



**CITY OF KIRKLAND**  
**Planning and Community Development Department**  
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**MEMORANDUM**

**To:** Planning Commission and Houghton Community Council

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

**Date:** August 4, 2010

**Subject:** **Code Enforcement Process, Code Consolidation and Property Maintenance Code Amendment Project, File ZON10-00018**

**RECOMMENDATION**

Conduct a study session on the proposed Kirkland Zoning Code (KZC) and Municipal Code (KMC) amendments and provide feedback to staff on whether additional information and/or staff response is needed for review at a future study session. Code language will be provided at a future study session.

**BACKGROUND DISCUSSION**

- I. Review and Approval
- II. Purpose and Scope
  - Code Enforcement Process Change
  - KMC Consolidation
  - Property Maintenance Code
- III. Schedule

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- I. Review and Approval

This project is part of the Miscellaneous Zoning Code Phase 2 project. However, only a relatively small part involves Zoning Code amendments (in this case code deletions). The Planning Commission and Houghton Community Council have jurisdiction over the Zoning Code amendments. The City Council amends the KMC. In order to put the Zoning Code amendments into context, staff is presenting the full scope of the project, including the KMC amendments, to the PC and HCC.

Staff attended a City Council Public Safety Committee meeting in June, 2010 in order to get initial direction. The Public Safety Committee endorsed work

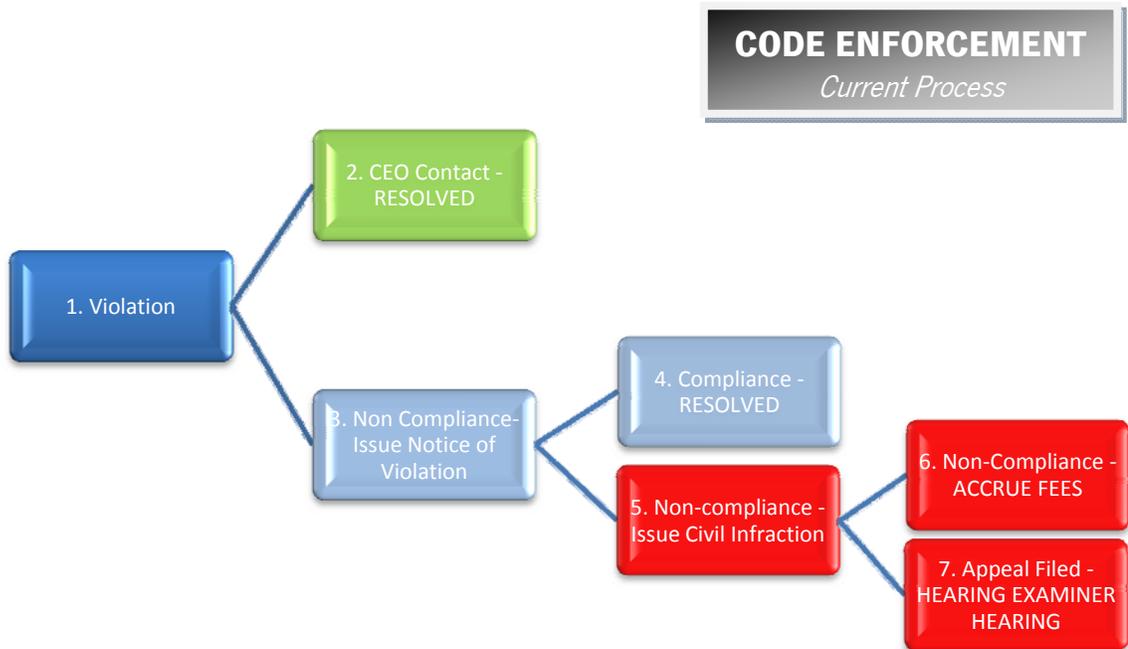
on the proposed Code Enforcement process, KMC consolidation and Property Maintenance Code. Therefore, all of this is included in the larger code amendment project.

## II. Purpose and Scope

This project proposes code enforcement changes that solve some due process concerns with our existing system, consolidate the processes for enforcing multiple codes into one process, and combine existing property maintenance provisions under one new chapter. The result will be an efficient system for code enforcement that is more predictable for the staff and public.

### **Code Enforcement Process Change**

There are some legal issues with the current code enforcement process in Chapter 170 of the KZC. These will be described through an explanation of the current process. It is diagrammed (simplified) in the following chart.



