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MEMORANDUM

To: Planning Commission

From: Eric Shields, AICP, Planning Director
Nancy Cox, AICP, Development Review Manager

Date: September 16, 2010

Subject: **Code Enforcement Zoning Code Amendment Project, File ZON10-00013**

RECOMMENDATION

Conduct a study session on the proposed Kirkland Zoning Code (KZC) amendments and provide feedback to staff on whether additional information is needed for the public hearing.

BACKGROUND DISCUSSION

This project was presented at the August 12 joint Planning Commission and Houghton Community Council meeting. At that time, general background information was presented about the purpose and scope of the project and schedule. No code language was presented. This link will take you to that previous packet memo for review if needed. The PC and HCC did not make comments or recommend changes at the first study session except for a recommendation to redo the existing and proposed enforcement process flow charts into a more standard format.

For the current study session, draft code language is presented for your review. The Planning Commission has authority for Zoning Code amendments and deletions; this project involves mostly deletions. Most of the new code language for this project will be in the KMC and will be decided upon by the City Council later this year. However, draft code language for KMC Chapter 1.12 Code Enforcement is attached to this memo (see Attachment 2) in order to provide context for the Zoning Code amendments that you will be reviewing. Please be aware that the KMC code language is still at an early draft stage and will be revised prior to the City Council meetings.

Zoning Code Changes

The following Zoning Code Sections are recommended for amendment as a result of this project (see Attachment 1 for actual code sections with underlines and crossouts):

Chapter 95 Tree Management and Landscaping, Section 95.21.2 Tree Pruning on Private Property – Describes that the replacement provisions in Section 95.55 that must be followed when tree topping occurs. KMC Chapter 1.12 will be referred to in lieu of 95.55.

Section 95.55 Enforcement and Penalties – Amendments to Chapter 95 were approved in April, 2010. During that project we did not discuss tree enforcement issues because we anticipated covering the issue in this project. Staff proposes to move most of the language from KZC 95.55 into KMC Chapter 1.12. The exception is to delete references to Civil Citations. Staff proposes to use the Notice of Civil Violation for tree violation cases the same as other code enforcement cases. Public tree enforcement is currently discussed in KMC 19.36. This project proposes to delete the appropriate sections and apply the new process in KMC Chapter 1.12 for public trees like private trees.

Chapter 115 – Miscellaneous Use Development and performance Standards, Section 115.65.6 Home Occupations Enforcement - This section refers to the enforcement provisions in Chapter 170 which would be revised to KMC Chapter 1.12.

Section 115.70 Junk and Junk Yards Prohibited – This section will be deleted and instead incorporated into the proposed Property Maintenance Code, KMC 21.41.

Chapter 117 Personal Wireless Facilities, Section 117.125 Violations and City Remedies - This section refers to the enforcement provisions in Chapter 170 which would be revised to KMC Chapter 1.12.

Chapter 141 Shoreline Administration, Section 141.80 Enforcement Authority – A reference to KMC Chapter 1.12 is proposed to be added to clarify our local enforcement procedures for shoreline violations.

Chapter 162 – Nonconformance, Section 162.20 Abatement of Nonconformance That Was Illegal When Initiated - This section refers to the enforcement provisions in Chapter 170 which would be revised to KMC Chapter 1.12.

162.25 Immediate Compliance with Certain Provisions Required – This section refers to the abatement procedures in Chapter 170 which would be revised to KMC Chapter 1.12.

Chapter 170 Code Enforcement - The majority of this Chapter describes the current code enforcement process. This portion of the Chapter is proposed to be deleted with reference made to KMC Chapter 1.12. Chapter 170 is proposed to be renamed "Zoning Code Administration."

Attachments

1 Kirkland Zoning Code Amendments for Code Enforcement

2 Draft KMC Chapter 1.12 Code Enforcement

KIRKLAND ZONING CODE AMENDMENTS

FOR CODE ENFORCEMENT

FILE ZON10-00013

Title 23
ZONING

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Click here to view adopted ordinances that have not yet been inserted into the Zoning Code as well as pending regulations under consideration.

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Chapter 95 – TREE MANAGEMENT AND REQUIRED LANDSCAPING

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~~9. Failure to Restore or Pay Fines~~
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95.57 City Forestry Account

95.21 Tree Pruning

1. Tree Pruning of Street Trees. It is the responsibility of the abutting property owner to maintain street trees abutting their property, which may include pruning, watering, and mulching. In order to prune, trim, modify, or alter a street tree, the abutting property owner shall apply for a permit by filing a written application with the City. Pruning shall conform to the most recent version of the American National Standards Institute (ANSI) A300 Part 1 – 2001 pruning standards or as outlined in an approved Utility Vegetation Management Plan. The City reserves the right to have City or utility crews perform routine pruning and maintenance of street trees.

2. Tree Pruning on Private Property. A permit is not required to prune trees on private property. Pruning which results in the removal of at least half of the live crown will be considered tree removal and subject to the provisions in KZC 95.23.

   Tree topping is not allowed. If a tree required by this chapter is smaller than six inches in diameter and is topped, it must be replaced pursuant to the standards in ~~KZC~~ 95.55~~(8)(b)~~KMC 1.12. If a tree six inches or larger in diameter is topped, the owner must have a qualified professional develop and implement a five-year restoration pruning program.

95.55 Enforcement and Penalties

~~1~~. Upon determination that there has been a violation of any provision of this section, the City may pursue code enforcement and penalties in accordance with the provisions of KMC 1.12, Code Enforcement. ~~Intent. These enforcement and penalty provisions have several purposes. First, they are intended to discourage damage or removal of significant trees above and beyond what is permitted under this chapter. Second, these enforcement and penalty provisions are intended to provide complete and effective restoration of areas in which violations of this chapter occur. Finally, these regulations are intended to provide a clear and efficient process for addressing violations of this chapter.~~

   ~~The City may utilize one or more of several remedies when responding to violations of this chapter. In almost all cases where a violation has occurred, the City will issue a civil citation that describes the nature of the~~

~~violation, the actions necessary to remedy the violation, and the amount of any civil penalty, among other things. If the acts that constitute a violation appear to be ongoing, the City may also issue a notice of cease and desist. Failure to adhere to a notice to cease and desist will result in imposition of additional civil penalties. If there is a pending development or building permit, the City may also issue a stop work order or withhold issuance of permit approval or a certificate of occupancy. Finally, additional fines may be imposed if a violator does not follow through in a timely manner with restoration work or other compliance issues.~~

