

ORDINANCE NO. 4282

AN ORDINANCE of the City Council of the City of Kent, Washington, amending the following provisions of the Kent City Code (KCC) to allow for civil infractions as an enforcement tool in code enforcement matters, in addition to other existing civil and criminal penalties, and to clarify when and what level of criminal charges may be brought for violations of the KCC: Chapter 1.04 KCC, KCC 8.01.050, KCC 8.04.190, KCC 8.07.080, KCC 8.08.060, KCC 13.02.090, KCC 14.08.240, and KCC 15.10.070.

RECITALS

A. Chapter 1.04 of the Kent City Code establishes a system for enforcing city regulations. The purpose of the code enforcement chapter is to provide a system where violations will be promptly resolved while providing both appropriate penalties and a full opportunity for alleged violators to have a hearing to contest the violations.

B. Currently, the system established by Chapter 1.04 of the Kent City Code allows for two primary enforcement mechanisms – a civil action before the City’s hearing examiner and a criminal misdemeanor action in Kent Municipal Court. While the criminal misdemeanor process can be effective for certain types of major violations, there are many less severe cases where filing criminal charges is not appropriate. The hearing examiner process involves extensive paperwork and does not allow for

prompt and expedient resolution of code violations. Both existing processes use significant staff resources.

C. Code enforcement matters have steadily increased over the last few years, growing from 93 active cases in 2014 to 544 active cases in 2017. Given the steady increase in code enforcement cases, it is critical to adopt a new enforcement tool that allows for prompt resolution while preserving staff resources.

D. This ordinance amends Chapter 1.04 of the Kent City Code, as well as several other sections of the code that contemplate penalties for violations, to add civil infractions as an available enforcement mechanism where the existing enforcement tools are not a good fit for the violation. This ordinance does not repeal the other enforcement options and leaves them in place and unaffected by this amending ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - *Amendment - KCC 1.04.030.* Section 1.04.030 of the Kent City Code, entitled "Violation unlawful—Each day is separate violation—Misdemeanor," is amended as follows:

Sec. 1.04.030. Violation unlawful - Each day is separate violation - ~~Misdemeanor~~Criminal Offense.

A. Separate Violations. The violation of any regulation shall be unlawful. A violation continues to exist until abated to the satisfaction of the City, with Each day, or portion thereof, in which the violation continues constituting a separate offense subjecting the person responsible for the violation to the civil and criminal penalties provided for in this chapter. ~~for which separate notices of violation may be issued.~~

B. ~~Misdemeanor~~Criminal Offense. In addition to other penalties provided for by this chapter, a person who: any violation of this chapter shall constitute a misdemeanor; and the city attorney, or the city attorney's designee, shall, at his or her discretion, have authority to file a violation as either a civil violation pursuant to this chapter, or as a criminal misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine. All criminal misdemeanor charges filed under this chapter shall be filed with the Kent municipal court. When the city files criminal misdemeanor charges pursuant to this chapter, the city shall have the burden of proving, beyond a reasonable doubt, that the violation occurred.

1. Negligently violates a provision of the Kent City Code is guilty of a misdemeanor, punishable by up to the maximum penalty established in RCW 9A.20.021(3) as now enacted or hereafter amended; or who

2. Knowingly violates a provision of the Kent City Code, or commits a repeated violation of the Kent City Code, is guilty of a gross misdemeanor, punishable by up to the maximum penalty established in RCW 9A.20.021(2), as now enacted or hereafter amended.

a. For purposes of this section *repeated violation* means, as evidenced by either a prior criminal conviction, a prior committed finding by the Kent Municipal Court of an infraction issued under this Chapter, or a prior committed finding by operation of law under KCC 1.04.130, that a violation of the Kent City Code has occurred on the same property or that a person responsible for the violation has committed a violation of the Kent City Code elsewhere within the city of Kent. To constitute a "repeat violation," the violation need not be the same violation as the prior violation.

3. If a person is found guilty of a criminal offense as provided for in this subsection (B), or pleads guilty to another offense on

recommendation of the prosecutor, the court shall order the defendant pay restitution to the city of Kent, or any other victim of the offense, for the total suffered loss or damage by reason of the commission of the crime.

SECTION 2. - *Amendment - New KCC 1.04.225.* Chapter 1.04 of the Kent City Code, entitled "Code Enforcement," is amended to add a new section 1.04.225, entitled "Civil Infractions," as follows:

Sec. 1.04.225. Civil Infractions.