**Box 1** - The City receives complaints from the City's website, in hard copy, or from an email. Once received, the Code Enforcement Officer (CEO) determines that a violation exists, sets up a case and begins investigation.

Box 2 - The CEO contacts the violator to explain the complaint and request cooperation to resolve the issue immediately.

Box 3 - If this is not successful, then a Notice of Violation (NOV) is issued. A NOV describes the violation, and sets forth the remedy, deadline and penalty for non-compliance. The fines cannot actually start to accrue until Box 6.

Box 4 - The violation is resolved according to the terms of the NOV.

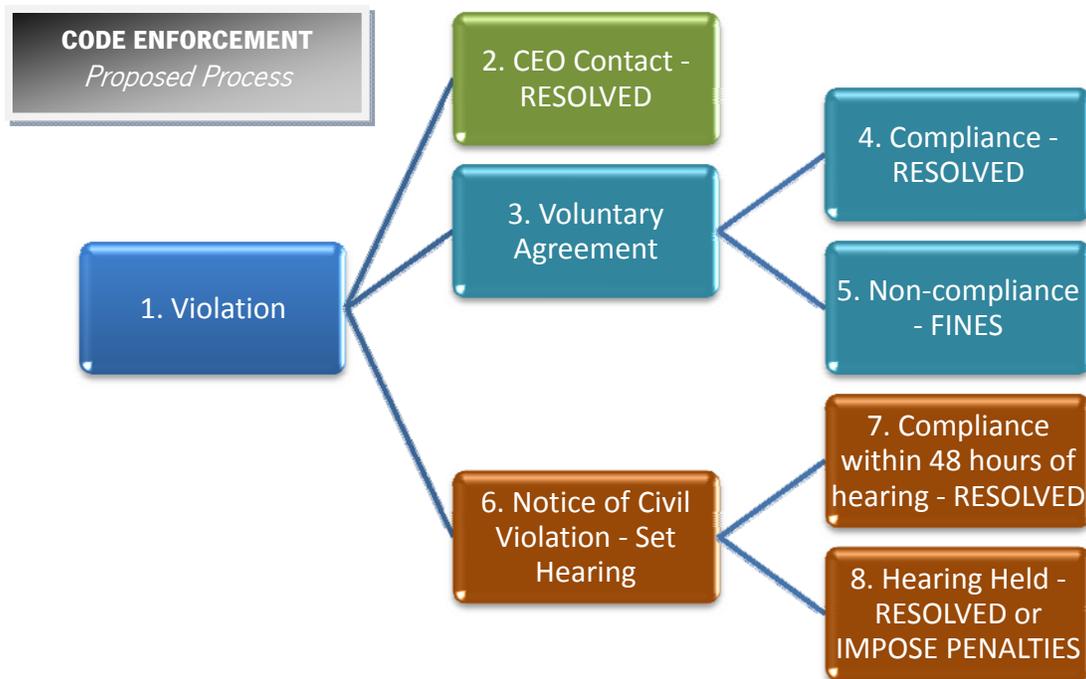
Box 5 - If not resolved a Notice of Civil Infraction is issued. The Civil Infraction sets forth the appeal period. One due process issue relates to the length of the current appeal process (seven days). A longer appeal period is preferable to ensure violators have enough time to decide on a course of action.

Box 6 - If an appeal is not filed within the seven days, fines start accruing. Legally, it is preferable for there to be a hearing on the merits of the case before establishing fines.

Box 7 - If an appeal is filed, an appeal hearing is held and the Hearing Examiner makes a written decision within 8 days. The Hearing Examiner can find for the appellant, or find for the City and require compliance and impose fines. A further issue with our current system is that recent case law calls into question the City's ability to impose ongoing fines without additional opportunities to be heard. There have been cases where fines continue to increase at \$100 per day without communication from the violator (this issue can also apply to Box 6).

Besides the due process concerns described above, code enforcement staff has concerns with the length of time it takes to use the two step process (Notice of Violation and Notice of Civil Infraction). In some cases, a violation can be on-going for quite some time before fines are applied or resolution is achieved.

For these reasons, staff researched other cities codes for a new process. Staff settled on Bellevue's code to use as a model and basis for a proposed process. The proposed process is as follows:



The proposed process resolves the due process issues in the existing process. It includes two main differences from the existing system: 1) it includes a step using a Voluntary Agreement (Box 3), and 2) it doesn't rely on the violator to file an appeal to have the matter heard by the Hearing Examiner (Boxes 6 & 8).