~~2. General Requirements. Enforcement shall be conducted in accordance with procedures set forth in Chapter 170 KZC. Special enforcement provisions related to tree conservation are set forth below. To the extent there is a conflict between the provisions of this section and Chapter 170 KZC, this section shall control.~~

~~For code enforcement provisions regarding street trees and trees located on City property see Chapter 19.36 KMC.~~

~~3. Authority. It shall be the duty of the Planning Official to administer the provisions of this chapter. The Planning Official shall have authority to enforce and carry out the provisions of this chapter.~~

~~4. Cease and Desist. The Planning Official may issue a notice to cease and desist using the procedure set forth in KZC 170.30 if the Planning Official finds that a violation of this code has occurred. Continued illegal tree activity following issuance of a cease and desist from the City for the tree activity shall result in fines of $1,000 per day of continued activity.~~

~~5. Stop Work Order. If a violation of this chapter or an approved Tree Retention Plan occurs on property on which work is taking place pursuant to a City of Kirkland development or building permit, the Building Official may suspend some or all of the work as appropriate through issuance of a stop work order. The Building Official shall remove the stop work order when the City determines that the violation has been corrected or when the City has reached an agreement with the violator regarding rectification of the violation. Any stop work order issued under this section may be appealed using the procedures set forth in Chapter 21.06 KMC.~~

~~6. Civil Citation. The City's Code Enforcement Officer shall notify a person who violates this chapter by issuance of a civil citation. The civil citation shall be in writing, and issued by certified mail with return receipt requested, or by personal service. The civil citation shall contain the following:~~

~~a. The name and address of the property owner or other person to whom the civil citation is directed;~~

~~b. The street address or description sufficient for identification of the land upon which the violation has occurred or is occurring;~~

~~c. A description of the violation and a reference to the provisions of this chapter that have been violated;~~

~~d. A statement of the restoration action required to be taken to correct the violation as determined by the Planning Official;~~

~~e. A statement of the civil penalty incurred for each violation;~~

~~f. A statement that the person to whom the civil citation is issued must correct the violation through restoration described in subsection (8) of this section and may pay the civil penalty or may appeal the civil citation as provided in this section.~~

~~7. Civil Penalty.~~

~~a. A person who fails to comply with the requirements of this chapter or the terms of a permit issued hereunder, who undertakes an activity regulated by this chapter without obtaining a permit, or fails to comply with a cease and desist or stop work order issued under this chapter shall also be subject to a civil penalty as set forth in Table 95.55.1. Each unlawfully removed or damaged tree shall constitute a separate violation.~~

~~b. Any person who aids or abets in the violation shall be considered to have committed a violation for purposes of the civil penalty.~~

~~c. The amount of the penalty shall be assessed in accordance with Table 95.55.1. The Planning Official may elect not to seek penalties if the Planning Official determines that the circumstances do not warrant imposition of civil penalties in addition to restoration.~~

~~Table 95.55.1 – Penalties~~

~~Types of Violations~~	~~Allowable Fines per Violation~~
~~1. Removal of tree(s) approved to be removed, but prior to final tree plan approval or issuance of a City tree removal permit~~	~~$100.00 per tree~~
~~2. Removal or damage of tree(s) that are or would be shown to be~~	~~$1,000 per tree~~

~~retained on an approved tree plan or any other violation of approved tree protection plan~~	
~~3. Removal of tree(s) without applying for or obtaining a required City permit~~	~~$1,000 per tree~~

~~8. Tree Restoration.~~

~~a. Violators of this chapter or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas in conformance with a plan, approved by the Planning Official, which provides for repair of any environmental and property damage, and restoration of the site; and which results in a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation(s). In cases where the violator intentionally or knowingly violated this chapter or has committed previous violations of this chapter, restoration costs may be based on the City appraised tree value of the subject trees in which the violation occurred, utilizing the industry standard trunk formula method in the current edition of Guide for Plant Appraisal. If diameter of removed tree is unknown, determination of the diameter size shall be made by the Planning Official by comparing size of stump and species to similar trees in similar growing conditions. The amount of costs above the approved restoration plan will be paid into the City forestry account.~~

~~b. Restoration Plan Standards. The restoration plan shall be in accordance to the following standards:~~

~~1) The number of trees required to be planted is equal to the number of tree credits of illegally removed trees according to Table 95.33.1.~~

~~2) The minimum size for a tree planted for restoration is 12-foot tall conifer and three-inch caliper deciduous or broadleaf evergreen tree. The City may approve smaller restoration tree sizes at a higher restoration ratio, provided the site has capacity for the additional trees and the results of restoration at a higher restoration ratio is as good or better than at the normal ratio. The smallest allowable alternatives to the normal restoration requirements shall be two eight-foot conifers for one 12-foot conifer or two two-inch caliper deciduous for one three-inch caliper deciduous tree.~~

~~3) In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall make payment to the City forestry account. Unless otherwise determined to base the restoration costs on appraised value, the amount paid will be the City's unit cost for a restoration tree multiplied by the number of~~

~~outstanding tree credits. The City's unit cost is based on the current market cost of purchase, installation and three-year maintenance for a minimum-sized tree for restoration.~~

~~4) The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a three-year period unless the violation was on a site with an approved tree plan, in which case the maintenance period is five years.~~

~~9. Failure to Restore or Pay Fines.~~

~~a. Prohibition of Further Approvals. The City shall not approve any application for a subdivision or any other development permit or approval, or issue a certificate of occupancy for property on which a violation of this chapter has occurred until the violation is cured by restoration or other means accepted by the Planning Official and by payment of any penalty imposed for the violation.~~

~~b. Fines. A property owner or occupant who fails to restore or otherwise cure property on which a violation of this chapter has occurred shall be assessed a fine of $100.00 per day for each day that restoration is incomplete. Prior to assessing fines under this subsection, the City shall issue a written notice to the property owner or that restoration has not been completed. The notice shall include the following information: (1) a description of the nature of the violation; (2) a description of what actions are required to bring the property into compliance; and (3) a date by which compliance shall be required (the "compliance date"). The compliance date shall be no less than 30 days from the date the notice is served on the property owner or occupant. If the property owner or occupant does not, in the determination of the City, bring the property into compliance by the compliance date, then the City may issue an order imposing $100.00 per day fines at any time after the compliance date. The fines shall continue to accrue until the violation has been certified to be corrected by the Planning Department. The property owner or occupant may appeal the order imposing fines to the Hearing Examiner using the procedures set forth in subsection 10 of this section.~~

