

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO NUISANCES.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code Chapter 11.24 is hereby repealed and reenacted to read as follows:

11.24.010 Definitions.

(a) "Costs" means, but is not limited to, contract expense and City employee labor expense incurred in abating a nuisance, a rental fee for City equipment used in abatement, costs of storage, disposal or destruction, legal expenses and attorneys fees associated with civil judicial enforcement of abatement orders or in seeking abatement orders, and any other costs incurred by the City excluding, however, fees and expenses associated with appeals authorized by this Chapter or by state law.

(b) "Director" means Kirkland's Director of Planning and Community Development, the Chief of Police or either of their designees.

(c) "Responsible Parties" means, as applicable, the owners of the property constituting the nuisance, the owners of the property upon which the nuisance is occurring and any other persons, corporations or other entities responsible for creating, allowing, maintaining or continuing the nuisance.

11.24.020 Public nuisance defined.

Every act done, every omission to perform a duty and any property allowed to remain in place which unreasonably:

(1) Annoys, injures or endangers the health, welfare, safety, comfort or repose of members of the public in any manner, including but not limited to:

(a) Depositing or disposing of any garbage, waste, litter, or other offensive material in any public park, street, alley, highway or other private or public area within the City;

(b) Performing any trade, employment, or manufacture in the City which results in offensive odors, hazardous wastes, or other annoyances and which annoys, injures or is offensive or detrimental to the health, welfare or safety of employees or to members of the public;

(c) Burning any material so as to cause or permit the smoke, ashes, soot, or gases arising from such burning to become discomforting or annoying, or to injure or endanger the health, welfare or safety of any person or neighborhood;

(d) Maintaining or using any building, house, room, or other structure or vehicle for the purpose of lewd acts or prostitution as defined in KMC Chapter 11.20;

(e) Maintaining or using any house, room, booth, or other structure as a place of resort where disorderly persons are allowed to congregate, or in which drunkenness is carried on or permitted;

(f) Beginning, maintaining, permitting or abandoning any excavation which is detrimental to the health, welfare or safety of the public;

(g) Storing, maintaining, or using, in or upon any public or private place in the City so as to be offensive or injurious to the health, welfare or safety of the public, or unpleasant or disagreeable to the adjacent residences or persons, any unsound, putrid or unwholesome substance; any structure, drain, sewer or septic tank; or any noxious, offensive, hazardous or otherwise dangerous chemicals or substances;

(h) Maintaining or operating premises, buildings and vehicles whereon or wherein intoxicating liquor is manufactured, sold, furnished, consumed, in violation of the laws of the State or the ordinances of the City;

(i) Permitting or maintaining vacant, unused or unoccupied buildings and structures within the City in a manner detrimental to the health, welfare or safety of the public;

(j) Discarding, abandoning or leaving in any place accessible to children any refrigerator, icebox or deep-freeze locker having a capacity of one and one-half (1½) cubic feet or more, or any other container manufactured, custom-made or homemade, designed for storage, which has not had the door or latching mechanism removed to prevent the latching or locking of the door;

(k) Placing or maintaining any sign, poster or other advertising matter of any nature upon a telephone or other poles, trees, sidewalks, streets, signs, traffic signs or other traffic-control devices or other structures or places within streets, alleys or other public places or rights of way;

(l) Maintaining buildings, vehicles or other structures, or any parts thereof, wherein any gambling, as defined by RCW 9.46.020, may be found, and any gambling device, as defined by RCW 9.46.020, may be found, except as licensed and within the scope of the license required under state or City law; or

(m) Permitting irrigation or other water to run by or on any street, alley or other public place so as to cause settling or damage to the street, alley or other public place, or to cause annoyance, damage or hazard to any user of the street, alley or other public place,

(2) Offends public decency; or

(3) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a public park, street, alley, highway, or other public area, shall constitute a public nuisance. Where the meaning of any of the foregoing terms is not obvious, they shall have that meaning as provided under the common law.

11.24.030 Violation of City or state law – Found to be in violation of federal law.

(a) Any business within the City that is operated either in violation of City or state law or has been found to be in violation of federal law is declared to be a public nuisance.

(b) Any act, omission, or property which includes, causes, or involves one or more violations of any City ordinance adopted to further the public interest in protecting, maintaining, or restoring the physical and natural environment is declared to be a public nuisance.

11.24.040 Determination of public nuisance by Director.

The Director shall determine whether the act, omission or property complained of, or otherwise discovered, constitutes a public nuisance. Standards developed by the Director for making these determinations shall be consistently applied.

11.24.050 Administrative abatement of nuisance on public property authorized – Procedure.

(a) A public nuisance found upon a right of way, public easement or other public property shall be abated summarily by the Director by removal and disposal or destruction at the Director's discretion.

(b) Private property removed and not disposed or destroyed may be held by the City or its designee for 30 days from the date removed. Thereafter, if the property is unclaimed, the property may be sold by auction and the proceeds from the sale may be retained by the City. The owner of the property may claim the property until sold by paying all Costs incurred by the City and designee in removing and holding the property.