A. In addition to, or as an alternative to any other penalty provided for in this chapter or by law, a code enforcement officer may issue to any person who violates any provision of the Kent City Code a class 1 civil infraction as set forth in RCW 7.80.120, as currently enacted or hereafter amended. An infraction issued pursuant to this section shall be filed in the Kent Municipal Court and processed in the same manner as other infractions filed in the Kent Municipal Court.

B. Payment of a monetary penalty shall not relieve a person of the duty to correct the violation.

SECTION 3. - *Amendment - Revise KCC 8.01.050.* Section 8.01.050 of the Kent City Code, entitled "Violation - Penalty," is amended as follows:

Sec. 8.01.050. Violation - Penalty.

A. *Civil code enforcement action.* Any violation of any provision of this chapter constitutes a civil violation under Chapter 1.04 KCC for which a monetary penalty may be assessed and abatement may be required as provided therein. For a violation involving a chronic criminal nuisance, a correction letter need not be issued under KCC 1.04.070 prior to the issuance of a notice of violation and the immediate assessment of a civil penalty under KCC 1.04.080.

~~B. *Criminal charge—Misdemeanor offense.* In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of the Kent City Code may be charged criminally, pursuant to KCC 1.04.030(B). ~~violates any provision of this chapter shall be guilty of a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.~~~~

~~C. *Civil infraction.* In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this Chapter may be issued a class 1 civil infraction pursuant to RCW 7.80.120, as currently enacted or hereafter amended, and KCC 1.04.225.~~

~~D. *Abatement proceedings.* As an alternative to any other penalty provided in this chapter, abatement proceedings may be instituted under RCW Title 7.~~

~~E. *Repeat violation or failure to abate – Criminal misdemeanor charge – Chronic criminal nuisance.* For the purpose of filing criminal charges under KCC 1.04.220 for a subsequent violation after a prior violation is deemed committed, the subsequent violation for a chronic criminal nuisance must occur within one hundred eighty (180) days from the date the prior violation was deemed committed. For a chronic criminal nuisance, a subsequent violation is a single occurrence of criminal conduct.~~

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SECTION 4. - Amendment - Revise KCC 8.04.190. Section 8.04.190 of the Kent City Code entitled "Violation - Penalty" is amended as follows:

Sec. 8.04.190 Violation - Penalty.

A. ~~Every person, entity, or corporation violating or failing to comply with any of the provisions of this chapter shall be subject to a civil penalty, deemed to be an infraction, in the amount of one hundred dollars (\$100) for each such violation. Each day the violation exists shall be considered a separate violation.~~Civil code enforcement action. Any violation of any provision of this chapter constitutes a civil violation under Chapter 1.04 KCC for which a monetary penalty may be assessed and abatement may be required as provided therein.

B. — Criminal offense. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter may be charged criminally, pursuant to KCC 1.04.030(B), shall be guilty of a misdemeanor pursuant to KCC 1.01.140.

C. Civil Infraction. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter may be issued a class 1 civil infraction pursuant to RCW 7.80.120, as currently enacted or hereafter amended, and KCC 1.04.225.

SECTION 5. - Amendment - Revise KCC 8.07.080. Section 8.07.080 of the Kent City Code entitled "Violation - Penalty" is amended as follows:

Sec. 8.07.080 Violation - Penalty.

A. Civil code enforcement action. Any violation of any provision of this chapter constitutes a civil violation under Ch. 1.04 KCC for which a

monetary penalty may be assessed and abatement may be required as provided therein.

B. *Criminal offense.* In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of the Kent City Code may be charged criminally, pursuant to KCC 1.04.030(B)~~this chapter shall be guilty of a misdemeanor pursuant to KCC 1.01.140.~~

C. *Civil Infraction.* In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this Chapter may be issued a class 1 civil infraction pursuant to RCW 7.80.120, as currently enacted or hereafter amended, and KCC 1.04.225.

SECTION 6. - *Amendment - Revise KCC 8.08.060.* Section 8.08.060 of the Kent City Code entitled "Violation - Penalty" is amended as follows:

Sec. 8.08.060 Violation - Penalty.

A. *Civil code enforcement action.* Any violation of any provision of this chapter is a civil violation as provided for in Ch. 1.04 KCC, for which a monetary penalty may be assessed and abatement may be required as provided therein.