~~10. Appeal to Hearing Examiner.~~

~~a. A person to whom a civil citation or order imposing fines is directed may appeal the civil citation, including the determination that a violation exists or the amount of any monetary penalty imposed, to the Hearing Examiner.~~

~~b. A person may appeal the civil citation or order imposing fines by filing a written notice of appeal with the Department of Planning and Community Development within 14 calendar days of the date of service of the civil citation or order imposing fines.~~

~~c. Fines that accrue on a daily basis shall not be imposed while an appeal is pending unless the Hearing Examiner determines that the appeal is frivolous or imposed solely for the purpose of delay.~~

~~d. If both a civil citation and an order to cease and desist have been issued in the same case, and both the civil citation and the order to cease and desist have been appealed, the appeals shall be consolidated for hearing.~~

~~e. The office of the Hearing Examiner shall give notice of the hearing to the appellants at least 17 calendar days prior to the hearing.~~

~~f. The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of procedure provided for in the Administrative Procedures Act (Chapter 34.05 RCW) and in accordance with any rules for hearings promulgated by the Hearing Examiner. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.~~

~~11. Hearing Examiner Decision.~~

~~a. The Hearing Examiner shall determine whether the City has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the civil citation, with or without written conditions.~~

~~b. In the event that the Hearing Examiner determines that a violation has occurred, the Hearing Examiner shall also consider the following in making his or her decision: (1) whether the appeal is frivolous or intended to delay compliance; (2) whether the appellant exercised reasonable and timely effort to comply with applicable development regulations; and (3) any other relevant factors.~~

~~c. The Hearing Examiner shall mail a copy of his or her decision to the appellant, by certified mail, postage prepaid, return receipt requested.~~

~~d. The decision of the Hearing Examiner may be reviewed in King County Superior Court using the standards set forth in RCW 36.70C.130. The land use petition must be filed within 21 calendar days~~

~~of the issuance of the final land use decision by the Hearing Examiner (see Chapter 36.70C RCW for more information).~~

CHAPTER 115 – MISCELLANEOUS USE DEVELOPMENT AND PERFORMANCE STANDARDS

Sections:

115.05 User Guide
115.07 Accessory Dwelling Units
(No change until)
~~115.70 Junk and Junk Yards Prohibited~~
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115.85 Lighting Regulations
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115.142 Transit Shelters and Centers, Public
115.150 Vehicles, Boats and Trailers – Size in Residential Zones Limited

Section 115.65 Home Occupations

6. Enforcement – Upon determination that there has been a violation of any provision of this section, the City may pursue code enforcement in accordance with the provisions of KMC Chapter~~170~~~~KZC~~ 1.12, Code Enforcement.

~~115.70 Junk and Junk Yards Prohibited~~

~~It is a violation of this code to accumulate junk or for a property owner or the person in control of property to allow junk to accumulate on the subject property. In addition, a junk yard is not permitted in the City.~~

Chapter 117 Personal Wireless Facilities

117.125 Violations and City Remedies

Any person who violates any of the provisions of this chapter shall be subject to the provisions of KMC Chapter ~~170 KZC~~ 1.12, Code Enforcement. In addition to fines, the City shall have the right to seek damages and injunctive relief for any and all violations of this chapter and all other remedies provided at law or in equity.

Chapter 141 – Shoreline Administration

141.80 Enforcement Authority.

1. WAC Chapter 173-27 contains enforcement regulations, including authority for the city to issue regulatory orders to enforce the Shoreline Management Act and the shoreline master program. In addition, the city shall have any and all other powers granted to or devolving upon municipal corporations to enforce ordinances, resolutions, regulations, and other laws within its territorial limits. Upon determination that there has been a violation of any provision of the city's shoreline regulations, the City may pursue code enforcement and penalties in accordance with the provisions of KMC 1.12, Code Enforcement.

Chapter 162 – Nonconformance

162.20 Abatement of Nonconformance That Was Illegal When Initiated

1. General – Except as specified in subsection (2) of this section, any nonconformance that was illegal when initiated must immediately be brought into conformance with this chapter. The City may, using the provisions of KMC Chapter ~~170 KZC~~1.12, immediately abate any nonconformance that was illegal when initiated.

162.25 Immediate Compliance with Certain Provisions Required

2. Abatement – The City may immediately abate any nonconformance listed in KZC 162.25(1) using the provisions of ~~KZC 170.25 through 170.40~~ KMC 1.12, or any other abatement process lawfully available to the City.

Chapter 170 – CODE ~~ENFORCEMENT~~ADMINISTRATION

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170.10 Permits Issued by Building Official – Responsibility Prior to Issuance of Permit
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170.60 Interpretations of This Code – General
170.65 Interpretations of This Code – Appeal
170.70 Conflict of Provisions
170.75 Easement Agreements Approved by the City Attorney

170.05 User Guide

This chapter contains a variety of provisions generally pertaining to the administration and enforcement of this code. Specifically, this chapter contains provisions in the following areas:

1. Code administration.

2. Code enforcement.

~~3. Penalties for code violation.~~

4. Status of discretionary decision.

5. Liability of employees and others.

6. Code interpretations and appeals.

7. Conflict of provisions.

8. Recording of easements.

170.10 Permits Issued by Building Official – Responsibility Prior to Issuance of Permit

1. General – The Building Official may not issue a permit to conduct any activity or to erect or alter any structure that does not conform to this code.

2. Required Information – The Building Official shall distribute to each applicant for a permit issued by that Official a list, prepared by the Planning Official, of all of the information and renderings required by this code.

3. Responsibility of Building Official – Upon receiving an application for any permit that is not exempt under subsection (7) of this section, the Building Official shall send the application and all relevant information to the Planning Department. The Building Official may not issue the permit until the permit application has been signed by the Planning Official.

4. Responsibility of the Planning Official – Upon receiving an application for a permit routed from the Building Official, the Planning Official shall promptly review it and make any necessary field inspection to determine whether the proposed development or activity complies with this code.

5. Additional Information – The Planning Official may require the applicant to provide any information or renderings required by this code, or any other information or renderings that are reasonably necessary to determine if the proposed development or activity complies with the provisions of this code.