11.24.060 Administrative abatement of nuisance on private property authorized – Procedures – Order – Review.

(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 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 \$5,000 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 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 Director, prior notification under this subsection may be dispensed with and the 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, any fines levied and identifying the sources as provided in 11.24.080 from which such Costs and fines may be satisfied.

(c) An order of abatement or any notice required herein shall be served upon the appropriate Responsible Parties as determined by the Director.

(1) Such service may be done personally, by certified mail to the last known address of each person to whom the order or notice applies, by posting the real property upon which the nuisance is occurring or by certified mail to the owner of the real property at the address appearing on the tax rolls for King County.

(2) In the event any of these persons cannot be found or no address can be obtained after reasonable effort, and posting would violate any law or would be impracticable, upon a written finding of the foregoing by the Director, the order or notice may be given by publication once in the City's official newspaper as designated pursuant to KMC Chapter 1.08.

(d) An order of abatement, including fine, may be appealed to the Hearing Examiner using the procedures provided in KZC 23.170.40, subsections (5)(b) and (d), (6)(a) and (7).

(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 order shall also provide that in the event the appellant does not abate the nuisance by the date provided in the order, the 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 decision of the Hearing Examiner may be appealed to the City Council using the procedures provided in KZC Chapter 23.150, subsections (80)(2) - (4) and sections (95) - (125). Whenever an order of abatement is affirmed or modified, the Council shall establish a new date for abatement or affirm the original date and provide that in the event the appellant does not abate the nuisance by the date provided in the order, the 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 person(s) responsible for the nuisance that were previously notified of the order of abatement.

(f) Notwithstanding the foregoing, the Director may summarily abate a public nuisance on private property without prior notice using the procedures set forth in 11.24.050 whenever it is:

(1) of such a character and so situated that it can be abated without the invasion or destruction of property or the prejudice of any right; or

(2) of such character as to constitute an imminent threat to the public health, welfare or safety.

11.24.070 Abatement by City – Safeguards.

Any abatement of a nuisance by the City must be implemented with due care so as to minimize risk of injury to persons or unnecessary destruction of property. In all cases the City employee abating the nuisance is authorized to employ such assistance and adopt such means as may be necessary to effect the abatement of the nuisance.

11.24.080 Abatement – Cost – Collection.

(a) At the 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.

(b) The City shall maintain an account of all Costs incurred in performing an abatement.

(c) 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.

11.24.090 Public nuisance – Criminal offense.

(a) Any person who creates, causes, allows, maintains, or continues a public nuisance is guilty of a gross misdemeanor.

(b) Additionally, any person(s) subject to a final order of abatement who fails to abate the nuisance as provided in a final order of abatement shall be guilty of a gross misdemeanor, and each day the nuisance is maintained shall be a separate offense.

(c) In addition to such other penalties as may be imposed, a court entering a judgment of guilty under KMC 11.24.090(a) or (b) may order as a condition of sentence: (1) the abatement of the public nuisance on such terms and conditions as may be just and equitable; and (2) the reimbursement of the City for any abatement Costs as defined in this Chapter.

(d) For purposes of KMC 11.24.090(b), a "final order" means an order of abatement that was not appealed or an order of abatement affirmed on appeal and from which affirmance no further appeal is or could be taken.

11.24.100 Remedies – Cumulative – Not exclusive.

The remedies provided in this Chapter, including but not limited to fines, recovery of Costs and criminal prosecution, are not exclusive and the City retains the right to pursue all other rights or remedies that might be available. Further, the remedies provided in this Chapter, and any other rights or remedies available, are cumulative and any or all may be pursued concurrently or at any separate time.

Section 2. This Ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.107, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

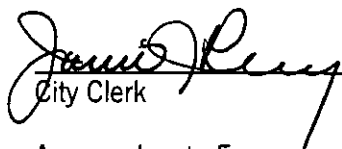
Passed by majority vote of the Kirkland City Council in open meeting this 4th day of April, 2000.

Signed in authentication thereof this 4th day of April, 2000.



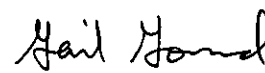
MAYOR

Attest:



City Clerk

Approved as to Form:



City Attorney
Ord\ nuisance

PUBLICATION SUMMARY OF
ORDINANCE 3746

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO NUISANCES.

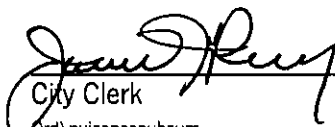
The City Council of the City of Kirkland do ordain as follows:

Section 1. Repeals and Reenacts Chapter 11.24 of the Kirkland Municipal Code to be entitled "Nuisances", defines public nuisance, establishes that the Planning Director and the Chief of Police or their designees will make the determination of nuisance, provides procedures for abating a nuisance, appealing of a finding of nuisance, standards for the City to follow in abating a nuisance and the further non-exclusive remedies which can be pursued by the City.

Section 2. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its open meeting on the 4th day of April, 2000.

I certify that the foregoing is a summary of Ordinance 3746
approved by the Kirkland City Council for summary publication.



City Clerk
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