

CITY OF KIRKLAND

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PLANNING AND COMMUNITY DEVELOPMENT

To: Anne Watanabe, Hearing Examiner

From: Craig Salzman, CCEO
City of Kirkland
Code Enforcement Officer

Date: September 22, 2011

Subject: Hearing for Jolene Winter, dba Eastside Pet Lodge and Day Care, Notice of Civil Violation for violation of the Home Occupation regulations, Kirkland Zoning Code, (KZC) 115.65 located at 1811 Market St Kirkland; Planning Department File No. ENF 11-050, COM11-00069

I. INTRODUCTION

City of Kirkland staff ("staff") offer this staff report with regard to the above-referenced Code Enforcement matter.

II. ISSUES PRESENTED

1. Whether owner, Jolene Winter, dba Eastside Pet Lodge and Day Care, is in violation of the provisions of the Home Occupations Code as adopted in Chapter 115.65 in the KZC.
2. Whether owner, Jolene Winter, dba Eastside Pet Lodge and Day Care is in violation of the Kirkland Zoning Code regulating the number of dogs allowed per dwelling unit under KZC 115.20.
3. Whether owner, Jolene Winter, dba Eastside Pet Lodge and Day Care built a 6 foot tall fence in the right of way parallel to 18th Ave W and needs to move the fence from the right of way onto the private property at 1811 Market St.
4. Whether owner, Jolene Winter, dba Eastside Pet Lodge and Day Care is responsible for the civil penalties of \$100 per day for the ongoing violations until certified corrected by the Planning Dept. In addition the costs of the first

hearing set for August 11, 2011 should be assessed against the respondent for the request for a continuance. This cost was incurred by the City and could have been avoided by the respondent requesting the continuance prior to the hearing date.

III. STATEMENT OF FACTS

The property in this matter is located at 1811 Market St in Kirkland, WA. The parcel number is 085600-1405. The property owner is listed as Cedomir (Chad) and Lucia Iovanovici. The Zoning for this property is RS 7.2.

The business, Eastside Pet Lodge and Day Care first applied for a City Business License in April 2010. At that time Ms. Winter signed the Home Occupation Agreement, which listed the limits placed upon all Home Occupations in the City of Kirkland. (ex. 1) At this time the City expressed concerns about the viability of a business of this nature given the constraints listed in the KZC regulating the Home Occupations. There are a series of emails with Ms. Winter discussing these concerns between Planning Staff and the business retention advisor attached. (ex 2) In those exchanges it was made clear to Ms. Winter that as a home occupation she could not exceed the limits placed upon homes for the number of animals allowed by the KZC. Ms. Winter was advised repeatedly that both City and County Animal Codes limited the number of dogs allowed per dwelling unit to no more than three dogs. Ms. Winter offered several times the fact that she believed she was entitled to house more than three dogs in the business. The actual phrase in the KZC is "per dwelling unit", this term is defined in the KZC as a residence for one family. Ms Winter was advised that to have more than three dogs on the site would be a violation and she was encouraged to find a commercial zone which would allow a kennel use, allowing for more dogs to be provided services.

While the KZC allows for the use of 500 square feet for the Home Occupation Ms. Winter uses nearly the entire first floor of the building for her business. The first floor is 1400 square feet and during an inspection conducted by myself and Clell Mason, Building Inspection Supervisor, it was clear that the dogs had access to the majority of the first floor; there were no separations or doors that would preclude the dogs from accessing approximately 1000 square feet on the first floor. A statement by the property owner also confirmed this.

Ms. Winter stated on her business license application that she was the only employee of the business. The City charges a fee per each employee of a business. On a site visit by me on March 29, 2011 I contacted an employee at the site that was not Ms. Winter. At that time I saw 6 dogs inside the house. During the site visit with Mr. Mason we saw 10 dogs on the site, some outside and some inside, one additional dog arrived at the site while we were there.

A new City Business License application has been submitted to the City by Ms. Janice Kile, listing her residence as 1811 Market St. The application is for a dog walking business. (ex. 3)

Ms. Winter listed her address on the business license application as 11920 98th Ave NE, #213 Kirkland. This is the same address as her voters' registration, which lists her voter status as active with her last voting on November 2, 2010. This was six months after she claimed that she was living at 1811 Market St. The unit still lists her as the owner with the property taxes being paid by her. A neighbor has reported seeing Ms. Winter at the 1811 Market St. address only rarely, with her car not staying overnight in the parking lot.

Ms. Winter had a wooden fence installed along 18th Ave W. This fence was actually installed well into the City right of way on 18th Ave. W. and Ms. Winter was notified by Kirkland Public Works that this fence was in violation of the City Code regulating placement of fences in the public right of way. In addition the fence would have to be removed if a complaint was received. The fence location is demonstrated on the attached GIS and photos taken by Officer Salzman. (ex. 5 & 6)

IV. LEGAL ANALYSIS

This portion of the staff report analyzes the following issues: (1) whether the subject property is subject to the Kirkland Zoning Code regulating Home Occupations and whether Ms. Winter is in violation of the Home Occupation regulations set out in KZC 115.65. (2) Whether the fence installed by Ms. Winter is in violation of the KZC 115.40 and KMC 19.04.050. (3) Whether Ms. Winter is responsible for civil fines of \$100 per day in monetary penalties accruing beyond the date set for compliance by the Examiner and the cost of the first Hearing incurred by the City which was scheduled and was continued at the request of the respondent.

1. Home Occupation

The Kirkland Zoning Code Section at 115.65 states in part:

1. Purpose – The purpose of this section is to allow limited commercial activity incidental to residential use of a dwelling unit while ensuring all residents freedom from excessive noise, excessive traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential neighborhoods.
2. Applicability – Home occupations are allowed as an accessory use to the residential use of a single-family, multifamily, or accessory dwelling unit, subject to the requirements of this chapter. A business license shall be required for all home occupations.

3. Residency – The location of the home occupation must be the principal residence of the person(s) conducting the home occupation.
4. Standards for Home Occupations – A home occupation may be conducted if it:
 - a. Is carried on by residents of the dwelling unit and, in addition, may involve no more than two (2) other business participants visiting the dwelling unit (or, for properties that contain an accessory dwelling unit, visiting the property) per day. “Other business participants” shall include non-family employees and independent contractors;
 - c. Requires no alteration to the interior or exterior of the dwelling that changes its residential character;
 - d. Does not involve activities, including but not limited to the use of heavy equipment, power tools, power sources, hazardous materials, or other equipment or materials that result in noise, vibration, smoke, dust, odors, heat, traffic, parking, or other conditions that exceed, in duration or intensity, such conditions normally produced by a residential use;
 - f. Occupies no more than 500 square feet of floor area, including any space in an accessory structure;
 - g. Includes no more than six (6) clients/customers per day and no more than two (2) clients/customers at any time visiting the dwelling unit (or, for properties that contain an accessory dwelling unit, visiting the property) for goods or services. A family arriving in a single vehicle shall be considered one (1) client. Client/customer visits to a home occupation shall be between the hours of 8:00 a.m. and 8:00 p.m. (not applicable to a bed and breakfast house);
 - i. Has no exterior indication other than one (1) building-mounted, non-illuminated sign with a maximum size of two (2) square feet;

The owner, Ms. Winter, applied for a City business license in April 2010. Ms Winter at that time acknowledged that she was operating a business in a residence. She also signed the Home Occupation Agreement, acknowledging the rules that apply to the operation of a business from a residence. The intent of these regulations is to maintain the residential character of the residentially zoned areas in the City and to prevent commercial businesses that may be disruptive to that character from operating within these zones. Ms. Winter was repeatedly informed that the business that she was considering might be more of a commercial operation in nature and may be better served by locating in a different zone.

Ms. Winter listed herself as the only employee, and stated that she lives at the residence, which is a requirement of the KZC. Upon visiting the business I encountered a person that was not Ms. Winter, and that Ms. Winter was not at the site at that time. Ms. Winter also listed her address on the business license application as 11920 98th Ave NE #213. This is the same address as her voting registration, which lists her voter status as active, last voting as November 2, 2010, six months after she claimed that she was living at 1811 Market St. Without a valid document to demonstrate that she has actually changed her official residence, such as voter registration, drivers' license or vehicle registration, we believe she does not reside at the 1811 Market St. location. We would ask that absent such proof of residence as well as compliance with the Zoning Code relating to the number of dogs allowed in a dwelling unit that the Home Occupation is not allowed and that the business operation be required to be relocated to a commercially zoned property and cease operations at this location.