6. Authorization by Planning Official – The Planning Official shall sign the permit application if the proposed development or activity conforms to the provisions of this code.

7. Permits Exempted from Review by the Planning Director – The Planning Director may specifically exempt categories of permits issued by the Building Official from the Planning Department review requirements of this section. The Building Official shall review applications for exempted permits for compliance with this code.

170.15 Permits Issued by Building Official – Certificate of Occupancy

1. General – It is unlawful to occupy a building or conduct a use requiring a certificate of occupancy unless the Planning Official has approved the certificate of occupancy for that building or use.

2. Responsibility of Building Official – Upon receipt of a request to issue a certificate of occupancy, the Building Official shall promptly notify the Planning Official of the request. The Building Official may not issue a certificate of occupancy until he/she receives written approval from the Planning Official.

3. Responsibility of the Planning Official – Upon receiving notice from the Building Official of a request for a certificate of occupancy, the Planning Official shall promptly review the request, and if necessary, conduct a field inspection to determine if the structure or use conforms to this code.

4. Issuance of the Planning Official Approval – The Planning Official shall sign and forward to the Building Department the Certificate of Occupancy if the building or use conforms to this code.

170.20 Code Enforcement~~ Officer – Duty To Investigate~~

~~1. General – The Code Enforcement Officer shall, either upon a complaint or on his/her own initiative, investigate potential violations of this code.~~ For

code enforcement procedures and penalties for violations of this code see KMC 1.12.

~~2. Entrance on Private Property – The Code Enforcement Officer may enter upon private property to investigate potential violations of this code if he/she has a good faith belief that a violation exists or is occurring on the property. Before entering upon private property, the Code Enforcement Officer shall present his/her credentials to the owner or person in possession or charge of the property and demand entry. If entry is refused, the Code Enforcement Officer may use every lawful means and remedy to obtain entry.~~

~~170.25 Violation of This Code~~

~~1. General – It is a violation for any person to do or cause any of the following to be done contrary to this code, and for the property owner to permit any of the following to be done contrary to this code:~~

~~a. Construct, in any way alter, or move any improvement.~~

~~b. Engage in any activity.~~

~~c. Use or occupy any structure or land.~~

~~d. Conduct any use.~~

~~e. Create any conditions.~~

~~It is also a violation for any person to fail to perform any activity or obligation required by this code. Violation of a provision of this code is a civil infraction for which a monetary penalty may be imposed under this chapter.~~

~~2. Monetary Penalty – The amount of the monetary penalty per day or portion thereof for each violation is as follows:~~

~~a. First violation: $100.00;~~

~~b. Second violation: $200.00;~~

~~c. Third violation: $300.00;~~

~~d. Additional violation in excess of three: $500.00.~~

~~3. Continued Duty To Correct – Payment of a monetary penalty pursuant to this chapter does not relieve a person of the duty to correct the violation as ordered by the applicable department director.~~

~~4. Other Legal Remedies – Nothing in this chapter limits the right of the City to pursue other lawful criminal, civil, or equitable remedies to abate, discontinue, or correct unlawful acts under or in violation of this code.~~

~~170.30 Code Enforcement Officer – Order To Cease Activity~~

~~1. General – If the Code Enforcement Officer determines that any activity being conducted or any improvement being erected or altered:~~

~~a. Does not conform to the code, and~~

~~b. Such activity (i) involves use of noise-emitting heavy construction equipment or land surface modification, or (ii) poses an immediate threat to the safety, repose or right of quiet enjoyment of neighboring property owners, or to the general public,~~

~~he/she may issue an order to cease activity.~~

~~2. Posting and Notice – The Code Enforcement Officer shall prominently post this Order on the subject property and shall make reasonable attempts to send this Order on to the property owner, the person in charge of the property, or the person causing the activity to be conducted or the improvement to be erected or altered.~~

~~3. Effect – When an order to cease activity has been posted on the subject property, it is a violation for any person with actual or constructive knowledge of the order to conduct the activity or do the work covered by the order until the Code Enforcement Officer has removed the posted copy of the order and issued written authorization for the activity or work to be continued. If an order to cease activity is violated, the Code Enforcement Officer may issue a notice of civil infraction under KZC 170.40 and need not first issue a notice of violation.~~

~~4. Appeal – An order to cease activity may be appealed in like manner as a notice of civil infraction to the Hearing Examiner under the provisions of KZC 170.40. If a notice of civil infraction has also been issued and appealed, the appeals shall be consolidated for hearing.~~

~~170.35 Code Enforcement Officer – Notice of Violation~~

~~1. General – If the Code Enforcement Officer determines that any activity, condition, structure, or use exists that does not conform to this code, he/she may issue a notice of violation. This notice will specifically indicate:~~

~~a. The name and address of the property owner or other person to whom the notice of violation is directed; and~~

~~b. 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~~

~~c. A description of the violation and a reference to that provision or provisions of this code being violated; and~~

~~d. A statement of the action required to be taken to correct the violation as determined by the applicable department director and a date or time by which correction is to be completed, which date shall be not less than seven days after the date of issuance of the notice of violation; and~~

~~e. A statement that a monetary penalty in an amount per day for each violation as specified by KZC 170.25 shall be assessed against the person to whom the notice of violation is directed for each and every day, or portion of a day, on which the violation continues following the date set for correction.~~

~~2. Notice to Occupant and Owner – The Code Enforcement Officer shall:~~

~~a. Leave a copy of this notice with the occupant or person in charge of the property or post it in a conspicuous place on the subject property; and~~

~~b. Send a copy of the notice by certified mail to the owner of the subject property.~~

~~3. Extension – Upon written request received prior to the correction date or time, the Code Enforcement Officer may extend the date set for correction for good cause. The Code Enforcement Officer may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.~~

~~170.40 Code Enforcement Officer – Notice of Civil Infraction~~

~~1. General – The Code Enforcement Officer may cause a notice of civil infraction to be issued in either of the following circumstances:~~

~~a. There is a violation of a posted order to cease activity.~~

~~b. If, after this time specified in the notice of violation, the activity, conditions, structure, or use cited in the notice of violation still does not conform to this code.~~

~~2. Issuance~~

a. The notice of civil infraction will be issued to the owner of the property, the occupant, or person in charge of the property and/or any other person causing or allowing the activity, conditions, structure or use to exist or occur.

b. Notwithstanding the provisions of KZC 170.30 and 170.35, the Code Enforcement Officer may issue a notice of civil infraction without having issued a notice of violation or order to cease activity when a repeated violation occurs within a six-month period of time.

c. A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this chapter.

