

ORDINANCE No. 119473

COUNCIL BILL No. 112688

*Effectuated 43 days after M...
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The City

AN ORDINANCE relating to enforcement of the Land Use Code, amending the enforcement process for certain violations of Title 23 of the Seattle Municipal Code, amending Section 23.40.002, adding a new Chapter 23.91, and adding new definitiv to Chapter 23.84.

Honorable President:

Your Committee on _____

to which was referred the within Council report that we have considered the same

COMPTROLLER FILE No. _____

| | |
|---------------------------------------|---|
| Introduced: <u>MAY 17 1999</u> | By: <u>DRAGO</u> |
| Referred: <u>MAY 17 1999</u> | To: <u>Business, Economic & Community Development Committee</u> |
| Referred: | To: |
| Referred: | To: |
| Reported: <u>5-24-99</u> | Second Reading: |
| Third Reading: <u>5-24-99</u> | Signed: <u>5-24-99</u> |
| Presented to Mayor: <u>5-24-99</u> | Approved: <u>6/1/99</u> |
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| Vetoed by Mayor: | Veto Published: |
| Passed over Veto: | Veto Sustained: |

5/18/99

5-24-99 Full Council

For Committee full time...

45 day after Mayor approval
Law Department

The City of Seattle--Legislative Department

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Code,
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REPORT OF COMMITTEE

Date Reported
and Adopted

able President:

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ch was referred the within Council Bill No.

that we have considered the same and respectfully recommend that the same:

(2)

5/18/99 BEGO Do approve as amended 2-0

Drago
Donaldson

24-99 Fall Council: Passed as amended 9-0

(1) Committee
Fall 1999 book

Committee Chair

ORDINANCE 119473

1
2
3 **AN ORDINANCE** relating to enforcement of the Land Use Code, amending the
4 enforcement process for certain violations of Title 23 of the Seattle Municipal
5 Code, amending Section 23.40.002, adding a new Chapter 23.91, and adding
6 new definitions to Chapter 23.84.

7
8 **WHEREAS**, the current enforcement system for processing Land Use Code violations
9 recognizes that the majority of citizens will voluntarily comply with the code
10 requirements once they are aware of a violation on their property; and

11
12 **WHEREAS**, the current enforcement system can be changed to be more effective in dealing
13 with the more difficult land use cases, particularly those involving repeat offenders
14 and property owners who are unwilling to comply with the City's requirements; and

15
16 **WHEREAS**, it is appropriate that the Land Use Code should discourage repeat violations by
17 imposing increasing penalties; and

18
19 **WHEREAS**, enforcement of the Land Use Code should efficiently use resources and focus
20 the most resources on difficult cases; and

21
22 **WHEREAS**, because violations of the Land Use Code have a serious impact on the
23 community, it is sometimes appropriate to assess a penalty irrespective of how
24 quickly the violation is cured in order to deter such violations; and

25
26 **WHEREAS**, it is appropriate to utilize this new enforcement tool on Land Use Code
27 violations that are readily and clearly identifiable from the public domain; that can be
28 brought into compliance in a reasonably short length of time; that have a significant
29 impact on the surrounding community; and that include a high percentage of the Land
30 Use Code enforcement cases;

31
32 **NOW THEREFORE,**

33
34 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

35
36 **Section 1.** Section 23.40.002 of the Seattle Municipal Code, which was last
37 amended by Ordinance 118794, is amended as follows:

38
39 **23.40.002 Conformity with regulations required.**

40
41 The establishment or change of use of any structures, buildings or premises, or any part
42 thereof, shall require approval according to the procedures set forth in Chapter 23.76,
43 Procedures for Master Use Permits and Council Land Use Decisions. No use of any
44 structure or premises shall hereafter be commenced, and no structure or part of a structure

1 shall be erected, moved, reconstructed, extended, enlarged or altered, except in conformity
2 with the regulations specified in this title for the zone and overlay district, if any, in which it is
3 or will be located. Owners of such structures, buildings or premises or parts thereof are
4 responsible for any failure of such structures, buildings or premises to conform to the
5 regulations of this title and for compliance with the provisions of this title in or on such
6 structures, buildings or premises. Any other person who created, caused or contributed to a
7 condition in or on such structure, building or premises, either alone or with others, is also
8 responsible under this title for any failure to conform to the regulations of this title. Building
9 and use permits on file shall be prima facie evidence of the time a building was built or
10 modified, or a use commenced, and the burden of demonstrating to the contrary shall be upon
11 the owner. Changes to existing structures may be permitted which make the structures
12 nonconforming if the changes are required by law for reasons of health and safety.

13
14 **Section 2.** Section 23.84.028 of the Seattle Municipal Code, which was last
15 amended by Ordinance 118472, is amended to add a definition to be put in alphabetical order
16 as follows:

17
18 **23.84.028 "O"**

19
20 "Owner" means any person having a legal or equitable interest in, title to, responsibility for,
21 or possession of a building or property, including, but not limited to, the interest of a lessee,
22 guardian, receiver or trustee, and any duly authorized agent of the owner.

23
24 **Section 3.** A new Section 23.91.002 is hereby added to the Seattle Municipal Code,
25 to read as follows:

26
27 **23.91.002 Scope.**

28
29 A. Violations of the following provisions of Seattle Municipal Code Chapter 23 shall be
30 enforced under the citation or criminal provisions set forth in this Chapter 23.91:

- 31
32 1. Junk storage (as defined in SMC section 23.84.020) in residential zones (Sections
33 23.44.006, 23.44.040, 23.45.004, and 23.45.140);
34 2. Construction or maintenance of structures in required yards or setbacks in residential
35 zones (Sections 23.44.014, 23.44.040, 23.45.005, 23.45.014, 23.45.056, and 23.45.072);
36 3. Parking of vehicles in required yards in a single family zone (Section 23.44.016);
37 4. Keeping of animals (Sections 23.44.048 and 23.45.148); and
38 5. Home Occupations (Sections 23.44.050 and 23.45.152).

39
40 B. Any enforcement action or proceeding pursuant to this chapter 23.91 shall not affect,
41 limit or preclude any previous, pending or subsequent enforcement action or proceeding
42 taken pursuant to chapter 23.90.
43

1 **Section 4.** A new Section 23.91.004 is hereby added to the Seattle Municipal Code,
2 to read as follows:

3
4 **23.91.004 Citation.**

5
6 A. **Citation.** If after investigation the Director determines that the standards or requirements
7 of provisions referenced in Section 23.91.002 have been violated, the Director may issue
8 a citation to the owner and/or other person or entity responsible for the violation. The
9 citation shall include the following information: 1) the name and address of the person to
10 which the citation is issued; 2) a reasonable description of the location of the property on
11 which the violation occurred; 3) a separate statement of each standard or requirement
12 violated; 4) the date of the violation; 5) a statement that the person cited must respond to
13 the citation within fifteen (15) days after service; 6) a space for entry of the applicable
14 penalty; 7) a statement that a response must be sent to the Hearing Examiner and
15 postmarked not later than midnight on the day the response is due; 8) the name, address
16 and phone number of the Hearing Examiner where the citation is filed; 9) a statement that
17 the citation represents a determination that a violation has been committed by the person
18 named in the citation and that the determination shall be final unless contested as
19 provided in this chapter; and 10) a certified statement of the inspector issuing the citation,
20 authorized by RCW 9A72.085, setting forth facts supporting issuance of the citation.

21
22 B. **Service.** The citation may be served by personal service in the manner set forth in RCW
23 4.28.080 for service of a summons or sent by first class mail, addressed to the last known
24 address of such person(s). Service shall be complete at the time of personal service, or if
25 mailed, three (3) days after the date of mailing. If a citation sent by first class mail is
26 returned as undeliverable, service may be made by posting the citation at a conspicuous
27 place on the property.

