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THE HEARING EXAMINER OF THE CITY OF KIRKLAND

IN RE:  Mary Decoy  Hearing on Notice of Violation	Case No. COM19-00501  FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
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**Overview**

Hearing was held on March 18, 2021 to review three code violations alleged against Ms. Decoy: (1) accumulation of junk and rubbish; (2) electrical power connection without permit; and (3) occupancy of garage/hobby room without final inspection and occupancy certificate. Ms. Decoy didn't contest these violations. All three violations are sustained.

At hearing, Ms. Decoy asserted that she had fully abated the junk/rubbish violation. Ms. Decoy agreed to have City staff inspect her property for the junk/rubbish violation the week of March 22, 2021. Should Ms. Decoy fail inspection she will have to remove all remaining junk/rubbish by April 20, 2021. She also agreed to disconnect the garage/hobby room from electrical power by March 24, 2021. She understands that she must obtain a final inspection and occupancy certificate for the garage/hobby structure by October 29, 2021. She further understands that to pass final inspection and acquire an occupancy certificate she will need to have permanent power installed via an approved electrical permit.

1 Should Ms. Decoy fail to comply with the compliance deadlines identified in the  
2 preceding paragraph, she can be subject to a fine of up to \$100 per day of  
3 noncompliance. The amount of the fine would be assessed at a compliance hearing  
4 before the examiner, where Ms. Decoy will have the opportunity to dispute the amount  
5 assessed. The Examiner retains jurisdiction for purposes of holding the compliance  
6 hearing, to be set at the discretion of the code enforcement staff.

### 6 **Exhibits**

7 The March 12, 2021 staff report with its 15 attachments was admitted as Ex. No. 1  
8 during the hearing.

### 9 **Findings of Fact**

10  
11 1. Notice of Civil Violation. Mary Decoy was cited with an Amended Notice of  
12 Civil Violation (NOCV) on February 25, 2021. The NOCV cited Ms. Decoy with  
13 violating KMC 21.41.308 Accumulation of Rubbish, Junk or Garbage; KMC 21.41.604  
14 (c) Electrical System Hazards; and KMC 21.06.535 Use and occupancy.

15 2. Subject property/Ownership. The subject property is located at 10026 Slater  
16 Avenue NE and is owned by Mary Decoy. The property is developed with a single-  
17 family dwelling and an unfinished detached garage with a hobby room above. The staff  
18 report asserts that based upon King County Assessor records, Ms. Decoy is the owner of  
19 the subject property. Ms. Decoy does not deny she is the owner.

20 3. Junk/Rubbish. Ms. Decoy had stored large quantities of junk and rubbish on  
21 the subject property between October 16, 2019 and February 23, 2021. As outlined in  
22 the staff report, accumulations of junk and rubbish were found on the subject property  
23 from site inspections conducted on October 16, 2019, July 10, 2020, December 22,  
24 2020 and February 23, 2021. These observations were corroborated with pictures of  
25 junk and rubbish in the outdoor and indoor areas of the property taken on October 16,  
26 2019 and February 23, 2021. Ms. Decoy did not contest that junk and rubbish had been  
27 left to accumulate on her property on the dates identified in the photographs and staff  
28 report.

29 4. Electrical Hazard. Ms. Decoy maintained an electrical hazard on the subject  
30 property. As noted in the staff report, on a site inspection conducted February 23, 2021,  
Brett Salveson, a City electrical/building inspector, observed that an electrical meter  
had not been installed and the power for electrical service was supplied by an exposed  
cable that extended from the garage structure to the main panel in the house. The staff  
report also notes that although at the time of the hearing an electrical permit had been  
issued, there had not been any final inspection conducted. Mr. Salveson testified that

1 the electrical installation is a hazard because wiring leading to the addition is exposed  
2 on the ground, instead of being buried below ground and also that the wiring isn't  
3 insulated in conduit. Mr. Salveson also noted that he hasn't had the opportunity to  
4 verify if the wiring is connected to fuses or not. Ms. Decoy responded that the wiring is  
5 on breakers. Ms. Decoy did not dispute any of the facts presented by the City or that  
6 the wiring constituted a hazard. Ms. Decoy also testified that she would remove the  
electrical connection within a week, establishing that the hazard had not yet been abated  
as of the date of hearing.

7 5. Certificate of Occupancy. As of the date of hearing, Ms. Decoy had not yet  
8 obtained a certificate of occupancy for the garage/hobby room. The staff report  
9 identifies that on September 6, 2019 no permits had been finalized for the garage/hobby  
10 room. Ms. Decoy does not deny that she never acquired a certificate of occupancy and  
11 staff reported that as of their last inspection on February 23, 2021 the work was still  
12 unfinished. Mr. Salveson testified that no certificate of occupancy could issue without  
13 final inspection for an electrical permit and Ms. Keirse testified that no final  
14 inspection had yet been done for the electrical work. From these facts, it is determined  
15 that more likely than not, as of the date of hearing no certificate of occupancy had yet  
been issued for the garage/hobby room. The photographs in the record show that the  
interior of the structure has been occupied for at least storage on October 16, 2019 and  
February 23, 2019.

16 6. Hearing. A virtual hearing on the NOCV was held on 9:30 am, March 18, 2021  
17 by the Zoom meeting application.

### 18 **Conclusions of Law**

19  
20 1. Jurisdiction. KMC 1.12.050 provides that the hearing examiner shall conduct a  
21 hearing and issue a final decision on the validity of Notices of Violation.

22 2. Alleged Code Violations. The code sections of the NOV identified in Finding of  
23 Fact No. 1 are quoted below in italics and applied via corresponding conclusions of law.

24 **KMC 21.41.308a:** *Accumulation of Rubbish, Junk or Garbage. Exterior property and*  
25 *premises, and the interior of every structure, shall be free from any accumulation of*  
26 *rubbish, junk or garbage.*

27 3. Ms. Decoy Has Violated KMC 21.41.308a: As determined in Finding of Fact No.  
28 3, Ms. Decoy allowed large accumulations of rubbish, junk or garbage on her property  
29 on October 16, 2019, July 10, 2020, December 22, 2020 and February 23, 2021.

1 **KMC 21.41.604c:** *Electrical System Hazards. Where it is found that the electrical*  
2 *system in a structure constitutes a hazard to the occupants or the structure by reason of*  
3 *inadequate service, improper fusing, insufficient receptacle and lighting outlets,*  
4 *improper wiring or installation, deterioration or damage, or for similar reasons, the*  
5 *code official shall require the defects to be corrected to eliminate the hazard.*

6 4. Ms. Decoy Has Violated 21.41.604c: As determined in Finding of Fact No. 4, Ms.  
7 Decoy allowed an electrical hazard to be maintained on her property in violation of  
8 KMC 21.41.604c on February 23, 2021 and this violation had not been corrected as of  
9 the date of hearing.

10 **KMC 21.06.535:** *A building or structure shall not be used or occupied, and a change*  
11 *in the existing use or occupancy classification of a building or structure or portion*  
12 *thereof shall not be made until the building official has issued a certificate of occupancy*  
13 *therefor as provided herein. Issuance of a certificate of occupancy shall not be*  
14 *construed as an approval of a violation of the provisions of this chapter or of other*  
15 *ordinances of the jurisdiction.*

16 5. Ms. Decoy Has Violated KMC 21.06.535: As determined in Finding of Fact No. 5,  
17 Ms. Decoy was occupying the garage/hobby room without an occupancy permit in  
18 violation of KMC 21.06.535 on October 16, 2019 and February 23, 2019.

19 6. Fines. Ms. McCoy shall be subject to fines of \$100 per day if she fails to meet the  
20 correction deadlines set in this Decision. However, the fines may not be imposed until  
21 Ms. McCoy has had an opportunity to contest the imposition of any such fines.

22 In the staff report, the City agreed to waive fines should Ms. McCoy abate the electrical  
23 violation by March 24, 2021, the junk violation by April 20, 2021 and occupancy  
24 violation by the October 29, 2021. However, the City wanted fines to accrue at \$100  
25 per day of violation if the correction deadlines are not met.

26 The \$100 fines requested by the City are clearly authorized by the KMC. 1.12.020d  
27 provides that each day of violation constitutes a separate violation for purposes of the  
28 City's code enforcement chapter, Chapter 1.12 KMC. KMC 1.12.040e1a provides that  
29 first time fines accrue at the rate of \$100 per day of violation.

30 The staff report requests that if the recommended correction deadlines are not met, the  
daily \$100 fines accrue from the date of issuance of the NOV to the date that code  
enforcement staff determine that the violations have finally been abated. In the absence  
of a hearing on the specific amount of the fines, the City's request on this issue is in  
violation of the procedural due process requirements in *Post v. City of Tacoma*, 167 Wn.

1 2d 300 (2009). The *Post* court held that code enforcement defendants have a right to be heard  
2 on the accrual of daily code enforcement fines.

3 As in Kirkland, in *Post* Tacoma imposed daily fines for failure to timely abate code violations.  
4 The court ruled the imposition of these daily fines to be invalid because the defendant didn't  
5 have an administrative right to contest the amount of daily fines levied against him. This is  
6 precisely the same situation faced by Ms. McCoy – if code enforcement staff determine that she  
7 has failed to meet correction deadlines and then start assessing daily fines for failing to do so,  
8 Ms. McCoy must be given the opportunity to challenge staff's determination that she failed to  
9 meet the compliance deadlines as well as an opportunity to challenge the amount assessed. The  
KMC does not have any express administrative appeal procedure for contesting the assessment  
of daily noncompliance fines. For this reason, the Examiner will retain jurisdiction to give Ms.  
McCoy an opportunity to be heard on any daily fines assessed against her.


### 10 **Decision**

- 11 1. All three violations identified in the NOV are sustained.
- 12 2. Ms. McCoy is subject to the following correction deadlines:
  - 13 A. Abatement of the electrical violation by March 24, 2021.  
14 *Abatement is accomplished by either disconnecting the electrical service*  
15 *and calling for inspection to verify disconnection; or passing final*  
16 *inspection on electrical permit ESF21-01717.*
  - 17 B. Abatement of the junk violation by April 20, 2021.  
18 *Pass inspection for removal of junk/garbage/rubbish by deadline.*
  - 19 C. Abatement of the occupancy violation by October 29, 2021.  
20 *Acquire certificate of occupancy or vacate structure (i.e. remove all*  
21 *items) by deadline. If Ms. Decoy elects to continue occupancy, she will*  
22 *need to acquire final inspection for permanent electrical service prior to*  
23 *issuance of certificate of occupancy.*
- 24 3. Failure to meet all three correction deadlines shall be subject to a fine of \$100  
25 per day per continuing violation. The assessment of fines shall be left to the  
26 discretion of the code enforcement staff. However, any amount assessed shall  
27 be subject to appeal to the hearing examiner. Ms. McCoy shall be given 14 days  
28 to appeal any amount of daily fines assessed against her. The appeal right shall  
29 not extend to whether the violation has occurred, but rather will be limited to  
30 whether Ms. McCoy has failed to abate, whether the fines have been correctly  
assessed and whether there is good cause to reduce the fine as authorized by the  
Kirkland Municipal Code.

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4. If Ms. McCoy fails to abate within required deadlines, the City is authorized to abate the outstanding violations at Ms. McCoy's expense as authorized by KMC 1.12.060, provided that any required warrant of abatement is first granted by a court with proper jurisdiction. The costs of any such abatement action may also be chargeable to Ms. McCoy, provided that if such costs are not expressly granted by a reviewing court that the amount will be appealable to the hearing examiner with a 14 day appeal deadline.

ORDERED this 28th day of March 2021.



Phil A. Olbrechts

City of Kirkland Hearing Examiner

**Appeal**

An appeal of this Decision must be filed with superior court within twenty-one calendar days from issuance as required by the Land Use Petition Act, Chapter 36.70C RCW.