3. Content – The Code Enforcement Officer shall include the following in the notice of civil infraction:

a. The name and address of the property owner or other persons to whom the notice of civil infraction is directed; and

b. 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

c. A description of the violation and a reference to that provision or provisions of this code which has been violated; and

d. A statement that the monetary penalty in the amount per day for each violation as specified in KZC 170.25 is assessed against the person to whom the notice of civil infraction is directed for each and every day, or portion thereof, during which the violation continues beyond the date or time established for correction in the notice of violation; and

e. A statement that the person to whom the notice of civil infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the City Clerk or may appeal the notice of civil infraction as provided in this section.

4. Service of Notice – The Code Enforcement Officer shall serve the notice of civil infraction upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil infraction by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting the notice of civil infraction conspicuously on the affected property or structure. The person who effected personal service shall make proof of service at the time of service by a written

~~declaration under penalty of perjury declaring the time and date and the manner in which service was made.~~

~~5. Appeal to Hearing Examiner~~

~~a. A person to whom a notice of civil infraction is directed may appeal the notice of civil infraction including the determination that a violation exists or may appeal the amount of any monetary penalty imposed to the Hearing Examiner.~~

~~b. A person may appeal the notice of civil infraction by filing a written notice of appeal with the Department of Planning and Community Development within seven calendar days from the date of service of the notice of civil infraction.~~

~~c. The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the Hearing Examiner may impose a daily monetary penalty from the date of service of the notice of civil infraction if he finds that the appeal is frivolous or intended solely to delay compliance.~~

~~d. The hearing before the Hearing Examiner shall be conducted as follows:~~

~~1) The office of the Hearing Examiner shall give notice of the hearing before the Hearing Examiner to the appellant 17 calendar days before such hearing.~~

~~2) The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of procedure as provided by the Administrative Procedure Act, Chapter 34.05 RCW. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.~~

~~6. Action of Hearing Examiner~~

~~a. The Hearing Examiner shall determine whether the City has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the notice of civil violation with or without written conditions.~~

~~b. The Hearing Examiner shall consider the following in making his/her determination:~~

~~1) Whether the intent of the appeal was to delay compliance, or~~

~~2) Whether the appeal is frivolous, or~~

~~3) Whether there was a written contract or agreement with another party which specified the securing by the other party of the applicable permit or approval from the City, or~~

~~4) Whether the appellant exercised reasonable and timely effort to comply with applicable development regulations, or~~

~~5) Any other relevant factors.~~

~~7. Notice of Decision – The Hearing Examiner shall mail a copy of his decision to the appellant by certified mail, postage prepaid, return receipt requested.~~

~~8. Judicial Review – The decision of the Hearing Examiner may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in King County Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the Hearing Examiner. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW.~~

~~9. Collection of Monetary Penalty~~

~~a. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil infraction is directed. Any monetary penalty assessed must be paid to the City Clerk within seven calendar days from the date of service of notice of civil infraction or, if an appeal was filed pursuant to this section, within seven calendar days of the Hearing Examiner's decision.~~

~~b. The City Attorney, on behalf of the City, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.~~

~~c. In the event of failure to appear at a hearing provided in this section, the Hearing Examiner shall assess the monetary penalty prescribed and a penalty of $25.00.~~

~~d. In the event of a conflict between this chapter and any other provision of this code or City ordinance providing for a civil penalty, this chapter shall control.~~

~~170.42 Failure To Satisfy Penalty~~

~~A person who willfully fails to pay a monetary penalty as required by provisions of this chapter may be found in civil contempt of court after notice and hearing.~~

170.~~45~~30 Variance, Permit, Decision or Discretionary Approval – General

The City shall enforce the provisions, including any conditions or restrictions, of a variance, permit, decision, or discretionary approval issued under this code as if those provisions are part of this code.

170.~~50~~40 Variance, Permit, Decision, or Discretionary Approval – Voiding

1. General – Under the provisions of this section, the City may void any variance, permit, decision or discretionary approval granted or issued under this code.

2. Review Process – The City, as the applicant, shall use the same process to determine if a variance, permit, decision, or discretionary approval should be voided as it used to grant the variance, permit, decision, or discretionary approval.

3. Decisional Criteria – The City may void a variance, permit, decision, or discretionary approval only if it finds that:

   a. There have been repeated violations of any aspect, including conditions or restrictions, of the variance, permit, decision, or discretionary approval; and

   b. The detriment caused by the violations clearly outweighs any public benefit of the variance, permit, decision, or discretionary approval.

4. Effect – If the City voids a variance, permit, decision, or discretionary approval, the City will apply and enforce the provisions of this code on the subject property, as if the variance, permit, decision, or discretionary approval had never been granted.

170.~~55~~50 No Personal Liability for Acts or Omissions

Each person responsible for the enforcement or administration of this code and each member of a Committee, Board, Commission or Council responsible for making any decision or recommendation under this code is relieved from any personal liability whatsoever from any injury to persons or property as a result of his/her act or omission in the good faith discharge of his/her responsibilities. If the person or member is sued for acts or omissions occurring in the good faith discharge of his/her responsibilities, the City shall defend and provide legal representation to the person or member until final

disposition of the proceedings. The City shall reimburse the person or member for any costs incurred in defending against alleged liability for the acts or omissions of the person or members in the good faith discharge of his/her duties.

170.60 Interpretations of This Code – General

1. Criteria – The Planning Director may, acting on his/her own initiative or in response to an inquiry, issue interpretations of any of the provisions of this code. The Director shall base his/her interpretations on:

   a. The defined or common meaning of the words of the provision; and

   b. The general purpose of the provision as expressed in the provision; and

   c. The logical or likely meaning of the provision viewed in relation to the Comprehensive Plan.

2. Effect – An interpretation of this code will be enforced as if it is part of this code.

3. Availability – All interpretations of this code, filed sequentially, are available for public inspection and copying in the Planning Department during regular business hours. The Planning Official shall also make appropriate references in this code to these interpretations.

170.65 Interpretations of This Code – Appeal

1. Who Can Appeal – Any person who is aggrieved by an interpretation issued by the Planning Director may appeal that interpretation at any time.