28
29 **Section 5.** A new Section 23.91.006 is hereby added to the Seattle Municipal Code, to
30 read as follows:

31
32 **23.91.006 Response to citations.**

33
34 Within fifteen (15) days after the date the citation is served, a person must respond to a
35 citation in one of the following ways:

- 36
37 A. Paying the amount of the monetary penalty specified in the citation, in which case the
38 record shall show a finding that the person cited has committed the violation; or
39
40 B. Requesting in writing a mitigation hearing to explain the circumstances surrounding the
41 commission of the violation and providing a mailing address to which notice of such
42 hearing may be sent; or
43

1 C. Requesting a contested hearing in writing specifying the reason why the cited violation
2 did not occur or why the person cited is not responsible for the violation, and providing a
3 mailing address to which notice of such hearing may be sent.
4

5 **Section 6.** A new Section 23.91.008 is hereby added to the Seattle Municipal Code,
6 to read as follows:
7

8 **23.91.008 Failure to respond.**
9

10 If a person fails to respond to a citation within fifteen (15) days of service, an order shall be
11 entered by the Hearing Examiner finding that the person cited committed the violation stated
12 in the citation, and assessing the penalty specified in the citation.
13

14 **Section 7.** A new Section 23.91.010 is hereby added to the Seattle Municipal Code,
15 to read as follows:
16

17 **23.91.010 Mitigation Hearings.**
18

19 A. **Date and Notice.** If a person requests a mitigation hearing, the mitigation hearing shall be
20 held within thirty (30) days after written response to the citation requesting such hearing
21 is received by the Hearing Examiner. Notice of the time, place, and date of the hearing
22 will be sent by first class mail to the address provided in the request for hearing not less
23 than ten (10) days prior to the date of the hearing.
24

25 B. **Procedure at Hearing.** The Hearing Examiner shall hold an informal hearing which shall
26 not be governed by the Rules of Evidence. The person cited may present witnesses, but
27 witnesses may not be compelled to attend. A representative from DCLU may also be
28 present and may present additional information, but attendance by a representative from
29 DCLU is not required.
30

31 C. **Disposition.** The Hearing Examiner shall determine whether the person's explanation
32 justifies reduction of the monetary penalty; however, the monetary penalty may not be
33 reduced unless the person provides at the hearing a certificate of compliance from DCLU
34 that the violation has been corrected prior to the mitigation hearing. Factors that may be
35 considered in whether to reduce the penalty include whether the violation was caused by
36 the act, neglect, or abuse of another; or whether correction of the violation was
37 commenced promptly prior to citation but that full compliance was prevented by a
38 condition or circumstance beyond the control of the person cited.
39

40 D. **Entry of Order.** After hearing the explanation of the person cited and any other
41 information presented at the hearing, the Hearing Examiner shall enter an order finding
42 that the person cited committed the violation and assessing a monetary penalty in an
43 amount determined pursuant to this section. The Hearing Examiner's decision is the final
44 decision of the City on the matter.

1
2 **Section 8.** A new Section 23.91.012 is hereby added to the Seattle Municipal Code,
3 to read as follows:

4
5 **23.91.012 Contested hearing.**

- 6
7 A. Date and Notice. If a person requests a contested hearing, the hearing shall be held
8 within sixty (60) days after the written response to the citation requesting such hearing is
9 received.
10
11 B. Hearing. Contested hearings shall be conducted pursuant to the procedures for hearing
12 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing
13 Examiner for hearing contested cases, except as modified by this section. The issues
14 heard at the hearing shall be limited to those that are raised in writing in the response to
15 the citation and that are within the jurisdiction of the Hearing Examiner. The Hearing
16 Examiner may issue subpoenas for the attendance of witnesses and the production of
17 documents, ~~but shall not issue a subpoena for the attendance of a witness at the request~~
18 ~~of the person cited unless the request is accompanied by the fee required by RCW~~
19 ~~5.56.010 for a witness in district court.~~ 
20
21 C. Sufficiency. No citation shall be deemed insufficient for failure to contain a detailed
22 statement of the facts constituting the specific violation which the person cited is alleged
23 to have committed or by reason of defects or imperfections, provided such lack of detail,
24 or defects or imperfections do not prejudice substantial rights of the person cited.
25
26 D. Amendment of Citation. A citation may be amended prior to the conclusion of the
27 hearing to conform to the evidence presented if substantial rights of the person cited are
28 not thereby prejudiced.
29
30 E. Evidence at Hearing. The certified statement or declaration authorized by RCW
31 9A.72.085 submitted by an inspector shall be prima facie evidence that a violation
32 occurred and that the person cited is responsible. The certified statement or declaration
33 of the inspector authorized under RCW 9A.72.085 and any other evidence accompanying
34 the report shall be admissible without further evidentiary foundation. Any certifications
35 or declarations authorized under RCW 9A.72.085 shall also be admissible without further
36 evidentiary foundation. The person cited may rebut the DCLU evidence and establish
37 that the cited violation(s) did not occur or that the person contesting the citation is not
38 responsible for the violation.
39
40 F. Disposition. If the citation is sustained at the hearing, the Hearing Examiner shall enter
41 an order finding that the person cited committed the violation. If the violation remains
42 uncorrected, the Hearing Examiner shall impose the applicable penalty. The Hearing
43 Examiner may reduce the monetary penalty in accordance with the mitigation provisions
44 in 23.91.010 if the violation has been corrected. If the Hearing Examiner determines that

1 the violation did not occur, the Hearing Examiner shall enter an order dismissing the
2 citation.

3
4 G. Appeal. The Hearing Examiner's decision shall be final unless one of the parties initiates
5 review by writ of certiorari in King County Superior Court within fifteen (15) days after
6 entry of the Hearing Examiner's decision.

7
8 **Section 9.** A new Section 23.91.014 is hereby added to the Seattle Municipal Code, to
9 read as follows:

10
11 **23.91.014 Failure to Appear for Hearing.**

12 Failure to appear for a requested hearing will result in an order being entered finding that the
13 person cited committed the violation stated in the citation and assessing the penalty specified
14 in the citation. For good cause shown and upon terms the Hearing Examiner deems just, the
15 Hearing Examiner may set aside an order entered upon a failure to appear.
16

17
18 **Section 10.** A new Section 23.91.016 is hereby added to the Seattle Municipal
19 Code, to read as follows:

20
21 **23.91.016 Penalties.**

22
23 A. First Violation. The first time that a person or entity is found to have violated one of the
24 provisions referenced in Section 23.91.002 after the effective date of this ordinance, the
25 person or entity shall be subject to a penalty of One Hundred Fifty dollars (\$150.00).

26
27 B. Second and Subsequent Violations. Any subsequent time that a person or entity is found
28 to have violated one of the provisions referenced in Section 23.91.002 within a five (5)
29 year period after the first violation, the person or entity shall be subject to a penalty of
30 Five hundred dollars (\$500.00) for each such violation.

31
32 **Section 11.** A new Section 23.91.018 is hereby added to the Seattle Municipal Code, to
33 read as follows:

34
35 **23.91.018. Alternative criminal penalty.**

36
37 Any person who violates or fails to comply with any of the provisions referenced in Section
38 23.91.002 shall be guilty of a misdemeanor subject to the provisions of Chapters 12A.02 and
39 12A.04, except that absolute liability shall be imposed for such a violation or failure to
40 comply and none of the mental states described in Section 12A.04.030 need be proved. The
41 Director may request the City Attorney to prosecute such violations criminally as an
42 alternative to the citation procedure outlined in this Chapter.
43

1 **Section 12.** A new Section 23.91.020 is hereby added to the Seattle Municipal
2 Code, to read as follows:

3
4 **23.91.020. Abatement.**

5
6 Any property on which there continues to be a violation of any of the provisions referenced in
7 Section 23.91.002 after enforcement action taken pursuant to this chapter is hereby declared
8 a nuisance and subject to abatement by the City in the manner authorized by law.
9

10 **Section 13.** A new Section 23.91.022 is hereby added to the Seattle Municipal
11 Code, to read as follows:

12
13 **23.91.022 Collection of penalties.**

14
15 If the person cited fails to pay a penalty imposed pursuant to this chapter, the penalty may be
16 referred to a collection agency. The cost to the city for the collection services will be
17 assessed as costs, at the rate agreed to between the City and the collection agency, and added
18 to the penalty. Alternatively, the City may pursue collection in any other manner allowed by
19 law.
20

21 **Section 14.** A new Section 23.91.024 is hereby added to the Seattle Municipal
22 Code, to read as follows:

23
24 **23.91.024 Each day a separate violation.**

25
26 Each day a person or entity violates or fails to comply with a provision referenced in Section
27 23.91.002 may be considered a separate violation for which a citation may be issued.
28

29 **Section 15.** A new Section 23.91.026 is hereby added to the Seattle Municipal
30 Code, to read as follows:

31
32 //

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34 //

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36 //

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40 //

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42 //

43
44 //

1 **23.91.026 Additional relief.**

2
3 The Director may seek legal or equitable relief at any time to enjoin any acts or practices that
4 violate the provisions referenced in Section 23.91.002 or abate any condition that constitutes
5 a nuisance.