2. Animals in Residential Zones

115.20 Animals in Residential Zones

1. General – This section establishes special regulations that govern the keeping of animals in any zone where a dwelling unit is permitted.
2. Types of Animals – Animals will be regulated according to the following categories:
 - a. Household Pets – The following animals will be regulated as household pets:
 - 1) Three (3) dogs or less per dwelling unit.
 - 2) Three (3) cats or less per dwelling unit.
 - 3) A total of four (4) dogs and cats per dwelling unit.

Ms. Winter repeatedly asked for clarification of item 3, and was told consistently that she could only have three dogs per the KZC. Attached exhibits to exhibit 2 contain multiple communications that emphasize the number of dogs allowed.

450 **Kennel**

– An establishment, generally retail in nature, which houses, cares for, breeds, raises or sells dogs or cats.

Kennels are allowed in specific zones, specifically LIT zones allow kennels. This lot is zoned RS 7.2, single family residential.

3. Fence in Right-of-way

115.40 Fences

1. General

- a. Fences not over six (6) feet in height may be anywhere on the subject property except:
 - 1) A fence may not be within 15 feet of any street curb, or the edge of the street pavement, if no curb exists; or
 - 2) If the applicant can show with a survey, or other reasonable means, the location of his/her property line, the fence can be placed on the property line regardless of the distance from a street curb or the edge of the pavement.

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.

The fence in question is clearly in the right of way, it is located within 10.08 feet of the edge of the pavement. The right of way extends to 21 feet from the edge of the pavement. This fence is clearly placed in the City right of way and violates both the applicable Kirkland Zoning and Municipal Codes. The City asks that the fence be required to be moved back onto the subject property.

4. Monetary fines.

The Notice of Civil Violation was issued and delivered by hand to Ms. Winter on July 5, 2011. The amount of the monetary penalty per day or portion thereof is \$100: Kirkland Municipal Code 1.12.040. If the Hearing Examiner determines that there has been a Code violation in this case, then staff requests that Ms. Winter be found liable for \$100 in monetary penalties for the Code violations existing from the date set for compliance in the findings and when the code violations are certified as corrected by the Department of Planning and Community Development. Additionally we ask that due to the delays by the respondent, and the continued disruption to the neighborhood, that the fines accrue from the original date of the Notice, July 5, 2011. The City also asks that Ms. Winter be held liable for the cost of the Hearing which was scheduled in advance on August 11 and was continued from that date at the request of the respondent. This request could have been made prior to the actual date of the hearing and saved the City the cost of the Hearing.

V. CONCLUSION

We believe that the exhibits attached, along with the testimony presented demonstrate that Ms. Winter has not been honest about her business: she has more than herself as an employee, she does not actually reside at the house and she is violating the standards for number of dogs allowed in a dwelling unit in a residential zone. Ms. Winter has been advised repeatedly by City Staff about a variety of issues at the property, yet continues to claim she is in compliance with the applicable Codes. We ask that the Hearings Examiner find the owner, Ms. Winter, and her business, Eastside Pet Lodge and Day Care responsible for the violation and be required to bring her business into compliance or to cease operations at this location. We also ask that the property owner, Mr. Cedric (Chad) Iovanovici not be held responsible for any of the violations committed by Ms. Winter.

Signature _____

Craig Salzman, CCEO

List Exhibits for this report

- Ex. 1- Business License application for Eastside Pet Lodge and Play Care, BUS-17042
- Ex. 2- A number of email communications between Ms. Winter and City Staff and the City contract business consultant.
- Ex. 3- Business License application for Janice Kile, BUS-17804
- Ex. 4- Voter Database showing address for Jolene Winter
King County Assessor property tax receipt for 11920 98th Ave NE #213
- Ex. 5- GIS aerial photo of the subject property
- Ex. 6- Photo of the fence on the subject property
- Ex. 7- Area measurement of the size of the business
- Ex. 8- County assessor records of the property
- Ex. 9- Notice of Civil Violation issued July 5, 2011
- Ex. 10- Email sent by the owner to her clients requesting support