2. How To Appeal – The applicant must file a letter of appeal indicating how the interpretation affects his/her property and presenting any relevant arguments or information on the correctness of the interpretation. The applicant shall include the appeals fee as established by ordinance.

3. Applicable Procedures – All appeals of interpretations of this code will be reviewed and decided upon using the appeal provisions of Process I, described in Chapter 145 KZC.

4. Effect – If the interpretation of the Planning Director is modified, the Planning Official shall:

   a. Place the modifying decision in the Interpretation File; and

b. Change or remove, as appropriate, the interpretation that was modified; and

c. Change the reference in this code to reflect the modification.

170.70 Conflict of Provisions

The standards, procedures, and requirements of the code are the minimum necessary to promote the health, safety, and welfare of the residents of Kirkland. The City is free to adopt more rigorous or different standards, procedures, and requirements whenever this becomes necessary. If the provisions of this code conflict one with another, or if a provision of this code conflicts with the provision of another ordinance of the City, the most restrictive provision or the provision imposing the highest standard prevails.

170.75 Easement Agreements Approved by the City Attorney

In each case where the City requires an applicant to provide a public walkway, public use area, or other area, facility or structure that is open to the public, the applicant shall execute and record with the King County Bureau of Elections and Records an easement or similar document approved by the City Attorney.

CHAPTER 1.12
CODE ENFORCEMENT

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1.12.010 Purpose

The purpose of this chapter is to establish an efficient system to enforce the regulations of the city, to provide an opportunity for a prompt hearing and decision on alleged violations of these regulations, and to establish monetary penalties for violations.

1.12.020 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 which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.

B. "Act" means doing or performing something.

C. "Applicable department director" means the director of the department or any designated alternate empowered by ordinance or by the city manager to enforce a city ordinance or regulation.

D. "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions issued pursuant to KMC Title 11 are specifically excluded from the application of this chapter.

E. "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts governed by a city regulation.

F. "Emergency" means a situation which in the opinion of the applicable department director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.

G. "Hearing examiner" means the Kirkland hearing examiner and the office thereof established pursuant to Chapter 3.34 of this Code.

H. "Omission" means a failure to act.

I. "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

J. "Person responsible for the violation" means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the city, and includes but is not limited to owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs. For violations of the City sign regulations, this definition includes, but is not limited to, sign installers/posters, sign owners, and any other persons who cause or participate in the placement of a sign in a manner that constitutes a civil violation. For violations of City tree regulations, this definition includes any person who caused or participated in the removal of a tree in a manner that constitutes a civil violation.

K. "Regulation" means and includes the following, as they now exist or are hereafter amended:

1. KMC Title 23 (Kirkland Zoning Code);

2. KMC Title 21 Building and Construction (including codes adopted by reference);

3. KMC Chapter 15.52 (Surface Water Management)

4. KMC Title 29 (Land Surface Modifications)

5. KMC Chapter 19.04 (Obstructing Streets and Sidewalks)

6. KMC Title 9 (Health and Sanitation)

7. KMC Chapters 11.76 (Junk Vehicles)

8. KMC Chapter 19.36 (Street Trees and Trees on City Property, in addition to trees subject to regulation under the Kirkland Zoning Code)

9. KMC Chapter 11.24 (Nuisance)

10. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city.

L. "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.

M. "Violation" means an act or omission contrary to a city development regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

1.12.030 Voluntary correction.

A. Applicability. This section applies whenever the applicable department director determines that a violation of a regulation has occurred or is occurring.

B. General. The applicable department director shall make a reasonable attempt to secure voluntary correction by contacting the person responsible for the violation where possible, explaining the violation and requesting correction.

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 applicable department director.

1. Content. The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

a. The name and address of the person responsible for the violation; and

b. 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

c. A description of the violation and a reference to the provision(s) of the city ordinance or regulation which has been violated; and

d. The necessary corrective action to be taken, and a date or time by which correction must be completed; and

e. An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses and a monetary penalty pursuant to this chapter from the person responsible for the violation if terms of the voluntary correction agreement are not met; and

f. An agreement that by entering into the voluntary correction agreement the person responsible for the violation waives the right to an administrative appeal of the violation and/or the required corrective action.

2. Right to a Hearing Waived. The person responsible for the violation waives the right to an administrative appeal of the violation and the required corrective action upon entering into a voluntary correction agreement.

3. Extension – Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director 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.
4. Abatement by the City. The city may abate the violation in accordance with KMC 1.18.060 if the terms of the voluntary correction agreement are not met.
5. Collection of Costs. If the terms of the voluntary correction agreement are not met the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with KMC 1.12.040, plus all costs and expenses of abatement, as set forth in KMC 1.12.060.

1.12.040 Notice of civil violation.

A. Issuance.
1. When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to KMC 1.12.030, the applicable department director may issue a notice of civil violation to the person responsible for the violation.
2. The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in KMC 1.12.030 under the following circumstances:

a. When an emergency exists;

b. When a repeat violation occurs;

c. When the violation creates a situation or condition which cannot be corrected;

d. When the person knows or reasonably should have known that the action is in violation of a city regulation.

B. Content. The notice of civil violation shall include the following:

1. The name and address of the person responsible for that 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 provision(s) of the city regulation which has been violated; and
4. The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with KMC 1.12.060 and the hearing examiner's order; and

5. The date, time and location of an appeal hearing before the hearing examiner which will be at least 10 days from the date the notice of civil violation is issued; and

6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed, required corrective action at least 48 hours prior to the hearing; except, that this statement need not be included where the violation constitutes a repeat violation or the violation creates a situation or condition which cannot be corrected; and

7. A statement that the costs and expenses of abatement incurred by the city pursuant to KMC 1.12.060 and a monetary penalty in an amount per day for each violation as specified in subsection (E) of this section may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearing examiner.

C. Service of Notice. The applicable department director shall serve the notice of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within King County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. 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 the facts showing that due diligence was used in attempting to serve the person personally or by mail.

D. Extension. No extension of the time specified in the notice of civil violation for correction of the violation may be granted, except by order of the hearing examiner.

E. Monetary Penalty.

1. The monetary penalty for each violation per day or portion thereof shall be as follows, with adjustments as allowed pursuant to subsection (E)(2) of this section for repeat violations:

a. First day of each violation, $100.00;

b. Second day of each violation, $200.00;

c. Third day of each violation, $300.00;

d. Fourth day of each violation, $400.00;

e. Each additional day of each violation beyond four days, $500.00 per day.