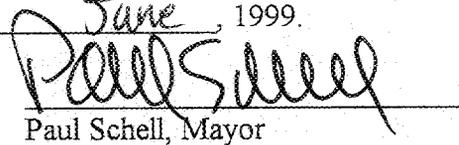
6
7 **Section 16.** The provisions of this ordinance are declared to be separate and
8 severable and the invalidity of any clause, sentence, paragraph, subdivision, section,
9 subsection, or portion of this ordinance, or the invalidity of the application thereof to any
10 person or circumstance, shall not affect the validity of the remainder of this ordinance or the
11 validity of its application to other persons or circumstances.

12
13 **Section 17.** This ordinance shall take effect and be in force forty-five (45) days
14 from and after its approval by the Mayor, but if not approved and returned by the Mayor
15 within ten (10) days after presentation, it shall take effect as provided by Municipal Code
16 Section 1.04.020.

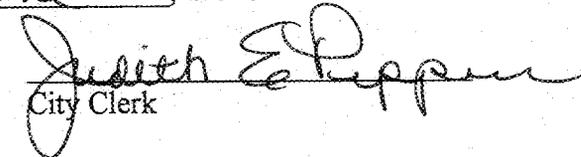
17
18 Passed by the City Council the 24th day of May, 1999, and signed by
19 me in open session in authentication of its passage this 24th day of May, 1999.

20
21
22 
23
24 President of the City Council

25
26 Approved by me this 1st day of June, 1999.

27 
28 Paul Schell, Mayor

29
30
31 Filed by me this 1st day of June, 1999.

32 
33 City Clerk

34 (SEAL)



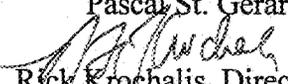
City of Seattle

Paul Schell, Mayor

Department of Design, Construction and Land Use
R. F. Krochalis, Director

MEMORANDUM

TO: Sue Donaldson, City Council President
Via: Margaret Klockars, Law Department
Pascal St. Gerard, City Budget Office

FROM: 
Rick Krochalis, Director

DATE: May 11, 1999

SUBJECT: Recommended Amendments to the Enforcement Provisions of the City's
Land Use Code

Transmittal

With this memorandum we are transmitting for City Council consideration proposed legislation amending the City's Land Use Code, creating a new citation enforcement process.

Background and Summary Recommendations

The Department of Design, Construction and Land Use (DCLU) is responsible for administering several codes, including the Land Use Code (SMC Title 23). The Land Use Code currently features an enforcement process that uses a notice of violation (NOV), and allows responsible parties a reasonable time to comply before penalties accrue. If a responsible party fails to comply with the NOV, the case may be referred to the Law Department for prosecution and collection of accrued civil penalties in Municipal Court.

Most DCLU enforcement actions are resolved through voluntary compliance. Although the current process works well in the majority of cases, it has limitations that prevent it from being effective in some situations. In addition, the time and cost of imposing and collecting the penalty in cases of relatively minor violations, or when a small penalty is involved, can result in decisions to forego imposition or collection of the accrued penalties. Such decisions, although correct from a resource perspective, often fail to provide the impetus for a change in behavior of the responsible party.

The proposed changes to the enforcement process would allow DCLU to be more effective in dealing with those violators who do not respond to DCLU's initial efforts to gain compliance in routine cases. The new process would also free up DCLU and Law Department resources to work on cases of significant neighborhood concern.

City of Seattle, Department of Design, Construction and Land Use
710 Second Avenue, Suite 200, Seattle, WA 98104-1703

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The process changes are proposed to apply to five specific types of violations:

- Outdoor storage of junk in residential zones
- Construction/maintenance of structures in required yards in residential zones
- Parking of vehicles in required yards in single family zones
- Failure to meet the standards for home occupations
- Keeping of animals not allowed by the code in single family zones

These violations were selected because they are generally easy to identify and easy to prove; they do not require entry onto private property and are often observable from public areas; they are mostly the result of volitional behavior and can be easily corrected; and they have significant impact on the surrounding area and its citizens. In 1998, there were about 1,000 cases involving the above violations. More than 75 percent were resolved voluntarily.

The proposed process is built on the traditional citation framework, and includes features such as pre-set penalties, increasing penalties for repeat offenders, and an opportunity for a hearing to contest the violation or request mitigation of the penalty. This process, however, still provides inspectors the option to allow an individual who has not had previous violations to correct the violation and thus avoid issuance of a citation.

The proposed system includes a penalty when the citation is issued. We anticipate that many would pay the penalty and comply. A person receiving a citation must request a hearing if they want to either contest the citation or seek a reduction in the penalty. Generally, mitigation of the penalty would only be available if the violation is corrected prior to the requested hearing. The proceedings would be before the Hearing Examiner and would occur within 30 days of the request for mitigation and 60 days of the request for contested hearings. This significantly shortens the time to bring a person before a fact-finder (hearing officer) for a determination of the case and reduces the amount of time involved in each violation if the property is not voluntarily brought into compliance.

One of the primary objectives of the proposed system is to change behavior of the violators from whom the Department has had difficulty gaining compliance in the past. A penalty would be imposed immediately, and sanctions for repeat offenders would be increased. Failure to correct the violation would, in most cases, result in imposition of the maximum penalty. The penalty for a first violation would be \$75.00. The penalty for a second violation within five years would be \$250.00. Third violations may result in criminal charges. Failure to correct the violation may result in the City seeking a court order authorizing abatement of the violation.

SEPA Environmental Review Determination

The proposed legislation amending enforcement of the Land Use Code was reviewed and is categorically exempt from SEPA, pursuant to SMC 25.05.800T.

Public Hearing Scheduled

A public hearing on this legislation has been scheduled before the City Council's Business, Economics, and Community Development Committee at 5:00 pm, Monday, May 17, 1999.

Implementation Costs and Benefits

- One-Time Implementation Costs: The one-time implementation costs would be approximately \$17,500. This includes the cost of preparing for and providing staff training, copying the approved ordinances for use by DCLU staff, printing new Land Use Code pages by the Book Publishing Company, preparing public information pamphlets and amending existing public information materials, preparing and printing new citations, and costs for staff time to set up collection system to work with the Hearing Examiner's system. These costs would be covered within the existing budget.
- Potential Long-Term Benefits/Costs: The procedural amendments proposed to the Land Use Code are changes to the current enforcement process. We anticipate some associated costs to DCLU other than those one-time implementation costs listed above. The estimated costs are \$7,500 per year, and include on-going staff training related to the citation process, new costs for collecting penalties by DCLU (that had been collected by Municipal Court), and the cost of using special pre-printed, multiple-copy and numbered citations. These costs would be covered within the existing budget.

