue NE  
Woodinville, WA 98072

RE: Ford of Kirkland Complaints

Dear Mr. Knapinski;

Thank you for your email to the Kirkland City Council of June 8, 2010 concerning activities on and adjacent to the Ford of Kirkland property on 124<sup>th</sup> Avenue NE. This letter has been drafted by staff in response to the email to the City Council and other electronic correspondence you've sent to several city staff members. In your correspondence to the City you have raised issues concerning the use of public right-of-way, sight distance, and A-board signs.

Right-of-Way: Kirkland Municipal Code Section 19.04.010

In your correspondence to the City, you express that the manner in which vehicles are parked on the property violates Kirkland Municipal Code Section 19.04.010 that prohibits anything in a right of way "which obstructs or tends to obstruct vehicles or persons traveling upon a street or sidewalk." In response to your concerns, Public Works Neighborhood Traffic Safety Control Program staff has discussed these concerns with Ford of Kirkland and has directed that the vehicles be parked back from the sidewalk so as not to in any way block pedestrian movement along the sidewalk. The vehicles have been moved in compliance of this provision and Ford of Kirkland has agreed to maintain compliance.

Sight Distance Concerns

You also expressed a concern that display vehicles were parked in such a location as to block the sight line of vehicles exiting driveways along 124<sup>th</sup> Ave. NE. Public Works Engineering staff has also addressed this issue with Ford of Kirkland and has required vehicles blocking such sight lines be removed. Ford of Kirkland has now met this requirement.

Unused Right-of-Way: Kirkland Municipal Code Section 19.04.050

Kirkland Municipal Code Section 19.04.050 provides that unused right of way may be incorporated into the landscaping of the abutting private property. The unused right of way abutting Ford of Kirkland has been incorporated into the landscaping for Ford of Kirkland. Ford of Kirkland uses the landscaped area in the unused right of way to display vehicles for sale. There is no provision in the Kirkland Municipal Code which prohibits the use of the landscaping area for the display of vehicles. Therefore, no violation of this provision exists.

Historical Use

Ford of Kirkland and its' predecessors in interest have made a long-standing use of unused right of for the display of vehicles. An aerial photo pre-dating the 1988 annexation of the subject property into the City of Kirkland demonstrates this use. In the zoning context, the general rule

is that a zoning ordinance may not operate to immediately suppress or remove from a particular district an otherwise lawful business for a use already established and maintained. A copy of the photo is available for your review from Judd Tuberg Code Enforcement Officer in the Department of Planning and Community Development.

A-Board Signs

You also raised the issue of the display of numerous A-board signs on and adjacent to the Ford of Kirkland premises. Investigation has confirmed that Ford of Kirkland is displaying more of these signs than the Zoning Code allows (one per block). A code enforcement officer has already been in contact with Ford of Kirkland to bring those signs into compliance.

The City Council appreciates your bringing your concerns to our attention. Should you have further concerns you would like the City to investigate regarding this property, please contact Marie Stake, Communications Program Manager, 425-587-3021 or [mstake@ci.kirkland.wa.us](mailto:mstake@ci.kirkland.wa.us).

Sincerely,  
KIRKLAND CITY COUNCIL

by Joan McBride  
Mayor