**Box 1** – A complaint is received, the CEO determines that a violation exists, a case is set up and investigation begins.

**Box 2** – The CEO contacts the violator to explain and request cooperation to resolve the issue immediately.

**Box 3** – If the violation isn't resolved the next step is to propose a Voluntary Agreement between the City and the violator. The Voluntary Agreement is a written document that describes the violation and how it should be remedied that is signed by the violator and the City. This is an affirmative step in acknowledging the complaint and reaching an agreement on how and when to comply.

**Box 4** – The violation is resolved according to the terms of the Voluntary Agreement. According to Bellevue staff, the vast majority of cases are resolved at this point. The Voluntary Agreement encourages cooperation and potentially resolves violations faster than the existing process.

**Box 5** - If the violator does not follow through with the steps in the Voluntary Agreement, then the City can issue fines. With this method, there is no due process concern because as a result of the agreement the party has signed and acknowledged awareness of the potential for fines. They also are waiving the right to appeal.

**Box 6** - If the party does not opt for the Voluntary Agreement then the CEO could issue a Notice of Civil Violation. This Notice is a major change from our

current process because it establishes a hearing date thereby bypassing the current process deficiency of requiring the filing of an appeal in order to have a hearing. The date for the hearing will be set some weeks out giving time for resolution in advance.

Box 7 - If the party complies within 48 hours of the hearing, then the hearing will be cancelled.

Box 8 - If not, the hearing is held and the hearing examiner can find for the party, or require compliance and/or fines. Appeals would be to court.

Staff is proposing to delete portions of KZC Chapter 170 that describe the existing process, and add Chapter 1.12 to the KMC describing the proposed process.

#### Public and private tree enforcement

During the recent amendments to Tree Management and Required Landscaping in KZC Chapter 95 it was identified that tree enforcement provisions would be updated as part of this project. Questions about the amounts of fines and differences in the enforcement of public and private trees were noted. Staff is proposing a single process for both public and private trees using the process proposed in KMC Chapter 1.12. Accordingly, portions of KZC Chapter 95 and KMC Chapter 19.36 will be deleted.

#### KMC Consolidation

There are many Chapters in the KMC that incorporate procedures so that citizens can appeal a decision of the City. To begin, in this project staff is proposing to focus on KMC chapters that are associated with the most common enforcement subject areas for consolidation. Consolidation means to delete existing enforcement provisions in chapters and refer the reader to the proposed process in KMC Chapter 1.12. Five chapters that have been identified are:

- 11.24 Nuisances
- 15.52 Storm Water Management
- 19.04 Obstructing Streets and Sidewalks
- 19.36 Penalties for violations – street trees and trees on city property
- 21.06 Construction Administrative Code
- 29.36 Land Surface Modification enforcement

In addition, staff proposes that a new chapter, Chapter 21.41 Property Maintenance Code, use the enforcement provisions of the Chapter 1.12.

#### Property Maintenance Code

The KMC includes several scattered chapters that address property maintenance. The City currently regulates the maintenance of houses and

other buildings through the Uniform Housing Code (UHC) and the Uniform Code for the Abatement of Dangerous Buildings (UCADB). These codes were last published in 1997 and have been superseded in many jurisdictions by the International Property Maintenance Code (IPMC). The main difference between the IPMC and the two Uniform codes is that the IPMC also regulates the property as well as the buildings. Kirkland currently regulates some property issues such as, garbage, rodents and junk vehicles but the IPMC goes further to include items such as overgrown vegetation.

As part of this project, staff recommends that the City adopt some or all of the 2009 IPMC in a new KMC Chapter 21.41. The existing UHC and UCADB plus the KMC chapters having to do with garbage, rodents and junk vehicles are obvious provisions to relocate and combine into a new PMC chapter. Additional sections could be added to address things such as the height of weeds and grass, the state of repair for walkways and driveways, or the condition of vacant structures and land. However, new provisions should only be added if additional staff resources are also provided.

### III. Schedule

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|------------|----------------------|-------------------------------|
| *August 12 | PC/HCC Joint Meeting | Study                         |
| Sept 23    | PC                   | Study                         |
| Sept 27    | HCC                  | Study                         |
| Oct 25     | HCC                  | Public Hearing/Recommendation |
| Nov 4      | PC                   | Public Hearing/Recommendation |
| Dec 7      | CC                   | Review & direction            |
| Dec 21     | CC                   | Final Action                  |
| Jan 24     | HCC                  | Final Action                  |