At this time, we do not know with any certainty what demands the new process will place on inspection staff and administrative staff. Additional staff may be needed depending on the public's response to the citation process and the demand for hearings. (Inspectors must be available to attend contested matters before the Hearing Examiner.) DCLU will be carefully monitoring the new citation process and will evaluate its impacts on department staff and other resources. If additional resources are needed, we will request additional funds to cover these costs. This, however, is not likely to work within the mid-biennium budget timeline, so a separate request would be needed. Also, there has been discussion about including additional types of violations from the Land Use Code as well as the possibility of using this process with other codes. If that were to happen, a request for additional resources might be included as part of the legislation implementing further process amendments.

We also anticipate a shift in resource needs from Law, who currently handle the cases, to DCLU who would be handling many of the cases as they progress through the Hearing Examiner system. There may also be increased costs to the Office of the Hearing Examiner. We anticipate that the Hearing Examiner will handle between 250 and 500 additional cases that arise out of the new citation enforcement process.

If you have questions about this proposed legislation, please contact Bob Laird of my staff by e-mail at bob.laird@ci.seattle.wa.us or by phone at (206)233-3893.

**Fiscal Note Information for
Amendments to Seattle's Land Use Code**

| Department | Contact Person/Phone: | CBO Analyst/Phone: |
|--|------------------------------|-------------------------------|
| Department of Design, Construction and Land Use | Robert Laird 233-3893 | Pascal St. Gerard 684-8085 |

Legislation Title:

Amendments to the Enforcement Provisions of the City's Land Use Code

Summary of the Legislation:

The Department of Design, Construction and Land Use (DCLU) is proposing amendments to the enforcement processes set forth in the City's Land Use Code. The amendments would apply to only five specific violations of the Land Use Code.

The proposed enforcement process would include the following Land Use Code violations:

- Outdoor storage of junk in residential zones
- Construction or maintenance of structures in required yards in residential zones
- Parking of vehicles in required yards in single family zones
- Failure to meet the standards for home occupations
- Keeping of animals not allowed by the code in single family zones

Background (include justification for the legislation and funding history, if applicable):

Most DCLU enforcement actions are resolved through voluntary compliance. Although the current process works well in the majority of cases, it has limitations that prevent it from being effective in some situations. In addition, the time and cost of imposing and collecting the penalty in cases of relatively minor violations, or when a small penalty is involved, can result in decisions to forego imposition or collection of the accrued penalties. Such decisions, although correct from a resource perspective, often fail to provide the impetus for a change in behavior of the responsible party.

The proposed changes to the enforcement process will allow DCLU to be more effective in dealing with those violators who do not respond to DCLU's initial efforts to gain compliance in routine cases. The new process also will free up DCLU and Law Department resources to work on cases of significant neighborhood concern.

Estimated Expenditure Impacts:

| FUND: DCLU Fund | 1999 | 2000 | 2001 |
|---|-------------|-------------|-------------|
| <p>Usual & customary one-time costs associated with implementation of legislation, including</p> <ul style="list-style-type: none"> • Prepare and provide staff training \$ 8,000 • Copy the approved ordinances for use by staff, conduct public outreach and prepare written enforcement materials \$ 2,500 • Conduct public informational meetings \$ 4,000 • Develop citation forms \$ 1,500 • Develop the collection system \$ 1,500 <p style="text-align: right;">Subtotal: \$17,500 [No new resources needed; may need to reprioritize General Fund] (all General Fund)</p> | | | |
| <p>On-going costs</p> <ul style="list-style-type: none"> • Coach staff on new citation process \$ 2,000 • Implement and maintain collection system in coordination with the Hearing Examiner \$ 5,000 • Prepare multiple-part numbered citation forms \$ 500 <p style="text-align: right;">Subtotal: \$ 7,500 [No new resources needed; may need to reprioritize General Fund] (all General Fund)</p> | | | |
| | | \$ 7,725 | \$ 7,960 |
| Total: | \$ 25,000 | \$ 7,725 | \$ 7,960 |

Estimated FTE Impacts:

| FUND: DCLU Fund | 1999 | 2000 | 2001 |
|---|-------------|----------------|----------------|
| <p>Uncertain. Potential need for additional inspection staff and/or administrative staff. Hearing Examiner's Office may also have staffing needs. Will be monitoring and evaluating the process.</p> <p>If the new process is extended to additional types of Land Use Code violations, or to other codes, request for additional funding may need to be included as part of the legislation implementing further process amendments.</p> | | (General Fund) | (General Fund) |
| Total: | | | |

Return Address:

Seattle City Clerk's Office

600 4th Avenue, Room 104

Seattle, WA 98104

FILED
CITY OF SEATTLE

99 NOV 22 PM 12:07



SEATTLE CITY O MISC

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| Document Title(s) (or transaction contained therein): (all areas applicable to your document <u>must</u> be filled in.) 1. ORDINANCE # 119473 |
| Re - _____ of document. |
| Grantor(s) (Last name first, then first name and initials) 1. City of Seattle <input type="checkbox"/> Additional names on page ---- of document. |
| Grantee(s) (Last name first, then first name and initials) 1. N/A 2. |
| Legal description (abbreviated: i.e. lot, block, plat or section, township, range) <input type="checkbox"/> Additional reference #'s on page ----- of document N/A |
| Assessor's Property Tax Parcel/Account Number/ N/A <input type="checkbox"/> Assessor Tax # not yet assigned. |

ORDINANCE 119473

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AN ORDINANCE relating to enforcement of the Land Use Code, amending the enforcement process for certain violations of Title 23 of the Seattle Municipal Code, amending Section 23.40.002, adding a new Chapter 23.91, and adding new definitions to Chapter 23.84.

WHEREAS, the current enforcement system for processing Land Use Code violations recognizes that the majority of citizens will voluntarily comply with the code requirements once they are aware of a violation on their property; and

WHEREAS, the current enforcement system can be changed to be more effective in dealing with the more difficult land use cases, particularly those involving repeat offenders and property owners who are unwilling to comply with the City's requirements; and

WHEREAS, it is appropriate that the Land Use Code should discourage repeat violations by imposing increasing penalties; and

WHEREAS, enforcement of the Land Use Code should efficiently use resources and focus the most resources on difficult cases; and

WHEREAS, because violations of the Land Use Code have a serious impact on the community, it is sometimes appropriate to assess a penalty irrespective of how quickly the violation is cured in order to deter such violations; and

WHEREAS, it is appropriate to utilize this new enforcement tool on Land Use Code violations that are readily and clearly identifiable from the public domain; that can be brought into compliance in a reasonably short length of time; that have a significant impact on the surrounding community; and that include a high percentage of the Land Use Code enforcement cases;

NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.40.002 of the Seattle Municipal Code, which was last amended by Ordinance 118794, is amended as follows:

23.40.002 Conformity with regulations required.

The establishment or change of use of any structures, buildings or premises, or any part thereof, shall require approval according to the procedures set forth in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions. No use of any structure or premises shall hereafter be commenced, and no structure or part of a structure



1 shall be erected, moved, reconstructed, extended, enlarged or altered, except in conformity
2 with the regulations specified in this title for the zone and overlay district, if any, in which it is
3 or will be located. Owners of such structures, buildings or premises or parts thereof are
4 responsible for any failure of such structures, buildings or premises to conform to the
5 regulations of this title and for compliance with the provisions of this title in or on such
6 structures, buildings or premises. Any other person who created, caused or contributed to a
7 condition in or on such structure, building or premises, either alone or with others, is also
8 responsible under this title for any failure to conform to the regulations of this title. Building
9 and use permits on file shall be prima facie evidence of the time a building was built or
10 modified, or a use commenced, and the burden of demonstrating to the contrary shall be upon
11 the owner. Changes to existing structures may be permitted which make the structures
12 nonconforming if the changes are required by law for reasons of health and safety.

13
14 Section 2. Section 23.84.028 of the Seattle Municipal Code, which was last
15 amended by Ordinance 118472, is amended to add a definition to be put in alphabetical order
16 as follows:

17
18 23.84.028 "O"

19
20 "Owner" means any person having a legal or equitable interest in, title to, responsibility for,
21 or possession of a building or property, including, but not limited to, the interest of a lessee,
22 guardian, receiver or trustee, and any duly authorized agent of the owner.