2. Effect of Repeat Violations. The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the hearing examiner shall consider the factors set forth in KMC 1.12.050(D)(4).

F. Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

G. Collection of Monetary Penalty.

1. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city at the permit center within 10 calendar days from the date of mailing of the hearing examiner's decision or a notice from the city that penalties are due.

2. The city attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty. The City may contract with a collections agency for this purpose.

1.12.050 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 10 calendar days after the notice of civil violation is issued.

B. Prior Correction of Violation or Payment of Monetary Penalty. Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least 48 hours prior to the scheduled hearing.

C. Procedure. The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

D. Decision of the Hearing Examiner.

1. The hearing examiner shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the

required correction is reasonable and shall affirm, vacate, or modify the city's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

2. 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 assessed based on the criteria in KMC 1.12.050(D)(3);

e. The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

3. Assessment of Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in KMC 1.12.040. The hearing examiner shall have the following options in assessing monetary penalties:

a. Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

b. Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; or

c. Assess no monetary penalties.

4. Determining Monetary Penalty. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:

a. Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;

b. Whether the person failed to appear at the hearing;

c. Whether the violation was a repeat violation;

d. Whether the person showed due diligence and/or substantial progress in correcting the violation;

e. Whether a genuine code interpretation issue exists; and

f. Any other relevant factors.

5. Effect of Repeat Violations. The hearing examiner shall assess a monetary penalty for each repeat violation as set forth in KMC 1.12.040.

6. Notice of Decision. The hearing examiner shall mail a copy of the decision to the appellant and to the applicable department director within 10 working days of the hearing.

E. Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order finding that the violation appeared and assessing the appropriate

monetary penalty. The city will carry out the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

F. Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with superior court within 20 calendar days from the date the hearing examiner's decision was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred.

1.12.060 Abatement by the city.

A. The city may abate a condition which was caused by or continues to be a civil violation when:

1. The terms of voluntary correction agreement pursuant to KMC 1.12.030 have not been met; or

2. A notice of civil violation has been issued pursuant to KMC 1.12.040 and a hearing has been held pursuant to KMC 1.12.050 and the required correction has not been completed by the date specified in the hearing examiner's order; or

3. The condition is subject to summary abatement as provided for in subsection B of this Section.

B. Summary Abatement. Whenever any violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

C. Authorized Action by the City. Using any lawful means, the city may enter upon the subject property and may remove or correct the condition which is subject to abatement. The city may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

D. Recovery of Costs and Expenses. The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the city at the permit center within 10 calendar days. The term "incidental expenses" includes but shall not be limited to personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the city in preparing notices, specifications

and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing.

E. Interference. No person shall obstruct, impede, or interfere with the city or its agents, or with any person who owns, or holds any interest or estate in any property, in performing any tasks necessary to correct the violation.

1.12.070 Stop work orders and orders to cease and desist.

A. Issuance of Order. Whenever the applicable department director finds any activity is being conducted or work being performed without a permit or in a manner contrary either to the provisions of the Kirkland Zoning Code or Kirkland Municipal Code, including any of the technical codes adopted by reference in KMC Chapter 21, the applicable department director is authorized to issue a stop work order or order to cease and desist. The order shall be in writing and shall be given to the owner or occupant of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order or order to cease and desist, the cited work or activity shall immediately cease. The order shall state the reason for the order, and the conditions under which the cited work or activity will be permitted to resume.

B. Fees and Penalties. The applicable department director is authorized to assess a special investigation fee for the issuance of a stop work order or order to cease and desist based on the costs to the City of investigation and enforcement of the order. Any person who shall continue any work or activity on the property after having been served with a stop work order or order to cease and desist (except such work as that person is directed to perform to remove a violation or unsafe condition) shall be subject to penalties as provided under this Chapter and as otherwise prescribed by law. A stop work order or order to cease activity may be appealed in the same manner and pursuant to the same provisions as a Notice of Civil Violation under this Chapter.

1.12.080 Entry to buildings and premises – Warrants.

Whenever necessary to make an inspection to determine whether a civil violation has occurred or is occurring, or to enforce any provision of the Kirkland Zoning Code or Kirkland Municipal Code, or regulation issued thereunder, violation of which is a civil violation under this chapter, the applicable department director or his designee may enter any building or premises at any reasonable time, provided if such building or premises is occupied he shall first present credentials and demand entry; and if such building or premises is not occupied, he shall first make a reasonable effort to locate the owner or other person having charge of the building or premises and demand entry. If such entry is refused, or the owner or other person having charge of the building or premises cannot be located, the applicable department director or his designee shall have recourse to every remedy

provided by law to secure entry, including recourse to the district or superior court for issuance of a warrant authorizing such entry and inspection.

1.12.090 Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement provisions authorized by the Kirkland Municipal Code except as precluded by law.

1.12.100 Special provisions relating to enforcement of tree regulations.

A. General Requirements. Enforcement shall be conducted in accordance with procedures set forth in this Chapter. Special enforcement provisions related to tree conservation are set forth in this Section.

B. Authority. It shall be the duty of the Planning Official to administer the provisions of this Section. The Planning Official shall have authority to enforce and carry out the provisions of this Section.

C. Cease and Desist. The Planning Official may issue a notice to cease and desist using the procedure set forth in this Chapter if the Planning Official finds that a violation of this code has occurred. Continued illegal tree activity following issuance of a cease and desist from the City for the tree activity shall result in fines of $1,000 per day of continued activity.

D. Stop Work Order. If a violation of Chapter 95 of the Kirkland Zoning Code or an approved Tree Retention Plan occurs on property on which work is taking place pursuant to a City of Kirkland development or building permit, the Building Official may suspend some or all of the work as appropriate through issuance of a stop work order. The Building Official shall remove the stop work order when the City determines that the violation has been corrected or when the City has reached an agreement with the violator regarding rectification of the violation. Any stop work order issued under this section may be appealed using the procedures set forth in this Chapter.

E. Notice of Civil Violation. The Planning Official shall notify a person who violates this chapter by issuance of Notice of Civil Violation pursuant to Section 1.12.040 of this Chapter.

F. Civil Penalty for Violations of the Tree Code.

1. A person who fails to comply with the requirements of Kirkland Zoning Code Chapter 95 or the terms of a permit issued thereunder, who undertakes an activity regulated by this chapter without obtaining a permit, or fails to comply with a cease and desist or stop work order issued under this chapter shall also be subject to a civil penalty as set forth in the following Table. Each unlawfully removed or damaged tree shall constitute a separate violation.

2. Any person who aids or abets in the violation shall be considered to have committed a violation for purposes of the civil penalty.

3. The amount of the penalty shall be assessed in accordance with Table 95.55.1. The Planning Official may elect not to seek penalties if the Planning Official determines that the circumstances do not warrant imposition of civil penalties in addition to restoration.

Types of Violations	Allowable Fines per Violation
1. Removal of tree(s) approved to be removed, but prior to final tree plan approval or issuance of a City tree removal permit	$100.00 per tree
2. Removal or damage of tree(s) that are or would be shown to be retained on an approved tree plan or any other violation of approved tree protection plan	$1,000 per tree
3. Removal of tree(s) without applying for or obtaining a required City permit	$1,000 per tree

G. Tree Restoration.

1. Violators of Kirkland Zoning Code Chapter 95 or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas in conformance with a restoration plan approved by the Planning Official. The restoration plan shall provide for repair of any environmental and property damage and restoration of the site. The goal of the restoration plan shall be a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation. In cases where the violator intentionally or knowingly violated this chapter or has committed previous violations of this chapter, restoration costs may be based on the City-appraised tree value of the subject trees in which the violation occurred, utilizing the industry standard trunk formula method in the current edition of Guide for Plant Appraisal. If diameter of removed tree is unknown, determination of the diameter size shall be made by the Planning Official by comparing size of stump and species to similar trees in similar growing conditions. The amount of costs above the approved restoration plan will be paid into the City forestry account.

2. Restoration Plan Standards. The restoration plan shall be in accordance to the following standards:

a) The number of trees required to be planted is equal to the number of tree credits of illegally removed trees according to Kirkland Zoning Code Table 95.33.1.

b) The minimum size for a tree planted for restoration is 12-foot-tall conifer and three-inch caliper deciduous or broadleaf evergreen tree. The City may approve smaller restoration tree sizes at a higher restoration ratio, provided the site has capacity for the additional trees and the results of restoration at a higher restoration ratio is as good or better than at the normal ratio. The smallest allowable alternatives to the normal restoration requirements shall be two eight-foot conifers for one 12-foot conifer or two two-inch caliper deciduous for one three-inch caliper deciduous tree.

c) In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall make payment to the City forestry account. Unless otherwise determined to base the restoration costs on appraised value, the amount paid will be the City's unit cost for a restoration tree multiplied by the number of outstanding tree credits. The City's unit cost is based on the current market cost of purchase, installation and three-year maintenance for a minimum-sized tree for restoration.

d) The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a three-year period unless the violation was on a site with an approved tree plan, in which case the maintenance period is five years.

H. Failure to Restore or Pay Fines.

1. Prohibition of Further Approvals. The City shall not approve any application for a subdivision or any other development permit or approval, or issue a certificate of occupancy for property on which a violation of this chapter has occurred until the violation is cured by restoration or other means accepted by the Planning Official and by payment of any penalty imposed for the violation.

2. Fines. A property owner or occupant who fails to restore or otherwise cure property on which a violation of this chapter has occurred shall be assessed a fine of $100.00 per day for each day that restoration is incomplete. Prior to assessing fines under this subsection, the City shall issue a written notice to the property owner or that restoration has not been completed. The notice shall include the following information: (1) a description of the nature of the violation; (2) a description of what actions are required to bring the property into compliance; and (3) a date by which compliance shall be required (the "compliance date"). The compliance date shall be no less than 30 days from the date the notice is served on the property owner or occupant. If the property owner or occupant does not, in the determination of the City, bring the property into compliance by the compliance date, then the City may issue an order imposing $100.00 per day fines at any time after the compliance date.

1.12.100 Special provisions relating to enforcement of nuisance regulations

A. Upon the discovery of a public nuisance on private property that does not constitute an immediate threat to the public health, welfare or safety, the applicable department director shall issue an order of abatement to the appropriate responsible parties identifying the nuisance and applicable code section violated, imposing a civil fine of not more than five thousand dollars and the date by which it must be paid, ordering a method of abatement, the date by which abatement must be accomplished, and containing notice of any right of appeal.

B. In case of a failure to abate or to appeal, the applicable department director shall notify the appropriate responsible parties that the city will abate the nuisance, the date abatement will occur, and that the city will assess the cost of abatement and any fine levied jointly and severally against the responsible parties, the subject property or both; provided, that in cases of immediate necessity as determined by the applicable department director, prior notification under this subsection may be dispensed with and the applicable department director shall provide the notice after the abatement has occurred. Such notice shall state the date the abatement occurred, the amount due the city for costs incurred in abating the nuisance, and any fines levied.

C. An order of abatement or any notice required herein shall be served upon the appropriate responsible parties as determined by the applicable department director in the manner set forth in KMC Section 1.12.040.

D. A person may appeal an order of abatement by filing a written notice of appeal with the Department of Planning and Community Development within ten (10) calendar days from the date of service of the notice. Except as otherwise provided in this Section, the appeal hearing shall be held in the manner set forth in KMC Section 1.12.050.

1. The hearing examiner may sustain the order and fine, modify the order and fine or dismiss the order and fine; provided, that whenever the order is sustained or modified, the hearing examiner shall establish a new date for abatement or affirm the original date. When appropriate, the hearing examiner may also require that the appellant post a bond to secure performance of the abatement by the appellant.

2. A sustained or modified abatement order shall also provide that in the event the appellant does not abate the nuisance by the date provided in the order, the applicable department director may abate the nuisance in any reasonable manner without further notice and that any costs and fines may be satisfied by the sale of any property obtained by the abatement or collected directly from the appellant or other responsible parties previously notified of the order of abatement.

E. The applicable department director may summarily abate a public nuisance on private property without prior notice using the procedures set forth in Section 11.24.050 whenever it is of such character as to constitute an imminent threat to the public health, welfare or safety.

F. At the applicable department director's discretion, the costs of abatement and fines shall be a lien against and collected from the sale of the property constituting the nuisance, the responsible parties, who shall be jointly and severally liable for the costs, or both. The city shall maintain an account of all costs incurred in performing an abatement. In addition to other powers given in this chapter to collect abatement costs, the city attorney may bring suit for recovery of the costs of any abatement in any court of competent jurisdiction, in the name of the city, against the subject property or the responsible parties.