B. *Criminal offense.* In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapterthe Kent City Code, shall be guilty of a misdemeanor pursuant to KCC 1.01.140 ~~may be charged criminally, pursuant to KCC 1.04.030(B).~~

C. *Civil Infraction.* In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any

provision of this Chapter may be issued a class 1 civil infraction pursuant to RCW 7.80.120, as currently enacted or hereafter amended, and KCC 1.04.225.

SECTION 7. - *Amendment - Revise KCC 13.02.090.* Section 13.02.090 of the Kent City Code entitled "Violation - Penalty" is amended as follows:

Sec. 13.02.090. Violation - Penalty.

A. Civil code enforcement action. ~~Any violation~~ of any provision of this title constitutes a civil violation under Ch. 1.04 KCC for which a monetary penalty may be assessed and abatement may be required and/or otherwise enforced as provided therein.

B. Criminal offense. ~~In addition to or as an alternative to any other enforcement procedure or penalty provided in this chapter, a violation of any provision of this chapter or a code enforced by this chapter shall constitute a misdemeanor pursuant to Ch. 1.04 KCC or by law, any person who violates any provision of the Kent City Code may be charged criminally, pursuant to KCC 1.04.030(B).~~

C. Civil Infraction. ~~In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this Chapter may be issued a class 1 civil infraction pursuant to RCW 7.80.120, as currently enacted or hereafter amended, and KCC 1.04.225.~~

~~D. Separate offense.~~ Each day, or portion thereof, that a violation continues to exist shall be considered a separate offense.

SECTION 8. - *Amendment - Revise KCC 14.08.240.* Section 14.08.240 of the Kent City Code entitled "Violation - Penalty" is amended as follows:

Sec. 14.08.240. Violation – Penalty.

A. Civil code enforcement action. Any violation of any provision of a building code enforced under this chapter constitutes a civil violation under Ch. 1.04 KCC for which a monetary penalty may be assessed and abatement may be required and/or otherwise enforced as provided therein.

B. Criminal offense. In addition to or as an alternative to any other enforcement procedure or penalty ~~in this chapter, provided in this chapter or by law, any person who violates any provision of the Kent City Code may be charged criminally, pursuant to KCC 1.04.030(B). a violation of any provision of this chapter or a code enforced by this chapter shall constitute a misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine. All misdemeanor charges filed under this title shall be filed with the Kent municipal court and shall bear the signature of the Kent city attorney or his or her designee. When the city files a criminal offense pursuant to this subsection, it shall have the burden of proving, beyond a reasonable doubt, that the violation occurred.~~

C. Civil Infraction. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this Chapter may be issued a class 1 civil infraction pursuant to RCW 7.80.120, as currently enacted or hereafter amended, and KCC 1.04.225.

D. Each day that anyone shall continue to violate or fail to comply with any of the foregoing provisions shall be considered a separate offense.

SECTION 9. - Amendment - Revise KCC 15.10.070. Section 15.10.070 of the Kent City Code entitled "Violation - Penalty" is amended as follows:

Sec. 15.10.070 Violation - Penalty.

A. Civil code enforcement action. Any violation of any provision of this chapter constitutes a civil violation under Ch. 1.04 KCC for which a monetary penalty may be assessed and abatement may be required as provided therein.

B. Criminal offense. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of the Kent City Code may be charged criminally, pursuant to KCC 1.04.030(B). ~~violating or failing to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable in accordance with the provisions of KCC 1.01.140 relating to criminal penalties for misdemeanors.~~

C. Civil Infraction. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this Chapter may be issued a class 1 civil infraction pursuant to RCW 7.80.120, as currently enacted or hereafter amended, and KCC 1.04.225.

SECTION 10. - Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 11. - Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the

correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

SECTION 12. - *Effective Date.* This ordinance shall take effect and be in force thirty days from and after its passage as provided by law.



DANA RALPH, MAYOR

7/3/18

Date Approved

ATTEST:



KIMBERLEY A. KOMOTO, CITY CLERK

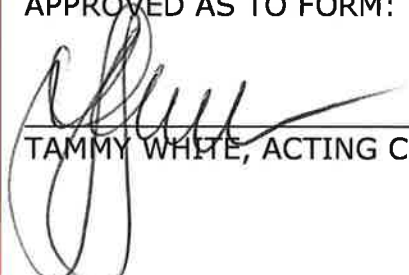
7/3/18

Date Adopted

7/13/18

Date Published

APPROVED AS TO FORM:



TAMMY WHITE, ACTING CITY ATTORNEY