23
24 Section 3. A new Section 23.91.002 is hereby added to the Seattle Municipal Code,
25 to read as follows:

26
27 23.91.002 Scope.

28
29 A. Violations of the following provisions of Seattle Municipal Code Chapter 23 shall be
30 enforced under the citation or criminal provisions set forth in this Chapter 23.91:

- 31
32 1. Junk storage (as defined in SMC section 23.84.020) in residential zones (Sections
33 23.44.006, 23.44.040, 23.45.004, and 23.45.140);
34 2. Construction or maintenance of structures in required yards or setbacks in residential
35 zones (Sections 23.44.014, 23.44.040, 23.45.005, 23.45.014, 23.45.056, and 23.45.072);
36 3. Parking of vehicles in required yards in a single family zone (Section 23.44.016);
37 4. Keeping of animals (Sections 23.44.048 and 23.45.148); and
38 5. Home Occupations (Sections 23.44.050 and 23.45.152).

39
40 B. Any enforcement action or proceeding pursuant to this chapter 23.91 shall not affect,
41 limit or preclude any previous, pending or subsequent enforcement action or proceeding
42 taken pursuant to chapter 23.90.
43



1 Section 4. A new Section 23.91.004 is hereby added to the Seattle Municipal Code,
2 to read as follows:

3
4 **23.91.004 Citation.**

5
6 A. Citation. If after investigation the Director determines that the standards or requirements
7 of provisions referenced in Section 23.91.002 have been violated, the Director may issue
8 a citation to the owner and/or other person or entity responsible for the violation. The
9 citation shall include the following information: 1) the name and address of the person to
10 which the citation is issued; 2) a reasonable description of the location of the property on
11 which the violation occurred; 3) a separate statement of each standard or requirement
12 violated; 4) the date of the violation; 5) a statement that the person cited must respond to
13 the citation within fifteen (15) days after service; 6) a space for entry of the applicable
14 penalty; 7) a statement that a response must be sent to the Hearing Examiner and
15 postmarked not later than midnight on the day the response is due; 8) the name, address
16 and phone number of the Hearing Examiner where the citation is filed; 9) a statement that
17 the citation represents a determination that a violation has been committed by the person
18 named in the citation and that the determination shall be final unless contested as
19 provided in this chapter; and 10) a certified statement of the inspector issuing the citation,
20 authorized by RCW 9A72.085, setting forth facts supporting issuance of the citation.

21
22 B. Service. The citation may be served by personal service in the manner set forth in RCW
23 4.28.080 for service of a summons or sent by first class mail, addressed to the last known
24 address of such person(s). Service shall be complete at the time of personal service, or if
25 mailed, three (3) days after the date of mailing. If a citation sent by first class mail is
26 returned as undeliverable, service may be made by posting the citation at a conspicuous
27 place on the property.

28
29 Section 5. A new Section 23.91.006 is hereby added to the Seattle Municipal Code, to
30 read as follows:

31
32 **23.91.006 Response to citations.**

33
34 Within fifteen (15) days after the date the citation is served, a person must respond to a
35 citation in one of the following ways:

- 36
37 A. Paying the amount of the monetary penalty specified in the citation, in which case the
38 record shall show a finding that the person cited has committed the violation; or
39
40 B. Requesting in writing a mitigation hearing to explain the circumstances surrounding the
41 commission of the violation and providing a mailing address to which notice of such
42 hearing may be sent; or
43



1 C. Requesting a contested hearing in writing specifying the reason why the cited violation
2 did not occur or why the person cited is not responsible for the violation, and providing a
3 mailing address to which notice of such hearing may be sent.
4

5 Section 6. A new Section 23.91.008 is hereby added to the Seattle Municipal Code,
6 to read as follows:
7

8 **23.91.008 Failure to respond.**
9

10 If a person fails to respond to a citation within fifteen (15) days of service, an order shall be
11 entered by the Hearing Examiner finding that the person cited committed the violation stated
12 in the citation, and assessing the penalty specified in the citation.
13

14 Section 7. A new Section 23.91.010 is hereby added to the Seattle Municipal Code,
15 to read as follows:
16

17 **23.91.010 Mitigation Hearings.**
18

19 A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing shall be
20 held within thirty (30) days after written response to the citation requesting such hearing
21 is received by the Hearing Examiner. Notice of the time, place, and date of the hearing
22 will be sent by first class mail to the address provided in the request for hearing not less
23 than ten (10) days prior to the date of the hearing.
24

25 B. Procedure at Hearing. The Hearing Examiner shall hold an informal hearing which shall
26 not be governed by the Rules of Evidence. The person cited may present witnesses, but
27 witnesses may not be compelled to attend. A representative from DCLU may also be
28 present and may present additional information, but attendance by a representative from
29 DCLU is not required.
30

31 C. Disposition. The Hearing Examiner shall determine whether the person's explanation
32 justifies reduction of the monetary penalty; however, the monetary penalty may not be
33 reduced unless the person provides at the hearing a certificate of compliance from DCLU
34 that the violation has been corrected prior to the mitigation hearing. Factors that may be
35 considered in whether to reduce the penalty include whether the violation was caused by
36 the act, neglect, or abuse of another; or whether correction of the violation was
37 commenced promptly prior to citation but that full compliance was prevented by a
38 condition or circumstance beyond the control of the person cited.
39

40 D. Entry of Order. After hearing the explanation of the person cited and any other
41 information presented at the hearing, the Hearing Examiner shall enter an order finding
42 that the person cited committed the violation and assessing a monetary penalty in an
43 amount determined pursuant to this section. The Hearing Examiner's decision is the final
44 decision of the City on the matter.



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Section 8. A new Section 23.91.012 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.012 Contested hearing.

- A. Date and Notice. If a person requests a contested hearing, the hearing shall be held within sixty (60) days after the written response to the citation requesting such hearing is received.
- B. Hearing. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases, except as modified by this section. The issues heard at the hearing shall be limited to those that are raised in writing in the response to the citation and that are within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue subpoenas for the attendance of witnesses and the production of documents, but shall not issue a subpoena for the attendance of a witness at the request of the person cited unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court.
- C. Sufficiency. No citation shall be deemed insufficient for failure to contain a detailed statement of the facts constituting the specific violation which the person cited is alleged to have committed or by reason of defects or imperfections, provided such lack of detail, or defects or imperfections do not prejudice substantial rights of the person cited.
- D. Amendment of Citation. A citation may be amended prior to the conclusion of the hearing to conform to the evidence presented if substantial rights of the person cited are not thereby prejudiced.
- E. Evidence at Hearing. The certified statement or declaration authorized by RCW 9A.72.085 submitted by an inspector shall be prima facie evidence that a violation occurred and that the person cited is responsible. The certified statement or declaration of the inspector authorized under RCW 9A.72.085 and any other evidence accompanying the report shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 shall also be admissible without further evidentiary foundation. The person cited may rebut the DCLU evidence and establish that the cited violation(s) did not occur or that the person contesting the citation is not responsible for the violation.
- F. Disposition. If the citation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the person cited committed the violation. If the violation remains uncorrected, the Hearing Examiner shall impose the applicable penalty. The Hearing Examiner may reduce the monetary penalty in accordance with the mitigation provisions in 23.91.010 if the violation has been corrected. If the Hearing Examiner determines that



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the violation did not occur, the Hearing Examiner shall enter an order dismissing the citation.

G. Appeal. The Hearing Examiner's decision shall be final unless one of the parties initiates review by writ of certiorari in King County Superior Court within fifteen (15) days after entry of the Hearing Examiner's decision.

Section 9. A new Section 23.91.014 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.014 Failure to Appear for Hearing.

Failure to appear for a requested hearing will result in an order being entered finding that the person cited committed the violation stated in the citation and assessing the penalty specified in the citation. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

Section 10. A new Section 23.91.016 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.016 Penalties.

A. First Violation. The first time that a person or entity is found to have violated one of the provisions referenced in Section 23.91.002 after the effective date of this ordinance, the person or entity shall be subject to a penalty of One Hundred Fifty dollars (\$150.00).

B. Second and Subsequent Violations. Any subsequent time that a person or entity is found to have violated one of the provisions referenced in Section 23.91.002 within a five (5) year period after the first violation, the person or entity shall be subject to a penalty of Five hundred dollars (\$500.00) for each such violation.

Section 11. A new Section 23.91.018 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.018. Alternative criminal penalty.

Any person who violates or fails to comply with any of the provisions referenced in Section 23.91.002 shall be guilty of a misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04, except that absolute liability shall be imposed for such a violation or failure to comply and none of the mental states described in Section 12A.04.030 need be proved. The Director may request the City Attorney to prosecute such violations criminally as an alternative to the citation procedure outlined in this Chapter.



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Section 12. A new Section 23.91.020 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.020. Abatement.

Any property on which there continues to be a violation of any of the provisions referenced in Section 23.91.002 after enforcement action taken pursuant to this chapter is hereby declared a nuisance and subject to abatement by the City in the manner authorized by law.

Section 13. A new Section 23.91.022 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.022 Collection of penalties.

If the person cited fails to pay a penalty imposed pursuant to this chapter, the penalty may be referred to a collection agency. The cost to the city for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the penalty. Alternatively, the City may pursue collection in any other manner allowed by law.

Section 14. A new Section 23.91.024 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.024 Each day a separate violation.

Each day a person or entity violates or fails to comply with a provision referenced in Section 23.91.002 may be considered a separate violation for which a citation may be issued.

Section 15. A new Section 23.91.026 is hereby added to the Seattle Municipal Code, to read as follows:

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23.91.026 Additional relief.

The Director may seek legal or equitable relief at any time to enjoin any acts or practices that violate the provisions referenced in Section 23.91.002 or abate any condition that constitutes a nuisance.

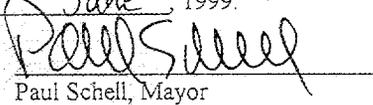
Section 16. The provisions of this ordinance are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Section 17. This ordinance shall take effect and be in force forty-five (45) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

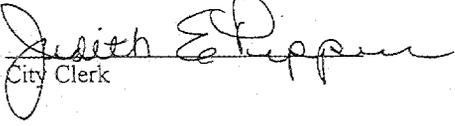
Passed by the City Council the 24th day of May, 1999, and signed by me in open session in authentication of its passage this 24th day of May, 1999.


President of the City Council

Approved by me this 1st day of June, 1999.


Paul Schell, Mayor

Filed by me this 1st day of June, 1999.


City Clerk

(SEAL)



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ORDINANCE _____

AN ORDINANCE relating to enforcement of the Land Use Code, amending the enforcement process for certain violations of Title 23 of the Seattle Municipal Code, amending Section 23.40.002, adding a new Chapter 23.91, and adding new definitions to Chapter 23.84.

WHEREAS, the current enforcement system for processing Land Use Code violations recognizes that the majority of citizens will voluntarily comply with the code requirements once they are aware of a violation on their property; and

WHEREAS, the current enforcement system can be changed to be more effective in dealing with the more difficult land use cases, particularly those involving repeat offenders and property owners who are unwilling to comply with the City's requirements; and

WHEREAS, it is appropriate that the Land Use Code should discourage repeat violations by imposing increasing penalties; and

WHEREAS, enforcement of the Land Use Code should efficiently use resources and focus the most resources on difficult cases; and

WHEREAS, because violations of the Land Use Code have a serious impact on the community, it is sometimes appropriate to assess a penalty irrespective of how quickly the violation is cured in order to deter such violations; and

WHEREAS, it is appropriate to utilize this new enforcement tool on Land Use Code violations that are readily and clearly identifiable from the public domain; that can be brought into compliance in a reasonably short length of time; that have a significant impact on the surrounding community; and that include a high percentage of the Land Use Code enforcement cases;

NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.40.002 of the Seattle Municipal Code, which was last amended by Ordinance 118794, is amended as follows:

23.40.002 Conformity with regulations required.

The establishment or change of use of any structures, buildings or premises, or any part thereof, shall require approval according to the procedures set forth in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions. No use of any structure or premises shall hereafter be commenced, and no structure or part or a structure shall be erected, moved, reconstructed, extended, enlarged or altered, except in conformity with the regulations specified in this title for the zone and overlay district, if any, in which it

1 is or will be located. Owners of such structures, buildings or premises or parts thereof are
2 responsible for any failure of such structures, buildings or premises to conform to the
3 regulations of this title and for compliance with the provisions of this title in or on such
4 structures, buildings or premises. Any other person who created, caused or contributed to a
5 condition in or on such structure, building or premises, either alone or with others, is also
6 responsible under this title for any failure to conform to the regulations of this title.
7 Building and use permits on file shall be prima facie evidence of the time a building was
8 built or modified, or a use commenced, and the burden of demonstrating to the contrary shall
9 be upon the owner. Changes to existing structures may be permitted which make the
10 structures nonconforming if the changes are required by law for reasons of health and safety.

11
12 **Section 2.** Section 23.84.028 of the Seattle Municipal Code, which was last
13 amended by Ordinance 118472, is amended to add a definition to be put in alphabetical
14 order as follows:

15
16 **23.84.028 “O”**

17
18 “Owner” means any person having a legal or equitable interest in, title to, responsibility for,
19 or possession of a building or property, including, but not limited to, the interest of a lessee,
20 guardian, receiver or trustee, and any duly authorized agent of the owner.

21
22 **Section 3.** Section 23.84.032 of the Seattle Municipal Code, which was last
23 amended by Ordinance 118794, is amended to add a definition to be put in alphabetical
24 order as follows:

25
26 **23.84.032 “R”**

27
28 “Responsible party” means an owner, any entity or person who has authority or control over
29 the property or makes decisions regarding the property’s maintenance or management, and
30 any person or entity that created or otherwise caused to be created the condition on the
31 property.

32
33 **Section 4.** A new Section 23.91.002 is hereby added to the Seattle Municipal Code,
34 to read as follows:

35
36 **23.91.002 Scope.**

37
38 In the discretion of the Director, violations of the following provisions of Seattle Municipal
39 Code Chapter 23 may be enforced either under the provisions of Seattle Municipal Code
40 Chapter 23.90 or the citation or criminal provisions set forth in this Chapter 23.91:

- 41 1. Junk storage (as defined in SMC section 23.84.020) in residential zones (Sections
42 23.44.006, 23.44.040, 23.45.004, and 23.45.140);
- 43 2. Construction or maintenance of structures in required yards or setbacks in
44 residential zones (Sections 23.44.014, 23.44.040, 23.45.005, 23.45.014, 23.45.056,
45 and 23.45.072);
- 46 3. Parking of vehicles in required yards in a single family zone (Section 23.44.016);

4. Keeping of animals (Sections 23.44.048 and 23.45.148); and
5. Home Occupations (Sections 23.44.050 and 23.45.152).

B. Any enforcement action or proceeding pursuant to this chapter 23.91 shall not affect, limit or preclude any previous, pending or subsequent enforcement action or proceeding taken pursuant to chapter 23.90.

Section 5. A new Section 23.91.004 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.004 Citation.

- A. Citation. If after investigation the Director determines that the standards or requirements of provisions referenced in Section 23.91.002 have been violated, the Director may issue a citation to the owner and/or other person or entity responsible for the violation. The citation shall include the following information: 1) the name and address of the person to which the citation is issued; 2) a reasonable description of the location of the property on which the violation occurred; 3) a separate statement of each standard or requirement violated; 4) the date the violation occurred; 5) a statement that the person cited must respond to the citation within twenty-one (21) days of issuance; 6) a space for entry of the penalty that the cited person may pay in response to the citation; 7) a statement that a response must be mailed not later than midnight on the day the response is due; 8) the name, address and phone number of the Hearing Examiner where the citation is filed; 9) a statement that the citation represents a determination that a violation has been committed by the person named in the citation and that the determination shall be final unless contested as provided in this chapter; and 10) a certified statement of the inspector issuing the citation.
- B. Service. The citation may be served by personal service in the manner set forth in RCW 4.28.080 for service of a summons or sent by first class mail, addressed to the last known address of such person(s). Service shall be complete at the time of personal service, or if mailed, three days after the date of mailing. If a citation sent by first class mail is returned as undeliverable, service may be made by posting the citation at a conspicuous place on the property.

Section 6. A new Section 23.91.006 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.006 Response to citations.

- A. Generally. A person must respond to a citation within twenty-one (21) days after the date the citation is served.
- B. Response. A person must respond to a citation by:
1. Paying the amount of the monetary penalty specified in the citation, in which case the record shall show that the person cited has committed the violation; or

1 2. Requesting in writing a mitigation hearing to explain the circumstances
2 surrounding the commission of the violation and providing a mailing address to
3 which notice of such hearing may be sent; or

4 3. Requesting a contested hearing in writing specifying the reason why the cited
5 violation did not occur or why the person cited is not responsible for the violation,
6 and providing a mailing address to which notice of such hearing may be sent.
7

8 **Section 7.** A new Section 23.91.008 is hereby added to the Seattle Municipal Code,
9 to read as follows:
10

11 **23.91.008 Failure to respond.**
12

13 If a person fails to respond to a citation within the twenty-one (21) days, an order shall be
14 entered by the Hearing Examiner finding that the person cited is responsible for the violation
15 stated in the citation and assessing the penalty specified in the citation.
16

17 **Section 8.** A new Section 23.91.010 is hereby added to the Seattle Municipal Code,
18 to read as follows:
19

20 **23.91.010 Mitigation Hearings.**
21

- 22 A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing shall
23 be held within thirty (30) days after written response to the citation requesting such
24 hearing is received by the Hearing Examiner. Notice of the time, place, and date of the
25 hearing will be sent by first class mail to the address provided in the request for hearing
26 not less than ten (10) days prior to the date of the hearing.
27
- 28 B. Procedure at Hearing. The Hearing Examiner shall hold an informal hearing which shall
29 not be governed by the Rules of Evidence. The person cited may present witnesses, but
30 witnesses may not be compelled to attend.
31
- 32 C. Disposition. The Hearing Examiner shall determine whether the person's explanation
33 justifies reduction of the monetary penalty; however, the monetary penalty may not be
34 reduced unless the person provides at the hearing a certificate of compliance from DCLU
35 that the violation has been corrected prior to the mitigation hearing. Factors that may be
36 considered in whether to reduce the penalty include whether the violation was caused by
37 the act, neglect, or abuse of another; or whether correction of the violation was
38 commenced promptly prior to citation but that full compliance was prevented by a
39 condition or circumstance beyond the control of the person cited.
40
- 41 D. Entry of Order. After hearing the explanation of the person cited, the Hearing Examiner
42 shall enter an order finding that the person cited committed the violation and assessing a
43 monetary penalty in an amount determined pursuant to this section. The Hearing
44 Examiner's decision is the final decision of the City on the matter.
45

1 **Section 9.** A new Section 23.91.012 is hereby added to the Seattle Municipal Code,
2 to read as follows:

3
4 **23.91.012 Contested hearing.**

- 5
6 A. **Date and Notice.** If a person requests a contested hearing, the hearing shall be held
7 within sixty (60) days after the written response to the citation requesting such hearing is
8 received.
9
10 B. **Hearing.** Contested hearings shall be conducted pursuant to the procedures for hearing
11 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing
12 Examiner for hearing contested cases, except as modified by this section. The issues
13 heard at the hearing shall be limited to those that are raised in writing in the response to
14 the citation and that are within the jurisdiction of the Hearing Examiner.
15
16 C. **Sufficiency.** No citation shall be deemed insufficient for failure to contain a detailed
17 statement of the facts constituting the specific violation which the person cited is alleged
18 to have committed or by reason of defects or imperfections, provided such lack of detail,
19 or defects or imperfections do not prejudice substantial rights of the person cited.
20
21 D. **Amendment of Citation.** A citation may be amended prior to the conclusion of the
22 hearing to conform to the evidence presented if substantial rights of the person cited are
23 not thereby prejudiced.
24
25 E. **Evidence at Hearing.** Issuance of a citation shall be prima facie evidence that the cited
26 violation occurred and that the person cited is responsible. The person contesting the
27 citation must prove by a preponderance of the evidence that, for the reasons specified in
28 the request for a hearing, the cited violation(s) did not occur or that the person contesting
29 the citation is not responsible for the violation.
30
31 F. **Disposition.** If the person contesting the violation does not meet the burden of proof, the
32 Hearing Examiner shall enter an order finding that the person cited committed the
33 violation. If the violation remains uncorrected, the Hearing Examiner shall impose the
34 maximum penalty. The Hearing Examiner may reduce the monetary penalty in
35 accordance with the mitigation provisions in 23.91.010 if the violation has been
36 corrected. If the Hearing Examiner determines the person contesting the violation has
37 met the burden of proof to show that the violation has not been proved, the Hearing
38 Examiner shall enter an order dismissing the citation. The Hearing Examiner's decision
39 is the final decision of the City on the matter.
40

41 **Section 10.** A new Section 23.91.014 is hereby added to the Seattle Municipal Code,
42 to read as follows:

43
44 **23.91.014 Failure to Appear for Hearing.**
45

1 Failure to appear for a requested hearing will result in an order being entered finding that the
2 person cited committed the violation stated in the citation and assessing the penalty specified
3 in the citation. For good cause shown and upon terms the Hearing Examiner deems just, the
4 Hearing Examiner may set aside an order entered upon a failure to appear.
5

6 **Section 11.** A new Section 23.91.016 is hereby added to the Seattle Municipal
7 Code, to read as follows:
8

9 **23.91.016 Penalties.**

10
11 A. First Violation. The penalty for a first violation of the provisions referenced in
12 Section 23.91.002 shall be Seventy-five dollars (\$75).
13

14 B. Second Violation. The penalty for a second violation of the provisions referenced in
15 Section 23.91.002 within a five (5) year period shall be Two-hundred fifty dollars
16 (\$250.00).
17

18 **Section 12.** A new Section 23.91.018 is hereby added to the Seattle Municipal Code,
19 to read as follows:
20

21 **23.91.018. Alternative criminal penalty.**

22
23 Any person who violates or fails to comply with any of the provisions referenced in Section
24 23.91.002 shall be guilty of a misdemeanor subject to the provisions of Chapters 12A.02 and
25 12A.04, except that absolute liability shall be imposed for such a violation or failure to
26 comply and none of the mental states described in Section 12A.04.030 need be proved. The
27 Director may request the City Attorney to prosecute such violations as an alternative to the
28 citation procedure outlined in this Chapter.
29

30 **Section 13.** A new Section 23.91.020 is hereby added to the Seattle Municipal
31 Code, to read as follows:
32

33 **23.91.020. Abatement.**

34
35 Any property on which there continues to be a violation of any of the provisions referenced
36 in Section 23.91.002 after enforcement action taken pursuant to this chapter is hereby
37 declared a nuisance and subject to abatement by the City in the manner authorized by law.
38

39 **Section 14.** A new Section 23.91.022 is hereby added to the Seattle Municipal
40 Code, to read as follows:

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23.91.022 Collection of penalties.

If the person cited fails to pay a penalty imposed pursuant to this chapter, the penalty may be referred to a collection agency. The cost to the city for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the penalty. Alternatively, the City may pursue collection in any other manner allowed by law.

Section 15. A new Section 23.91.024 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.024 Each day a separate violation.

Each day a person violates or fails to comply with a provision referenced in Section 23.91.002 is considered a separate violation and a new citation may be issued for each such violation.

Section 16. A new Section 23.91.026 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.026 Additional relief.

The Director may seek legal or equitable relief at any time to enjoin any acts or practices that violate the provisions referenced in Section 23.91.002 or abate any condition that constitutes a nuisance.

Section 17. The provisions of this ordinance are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Section 18. This ordinance shall take effect and be in force forty-five (45) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

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Passed by the City Council the _____ day of _____, 1999, and signed by me in open session in authentication of its passage this _____ day of _____, 1999.

President of the City Council

Approved by me this _____ day of _____, 1999.

Paul Schell, Mayor

Filed by me this _____ day of _____, 1999.

(SEAL)

City Clerk

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

_____ *Len Puga* _____

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____



PRESIDENT'S SIGNATURE

STATE OF WASHINGTON - KING COUNTY

106750
City of Seattle, City Clerk

—ss.

No. ORDINANCE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 119473in full

was published on

06/15/99

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

R. Patterson

Subscribed and sworn to before me on

06/15/99

McLweeney

Notary Public for the State of Washington,
residing in Seattle

City of Seattle

ORDINANCE 118473

AN ORDINANCE RELATING TO ENFORCEMENT OF THE LAND USE CODE, AMENDING THE ENFORCEMENT PROCESS FOR CERTAIN VIOLATIONS OF TITLE 23 OF THE SEATTLE MUNICIPAL CODE, AMENDING SECTION 23.40.002, ADDING A NEW CHAPTER 23.91, AND ADDING NEW DEFINITIONS TO CHAPTER 23.84.

WHEREAS, the current enforcement system for processing Land Use Code violations recognizes that the majority of citizens will voluntarily comply with the code requirements once they are aware of a violation on their property; and

WHEREAS, the current enforcement system can be changed to be more effective in dealing with the more difficult land use cases, particularly those involving repeat offenders and property owners who are unwilling to comply with the City's requirements; and

WHEREAS, it is appropriate that the Land Use Code should discourage repeat violations by imposing increasing penalties; and

WHEREAS, enforcement of the Land Use Code should efficiently use resources and focus the most resources on difficult cases; and

WHEREAS, because violations of the Land Use Code have a serious impact on the community, it is sometimes appropriate to assess a penalty irrespective of how quickly the violation is cured in order to deter such violations; and

WHEREAS, it is appropriate to utilize this new enforcement tool on Land Use Code violations that are readily and clearly identifiable from the public domain, that can be brought into compliance in a reasonably short length of time, that have a significant impact on the surrounding community, and that include a high percentage of the Land Use Code enforcement cases;

NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

SECTION 1. Section 23.40.002 of the Seattle Municipal Code, which was last amended by Ordinance 118794, is amended as follows:

23.40.002 CONFORMITY WITH REGULATIONS REQUIRED.

The establishment or change of use of any structures, buildings or premises, or any part thereof, shall require approval according to the procedures set forth in Chapter 23.76. Procedures for Master Use Permits and Council Land Use Decisions. No use of any structure or premises shall hereafter be commenced, and no structure or part of a structure shall be erected, moved, reconstructed, extended, enlarged or altered, except in conformity with the regulations specified in this title for the zone and overlay district, if any, in which it is or will be located. Owners of such structures, buildings or premises or parts thereof are responsible for any failure of such

and/or other person or entity responsible for the violation. The citation shall include the following information: 1) the name and address of the person to which the citation is issued; 2) a reasonable description of the location of the property on which the violation occurred; 3) a separate statement of each standard or requirement violated; 4) the date of the violation; 5) a statement that the person cited must respond to the citation within fifteen (15) days after service; 6) a space for entry of the applicable penalty; 7) a statement that a response must be sent to the Hearing Examiner and postmarked not later than midnight on the day the response is due; 8) the name, address and phone number of the Hearing Examiner where the citation is filed; 9) a statement that the citation represents a determination that a violation has been committed by the person named in the citation and that the determination shall be final unless contested as provided in this chapter; 10) a certified statement of the inspector issuing the citation, authorized by RCW 9A72.085, setting forth facts supporting issuance of the citation.

B. Service. The citation may be served by personal service in the manner set forth in RCW 4.28.080 for service of a summons or sent by first class mail, addressed to the last known address of such person(s). Service shall be complete at the time of personal service, or if mailed, three (3) days after the date of mailing. If a citation sent by first class mail is returned as undeliverable, service may be made by posting the citation at a conspicuous place on the property.

SECTION 5. A new section 23.91.006 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.006 RESPONSE TO CITATIONS.

Within fifteen (15) days after the date the citation is served, a person must respond to a citation in one of the following ways:

A. Paying the amount of the monetary

structures, buildings or premises to conform to the regulations of this title and for compliance with the provisions of this title in or on such structures, buildings or premises. Any other person who created, caused, or contributed to a condition in or on such structure, building or premises, either alone or with others, is also responsible under this title for any failure to conform to the regulations of this title. Building and use permits on file shall be prima facie evidence of the time a building was built or modified, or a use commenced, and the burden of demonstrating to the contrary shall be upon the owner. Changes to existing structures may be permitted which make the structures nonconforming if the changes are required by law for reasons of health and safety.

SECTION 2. Section 23.84.028 of the Seattle Municipal Code, which was last amended by Ordinance 118472, is amended to add a definition to be put in alphabetical order as follows:

23.84.028 "O"

"Owner" means any person having a legal or equitable interest in title to, responsibility for, or possession of a building or property, including, but not limited to, the interest of a lessee, guardian, receiver or trustee, and any duly authorized agent of the owner.

SECTION 3. A new Section 23.91.002 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.002 SCOPE.

A. Violations of the following provisions of Seattle Municipal Code Chapter 23 shall be enforced under the citation or criminal provisions set forth in this Chapter 23.91:

1. Junk storage (as defined in SMC section 23.84.028) in residential zones (Sections 23.44.006, 23.44.040, 23.45.004, and 23.45.140);

2. Construction or maintenance of structures in required yards or setbacks in residential zones (Sections 23.44.014, 23.44.040, 23.45.005, 23.45.014, 23.45.056, and 23.45.072);

3. Parking of vehicles in required yards in a single family zone (Section 23.44.016);

4. Keeping of animals (Sections 23.44.048 and 23.45.148); and

5. Home Occupations (Sections 23.44.050 and 23.45.152).

B. Any enforcement action or proceeding pursuant to this chapter 23.91 shall not affect, limit or preclude any previous, pending or subsequent enforcement action or proceeding taken pursuant to chapter 23.90.

SECTION 4. A new Section 23.91.004 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.004 CITATION.

A. Citation. If after investigation the Director determines that the standards or requirements of provisions referenced in Section 23.91.002 have been violated, the Director may issue a citation to the owner.

violation, the person or entity shall be subject to a penalty of five hundred dollars (\$500.00) for each such violation.

SECTION 11. A new Section 23.91.018 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.018 ALTERNATIVE CRIMINAL PENALTY.

Any person who violates or fails to comply with any of the provisions referenced in Section 23.91.002 shall be guilty of a misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04, except that absolute liability shall be imposed for such a violation if failure to comply and none of the defenses stated in Section 12A.04 may be proved. The Director may refer the City Attorney to prosecute such violations criminally as an alternative to the citation procedure outlined in this Chapter.

SECTION 12. A new Section 23.91.020 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.020 ABATEMENT.

Any property on which there continues to be a violation of any of the provisions referenced in Section 23.91.002 after enforcement action taken pursuant to this chapter is hereby declared a nuisance and subject to abatement by the City in the manner authorized by law.

SECTION 13. A new Section 23.91.022 is hereby added to the Seattle Municipal Code, to read as follows:

23.91.022 COLLECTION OF PENALTIES.

If the person cited fails to pay a penalty imposed pursuant to this chapter, the penalty may be referred to a collection agency. The cost to the city for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the penalty. Alternatively, the City may pursue collection in any other manner allowed by law.

SECTION 14. A new Section 23.91.024 is hereby added to the Seattle Municipal Code, to read as follows: