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No. 43076-2-II

STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

KITSAP COUNTY, a political subdivision of the State of Washington,
Respondent,

v.

KITSAP RIFLE AND REVOLVER CLUB, a not-for-profit corporation
registered in the State of Washington, and JOHN DOES and JANE DOES
I-XX, inclusive, Appellants,

and

IN THE MATTER OF NUISANCE AND UNPERMITTED
CONDITIONS LOCATED AT
One 72-acre parcel identified by Kitsap County Tax Parcel ID No.
362501-4-002-1006 with street address 4900 Seabeck Highway NW,
Bremerton Washington, Defendant.

AMENDED BRIEF OF APPELLANT

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I. INTRODUCTION

This case is about whether it was lawful and just to terminate the right of Appellant Kitsap Rifle and Revolver Club to operate its 88-year-old shooting range. The trial court divested the Club of a valuable property right without substantial evidence of nuisance conditions and contrary to Washington law. The trial court declared the Club's range a public nuisance based on speculative safety concerns and a handful of recent, subjective noise complaints contradicted by others in the same community. The Club asks this Court to reverse the trial court and affirm that, it like all other property owners, was entitled to intensify its operations within its historical eight acres of active use. Further, the Club requests this Court enforce the plain language of its contract with Kitsap County to secure the Club's right to continue and improve its nonconforming use, where overwhelming extrinsic evidence corroborates this intent. In the alternative, the Club also asks the Court to estop the County from contradicting the assurances that induced the Club to enter into the contract, and from unjustly enriching itself by concealing material facts about the property it sold to the Club. Finally, this appeal challenges the injunctions and warrant of abatement that give the County virtually unlimited control over the Club without judicial oversight and without any showing by the County of what it intends to do with that power. These

remedies should be reversed because they are arbitrary, excessive, and premised on multiple reversible errors.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in declaring the Club's nonconforming use right terminated.
2. The trial court erred in judging the Club a public noise nuisance.
3. The trial court erred in judging the Club a public safety nuisance.
4. The court erred in concluding the Club unlawfully expanded, changed, or enlarged its nonconforming use.
5. The court erred in denying the Club's accord and satisfaction defense and related breach of contract counterclaim.
6. The court erred in denying the Club's estoppel defense.
7. The court erred in its issuance of two injunctions and a warrant of abatement.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. May a trial court terminate an ongoing nonconforming use that has not been abandoned where there is no applicable amortization ordinance and no ordinance expressly authorizing immediate termination?
2. Should a property owner be able to continue enjoying his property when a local government claims it is a noise nuisance but has no objective decibel evidence and a significant number of landowners in the community testify the noise has no effect on their rights?
3. Should a property owner be allowed to act freely on his property absent evidence of a substantial and likely harm to his neighbors, as opposed to a mere possibility of future harm?
4. May a court find an expansion, change, or enlargement of use where the property owner has not increased its area of activity or substituted the use for a different kind altogether and has only increased the use within its historical area?
5. May a local government sell a property and then take legal action against the new owner for activities and improvements expressly authorized by the contract of sale where extrinsic evidence confirms the contract was intended to avert such disputes?
6. Should a local government be allowed to induce a person to take title to property by assuring his land use is approved and the sale is intended to secure his right to continue, concealing the contrary

- allegations of its code compliance officer, and then, after completing the conveyance, sue the landowner for continuing the land use?
7. May a trial court issue injunctions and a warrant of abatement that are not narrowly tailored and prohibit lawful conduct.

IV. STATEMENT OF THE CASE

This appeal arises from the judgment of the Pierce County Superior Court, following a bench trial, which prohibits the use of the Club's property as a shooting range unless it obtains a conditional use permit (CUP) from the County. The court terminated the Club's nonconforming use right based on the conclusion that the Club unlawfully expanded or changed the use of its property. The court also concluded shooting at the Club constitutes a public noise and safety nuisance. The court issued declaratory and injunctive relief prohibiting all shooting at the Club unless it obtains a CUP. CP 4084–86. The CUP process will give the County broad power to control and condition virtually every aspect of the Club's operations and facilities. *See* KCC 17.421.030.B.

The Club is a Washington non-profit corporation founded by charter in 1926 “for sport and national defense.” CP 4054 (FOF 4, 6). From its inception, the Club occupied the property where its facilities are presently located and where it has continuously operated as a gun club and shooting range. CP 4054–55 (FOF 7–8). The property consists of approximately 72 acres, including approximately eight acres of active or

intensive use or occupancy containing the Club's improvements, roads, parking areas, open "blue sky" shooting areas, targets, storage areas, and associated infrastructure (the "Property"). CP 4054–55 (FOF 8); Exs. 438, 486 (maps delineating eight acres).

Shooting was not historically confined to the developed ranges and cleared areas at the Property, but also took place on the periphery of the pistol and rifle ranges and within the eight-acre historical use area. CP 4059 (FOF 29). Some of the Club's historical activities involved rapid fire shooting and shooting in a variety of directions. VT 1782:21–1784:12, 1873:1–1874:13, 1907:14–23. The Club historically offered firearms training to classes of as many as 70 people. VT 1917:16–1919:21.

In 1993, the Kitsap County Board of County Commissioners (BOCC) authored a letter to the Club that recognized and "grandfathered" the Club's nonconforming use right as a shooting range. CP 4055 (FOF 10); CP 4075 (COL 6); Ex. 315. As of 1993, Club activities included rapid fire shooting, fully automatic firearms, cannons, explosives, and "sight in" season for hunters. CP 4059, 4073–74 (FOF 30, 83, 87). Shooting at the Club occurred during daylight hours, which are from as early as 6 am to as late as 10:15 pm. CP 4059 (FOF 30); VT 1027:24–

1028:14, 1096:10–18, 1068:28–25, 1069:7–9. At the time of trial, the Club’s hours were from 7 am to 10 pm. CP 4073 (FOF 80).

Military training occurred at least once in the early 1990s. CP 4071 (FOF 72); VT 2019:12–2020:3. Between 2002 and 2010, the Club hosted U.S. Navy small arms training exercises. CP 4071–72 (FOF 72–75). There is no finding that any Navy training is planned for the future.

The State of Washington owned the Property and leased it to the Club until 2009. CP 4055 (FOF 11). In 2009, the County took title to the Property as part of a package deal in which it obtained other property from the State that the County wanted to develop into a park. CP 4056–57 (FOF 16–17). The State would only convey the parkland to the County if it also took the Club Property. *Id.* (FOF 17). The County did not want to retain title to the Property because it was concerned about potential heavy metals contamination from its long use as a shooting range, which its appraiser valued as a \$2–3 million cleanup liability. CP 4057 (FOF 19). The Club wanted title to the Property because it was worried that if the County owned the Property it would end the Club’s operations there. *Id.* (FOF 18). The Club’s attorney understood that if it continued operating its shooting range the facility would not be treated as a hazardous waste site. VT 2894:7–2895:9.

The parkland and Club Property were the subject of months of negotiation and years of communication among the County, State, and Club. CP 4056–57 (FOF 17–20). The Club and County eventually negotiated a written Bargain and Sale Deed (“Deed”) to document the conveyance of the Property and their agreement to certain “covenants and conditions” regarding its use. CP 4056 (FOF 14); CP 4087–92 (Deed). On May 11, 2009, the County passed a written resolution stating: “it is in the public interest for firearm safety as well as in the best economic interest of the County to provide that KRRC continue to operate with full control over the property on which it is located.” Ex. 477 at 3 (emphasis added). The public record also represents that the Commissioners had determined the Club was compatible with the community and the County’s long term land use plan. Ex. 293; VT 2116:10–2117:1.

On June 18, 2009, the County recorded a deed transferring the Property from the State to the County, and then immediately recorded the Deed negotiated with the Club. CP 4056 (FOF 14); CP 4087–92 (Deed). Paragraph three of the Deed contains language requested by the Club’s attorney stating that the Club “may upgrade or improve” its facilities within its historical eight acres “consistent with management practices for a modern shooting range.” CP 4088–89 (¶ 3). The Deed also states the Club’s active shooting range shall be confined to its historical eight acres,

and any expansion will require an application to the County and compliance with land development ordinances. *Id.* The Deed requires the Club to offer public access to its shooting range, and requires its activities to conform to “accepted industry standards and practices.” CP 4088–89 (¶¶ 3–5). The Deed requires the Club to indemnify the County against any environmental liabilities at the Property. CP 4087–88 (¶ 1).

Unbeknownst to the Club, before the parties signed the Deed the County’s code compliance supervisor communicated to the County Commissioners and the County’s Deed negotiator his allegations that the Club was, in essence, an unlawful nuisance. VT 2827:3–9, 2828: 19–23, 2829:19–2831:3 (negotiator); VT 415:17–25, 574:9–576:3 (compliance supervisor). The County did not share this information with the Club until after it signed the Deed. VT 2097:2–2098:19, 2090:4–23, 2092:3–20; VT 2893:13–2894:4.

Approximately 18 months after the parties entered into the Deed, the County filed this lawsuit. *See* CP 2, 88. The County alleged the Club had committed noise and safety nuisance violations, nonconforming use violations, and site development permitting violations. *Id.* The County’s complaint and three amended complaints have never alleged a breach of the Deed. *Id.*; *see, e.g.*, CP 2, 88, 630,649, 1491, 1553, 1695, 1757.

After the parties' 14-day bench trial, the Club was continuing its operations when the trial court issued a declaratory judgment permanently terminating the Club's nonconforming use right. CP 4084. The trial court also enjoined all shooting at the Property without a CUP, and permanently enjoined certain specific activities and hours of operation, even with a CUP. CP 4085.

V. ARGUMENT

Conclusions of law are reviewed de novo.¹ Factual findings are reviewed for substantial evidence.² A declaratory judgment is reviewed "as other orders, judgments and decrees."³

A. Termination of the Club's Nonconforming Use Right Is Not Authorized By Law.

The trial court did not decide the scope of the Club's nonconforming use right. Instead, it issued a declaratory judgment abruptly terminating the nonconforming use right, in its entirety, on the grounds that there had been a change of the use, the use had expanded, there was unpermitted site development, the use was a nuisance, or the use

¹ *Nollette v. Christianson*, 115 Wn.2d 594, 800 P.2d 359 (1990) (citing *Spokane Cy. v. Glover*, 2 Wn.2d 162, 97 P.2d 628 (1940)).

² *Jenkins v. Weyerhaeuser*, 143 Wn. App. 246, 256–57 (2008) (reversing fact finding that was not supported by substantial evidence). *Bering v. SHARE*, 106 Wn.2d 212, 721 P.2d 918 (1986); see also *In re Request of Rosier*, 105 Wn.2d 606, 717 P.2d 1353 (1986) (appellate courts are not bound by the trial court's findings if those findings are based entirely on written material; the court can judge the sufficiency of such materials for itself).

³ *Schneider v. Snyder's Foods, Inc.*, 116 Wn. App. 706, 713, 66 P.3d 640, 643 (2003).

had increased. See CP 4076–80, 84. The Club disputes each of these conclusions, but even if they were correct the law would not authorize termination.

The trial decision cites several legal authorities as support for the termination remedy. At one point, the decision cites to “KCC Chapter 17.460 and Washington’s common law regarding nonconforming use.” CP 4080(COL 26). Later, the decision references KCC 17.455.060, KCC Chapters 17.381 and 17.420, KCC Title 17, and *Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wn.2d 1, 7, 959 P.2d 1024 (1988). CP 4081, 83 (COL 27, 35). None of these authorities support termination.

Title 17 of the Kitsap County Code (“KCC”), “Zoning,” includes Chapter 17.460 regarding “Nonconforming Uses, Structures and Use of Structures” The stated purpose of Chapter 17.460 is “to permit those nonconformities to continue until they are removed or discontinued.” KCC 17.460.010 (emphasis added). Thus, Kitsap County’s policy favors preservation of nonconforming uses. There is no provision in Chapter 17.460 authorizing termination of a nonconforming use right.

Likewise, KCC 17.455.060 says nothing about termination of a nonconforming use right. It only provides that a nonconforming use “shall not be altered or enlarged in any manner” unless doing so will create “greater conformity with uses permitted within, or requirements of, the

zone[.]” KCC 17.460.010. Washington common law favors free use of property, and holds that zoning ordinances shall “not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language.” *State ex rel. Standard Mining & Dev. Corp. v. City of Auburn*, 82 Wn.2d 321, 326, 510 P.2d 647 (1973). Therefore, KCC 17.455.060 does not terminate a nonconforming use right.

Remedies for land use violations are provided by the “Enforcement” chapter of Title 17, KCC 17.530. There are three enforcement mechanisms, none of which authorize termination of a nonconforming use right. The first mechanism is a civil infraction, which can result in monetary penalties, restitution, or community service. KCC 17.530.020, 2.116.140, 2.116.150. The second is administrative enforcement, which can result in voluntary correction by the landowner or abatement by the County. KCC 17.530.030, 9.56.030, 9.56.040, 9.56.050, 9.56.060. The third is a suit for injunction to abate a nuisance. KCC 17.530.030. County code does not authorize termination of a nonconforming use right as a remedy for change, expansion, unpermitted development, nuisance, or increased use.

The trial court also cited KCC 17.381 and 17.420. CP 4083 (COL 34–35). These chapters create zoning classifications and a process to obtain a conditional use permit. They do not authorize termination of a

nonconforming use right, which exists independently of such later-enacted zoning classifications. *See generally*, KCC 17.460.

Like Kitsap County Code, Washington common law provides no authority for termination of the Club's nonconforming use right. The trial court cited *Rhod-A-Zalea* but that case does not authorize termination. 136 Wn.2d at 7. Instead, it emphasizes the great extent to which nonconforming use rights are protected against termination by the Washington constitution and common law.

In *Rhod-A-Zalea*, the local government required the owner of a nonconforming use to obtain a grading permit even though no such permit was historically required of his peat-mining business. *Id.* at 3–4, 8–9. The Washington Supreme Court held the permit was required because it was imposed by a reasonable health and safety regulation that would not terminate the nonconforming use. *Id.* at 19. The landowner had already undertaken the grading and excavation activities that required the permit. Nevertheless, its nonconforming use right was not terminated, and a conditional use permit was not required. *Id.* at 17. The court distinguished cases where a regulation had the effect of terminating a nonconforming use right or rendering further nonconforming use impractical. *Id.* at 12–13. *Rhod-A-Zalea*, therefore, does not support termination, but actually protects the Club from it.

The very essence of a nonconforming use right is its protection of the use against immediate termination by later-enacted government regulation. *Id.* at 9–10. “[I]t would be unfair and perhaps unconstitutional to require an immediate cessation of a nonconforming use.” *Id.* at 7.

The only grounds for termination recognized by *Rhod-A-Zalea* are abandonment by the landowner and amortization by ordinance. 136 Wn.2d 17–19. The court did not find abandonment, and there is no applicable amortization ordinance. The County did not allege abandonment in its pleadings or argue for termination based on abandonment. Even if abandonment could be considered, the Club never abandoned its use of its Property as a shooting range. Abandonment and amortization provide no grounds for termination of the Club’s nonconforming use right.

The trial court terminated the Club’s nonconforming use right on the grounds that there had been a change of the use, the use had expanded, there was unpermitted site development, the use was a nuisance, or the use had increased. There is no legal authority for termination on such grounds. Termination of the Club’s nonconforming use right was in error.

B. The Club Is Not a Noise Nuisance.

The trial court made numerous findings of fact regarding sounds from the Property. *See* CP 4070, 73–74 (FOF 70, 80–87). The court then

concluded the sound of the Club is a public nuisance, and issued a corresponding judgment. *See* CP 4075–78 (COL 3, 13, 18, 20, 21); CP 4084–85 (Judgment). In essence, the court decided the amount of sound leaving the Property increased from its historical levels—particularly within the last five or six years—and at some point became a public nuisance to the community within two miles of the Club. *See, e.g.*, CP 4073–74 (FOF 84–85).

At trial the County presented no objective sound measurements or expert testimony regarding sound. The County admitted it possesses a decibel meter, which it typically uses to police its sound ordinance. VT 568:16–19. The County did not use the decibel meter in this case and never alleged a sound ordinance violation. VT 597:7–598:9; 626:5–10.

The County’s evidence of sound from the Club consisted almost entirely of lay witness testimony regarding their subjective perceptions. Almost half of the County’s witnesses were not particularly bothered or impacted by the expected noise coming from their pre-existing gun club neighbor. Although the County’s discovery included some audio and video recordings with audible sounds of shooting at the Club, none were calibrated to a decibel meter. The County’s chief building official testified he was not aware of any County study to determine whether the Club was in conformance with the County’s noise ordinance. VT 187:15–18,

268:19–269:3. The trial court denied the Club’s motion for a site visit to the Club and never listened to a live demonstration of shooting at the Club from any location. VT 13:14–14:14.

There are dozens, if not hundreds of homes within two miles of the Club. Ex. 3. Eighteen witnesses who lived within two miles of the Club gave subjective testimony about sound from the Club. *See* Ex. 3 (depicting locations of County witnesses). Six testified it was not objectionable. The rest had complaints, but there was little agreement about the specifics. The trial court did not find that the sounds from the Club affected equally the rights of every citizen within the “two-mile” community. Instead, the finding was that the complaints of the vocal minority were “representative of the experience of a *significant number* of home owners within two miles of the Property.” CP 4073 (FOF 84) (emphasis added).

Six of the eighteen witnesses confirmed sounds from the Club do not substantially interfere with the use and enjoyment of their property.⁴ Among the twelve who complained, some complained of only modest

⁴ *See* VT 1163:7–11 (Arnold Fairchild is not bothered by the sounds); VT 986:11–15 (Deborah Slaton does “not particularly” consider sounds annoying); VT 1174:8–17 (Lee Linton was never motivated to complain about the sounds); VT 1073:22–1075:2, 1080:1–5 (Jo Powell rarely hears sounds of gunfire, and they never caused her to lose enjoyment of her property); VT 1928:4–12 (Frank Jacobsen only hears sounds a “little bit” when is home and does not consider them a problem); VT 2300:5–16, 2298:12–14 (Kenneth Barnes barely notices the sounds).

annoyances.⁵ Others expressed negative attitudes that appear to have arisen only after learning the Navy's nearby shooting range had closed.⁶ Some let their imagination regarding safety or the sources of sounds get the better of them.⁷ Subsequent owners of the same property had dramatically different experiences.⁸ Some of the most vociferous complaints were made by individuals living furthest from the Club.⁹ It is difficult and unnecessary to reconcile these wildly varying accounts.

⁵ Craig Hughes testified the noise bothers him, but only when he is outside. VT 911:8–12. He testified, “I love where I live,” and he intends to stay. VT 917:21–25. Colby Swanson testified sounds from the Club were only an issue after 10 o'clock at night. VT 520:8–17. Donna Hubert hears sounds from the Club inside her house only “on occasion.” VT 873:220–25. The sounds upset her but have not caused her to change habits or stop inviting visitors. VT 876:18–877:7. William Fernandez admits the sounds he hears in his home are generally “sporadic and distant.” VT 406:17–21.

⁶ Kevin Gross is a former Navy employee. 1391:14–21. In 2008 he learned the Navy had closed its outdoor shooting range, which was formerly located a short distance from the Club. VT 1437:24–1438:5, 1391:14–21. Only then did he begin complaining of increased sound from the Club. VT 1433:25–1434:5, 1439:7–10. Eva Crim noticed sounds in 2004 to 2005 after she learned the Navy's shooting range had closed in 2003 or 2004. VT 962:18–963:11.

⁷ Molly Evans admitted she cannot separate her perception of “annoying” gunfire from her personal safety concerns regarding the Club. VT 1129:8–15. Robert Kermath did not notice sounds until 2007, a full year after he moved into his home located 1.5 miles from the Club. VT 302:18–19, 304:17–305:5, 306:20–307:8, 311:7–14, 323:16–20. He testified he is not qualified to identify sources of different sounds, yet concluded certain sounds were explosions from “binary bombs.” VT 311:7–14, 323:16–20. He claimed the explosions rattle his windows. VT 312:4–11.

⁸ Jeremy Bennett purchased Mr. Swanson's house in 2009. VT 886:2–5; *see supra* n. 5. Unlike Mr. Swanson, Mr. Bennett feels the sounds of the Club are highly objectionable. VT 888:19–889:8, 889:1–2. Similarly, Steven Coleman lived across the street from the Club from 1981 until sounds from the Club forced him to move in 2006. VT 919:23–921:8, 933:25–934:7. On cross-examination, Mr. Coleman admitted he did not think the noise was bothersome enough to disclose to the buyers, who are his friends and happily reside there based on his regular visits with them. VT 937:3–12.

⁹ Like Mr. Kermath, Mr. Gross lives approximately 1.5 miles from the Club. VT 1388:25–1390:2; Ex. 3. Mr. Gross is the only witness who claims rifle shooting at the Club causes “echoes” or “reverberations” throughout the community. VT 1407:6–14, 1407:24–1408:7.

What is clear is that the rights of landowners within two miles of the Club were not all equally affected.

1. There Is No Noise Nuisance Because the Club Is Exempt From Sound Limitations Between 7AM–10PM.

Washington State and Kitsap County define a nuisance in terms of “unlawful” activity and declare that activity expressly authorized by the legislature cannot be deemed a nuisance. RCW 7.48.120; RCW 7.48.160; KCC 17.110.515; *Linsler v. Booth Undertaking Co.*, 120 Wash. 177, 206 P. 976 (1922) (defining “nuisance” to mean “the unlawful doing of an act”). The State and County have established objective, decibel-based sound regulations that are the prevailing standards for the community surrounding the Club. WAC 173-60-040; KCC 10.28.040. These regulations expressly exempt authorized shooting ranges, such as the Club, from sound limitations between the hours of 7 am and 10 pm. WAC 173-60-050(1)(b); KCC 10.28.050(2). Even if sound regulations were applicable to the Club, there is no evidence the Club ever exceeded them. On this record, the Club is not a noise nuisance.

Under Washington law, a nuisance: “consists in *unlawfully* doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others...”

RCW 7.48.120 (emphasis added). This statute is incorporated into the definition of “nuisance” found in KCC. *See* KCC 17.110.515.

RCW 7.48.160 provides: “Nothing which is done or maintained under the express authority of a statute, can be deemed a nuisance.” This statute is incorporated into Kitsap County Code. KCC 17.110.515. The Washington Supreme Court applied RCW 7.48.160 in *Judd v. Bernard*, 49 Wn.2d 619, 304 P.2d 1046 (1956). There, landowners brought a nuisance claim to prevent the state from poisoning fish in a lake, which was expressly authorized by statute. *Id.* at 619–21. The court reasoned it could not find a nuisance because to do so would “usurp legislative and lawfully delegated administrative powers of the state.” *Id.* at 622.

Under Washington law, statutes, regulations, and ordinances authorizing certain acts must be respected when determining whether an activity is a nuisance. To find a noise nuisance arising from use of the Club’s shooting range between 7 am and 10 pm would usurp the authority of the State, Kitsap County, and the Department of Ecology, which exempt the Club from sound limitations during that time.

State and county regulations regarding permissible sounds from the Club are virtually identical. They each permit a range of levels from 55 to 70 dB, depending on the types of properties. WAC 173-60-040; KCC 10.28.040. They each exempt “[s]ounds created by the discharge of

firearms on authorized shooting ranges” between the hours of 7 am and 10 pm. WAC 173-60-050(1)(b); KCC 10.28.050(2).¹⁰ Kitsap County has never argued these exemptions are unreasonable, contrary to law, an abuse of the police power, or otherwise ineffective.

The trial court found the Club’s shooting range was authorized pursuant to its nonconforming use right, as confirmed by the County in 1993. CP 4055 (FOF 10); CP 4075 (COL 6). The only time the Club’s shooting range has ever been unauthorized was when the Club was shut down between the trial court’s decision and the stay of that decision by this Court. At the time of trial, the Club was still authorized, and its exemption from sound limitations should have disposed of the sound-based nuisance claim. The trial court erred in failing to conclude, pursuant to State and local regulations, that shooting sounds from the Club are not a nuisance between 7 am and 10 pm, regardless of volume.

If the shooting range sound exemptions somehow were not applicable to the Club, the decibel limitations themselves would set the standard for the County’s noise nuisance claim. The County failed to explain at trial how it could claim a property owner was a noise nuisance when it had no evidence of any exceedance of its own established decibel limitations, which set the levels deemed reasonable by Kitsap County

¹⁰ The Noise Control Act of 1974 expressly directs the Ecology to “provide exemptions or specially limited regulations relating to recreational shooting[.]” RCW 70.107.080.

itself. The proper application of sound regulations to a noise nuisance claim is illustrated by *Gill v. LDI*, 19 F.Supp.2d 1188 (W.D. Wash. 1998). There, the plaintiffs alleged a quarry was a noise nuisance, and submitted expert testimony and decibel measurements at summary judgment as evidence that the quarry exceeded the applicable state and local regulations. *Id.* at 1199. The objective decibel evidence allowed the plaintiff to continue to trial on the noise nuisance claim. *Id.*

Another instructive case is *Woodsmall v. Lost Creek Township Conservation Club, Inc.*, 933 N.E.2d 899 (Ind. App. 2011). There, landowners near a shooting range claimed a noise nuisance. The trial court denied the claim after a bench trial. *Id.* The Indiana Court of Appeals affirmed, noting, “[t]he decibel level was not addressed in the evidence adduced.” *Id.* at 903; *see also*, *Concerned Citizens of Cedar Heights—Woodchuck Hill Road v. DeWitt Fish & Game Club*, 302 A.D.2d 938, 755 N.Y.S.2d 192 (N.Y. App. 2003) (affirming summary judgment dismissal of noise nuisance claim against gun club because no evidence of violation of local noise control ordinance); *see also* *Lehman v. Windler Rifle & Pistol Club*, 44 Pa. D. & C.3d 243, 246, 1986 WL 20804 (Pa. Com. Pl. 1986) (dismissing noise nuisance claim against rifle range based on “general rule” that “no one is entitled to absolute quiet in the

enjoyment of his property; but one may insist on a degree of quietness consistent with the standard prevailing in the locality in which one lives”).

The Club is exempt from sound limitations between 7 am and 10 pm. WAC 173-60-050(1)(b); KCC 10.28.050(2). Even if it were not exempt, State and local law measures and limits sounds based on decibels. Without such evidence, the County’s noise nuisance claim relies entirely on the apparently delicate “aesthetic sense” of a handful of lay witnesses, which cannot prove a nuisance. *See Mathewson v. Primeau*, 64 Wn.2d 929, 395 P.2d 183 (1964) (“That a thing is unsightly or offends the aesthetic sense of a neighbor, does not ordinarily make it a nuisance”). The Club’s counsel is aware of no appellate opinion in Washington where a historical sound source exempt from sound regulations was held a public noise nuisance solely upon the subjective testimony of a few lay witnesses who found it annoying. The trial court’s decision that the sounds of shooting at the Club are a public noise nuisance to the community within two miles from the Club was in error and should be reversed.

2. There Is No Public Noise Nuisance Because Sounds from the Club Do Not Affect the Rights of All Members of the Community Equally.

In addition, the trial court’s decision that the Club is a public noise nuisance should be reversed because the evidence does not show the rights of all members of the community within two miles of the Club were

equally affected by sounds from the Club. Since at least 1881, the State of Washington has defined a “public nuisance” as “one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.” RCW 7.48.130. Under this statute, a public nuisance does not exist if the rights of only some members of a community are impacted, nor even if a substantial portion of the community is impacted. The rights of the “entire” community must be impacted “equally.” *Id.*

In *State v. Hayes Investment Corp.*, 13 Wn.2d 306 (1942) the plaintiffs alleged a noise nuisance and sought an injunction against a public beach and trailer camp owned and operated by the State. The Washington Supreme Court on review found the plaintiffs were “not in agrément as to the cause for complaint.” *Id.* at 311. Therefore, it was clear the activities at issue “d[id] not affect ‘equally the rights of an entire community or neighborhood,’” and there was no public nuisance pursuant to RCW 7.48.130. *Id.*

In *Crawford v. Central Steam Laundry*, 78 Wash. 355, 139 P. 56 (1914) the Washington Supreme Court reversed the trial court’s finding of nuisance. The plaintiffs complained of “noises, odors, smoke, and soot,” but their testimony showed they were “not similarly affected.” *Id.* at 356. The court held it was improper to abate the laundry as a nuisance

simply because it was “offensive to *some* of the residents and property owners within its immediate vicinity.” *Id.* at 357–58 (emphasis added).¹¹

Under RCW 7.48.130, *Hayes Investment Corp.*, 13 Wn.2d at 306 and *Crawford*, 78 Wash. at 355, a public nuisance exists only if it has an equal effect on the rights of an entire community or neighborhood. When numerous witnesses from an alleged community testify they have no problem with sounds from a shooting range, the rights of all members of the community are not equally affected. In such a case, there is no public nuisance.

Numerous witnesses who live within two miles from the Club testified that noise from the Club is not a problem for them. Several of these witnesses were called to testify by the County itself, and had no connection with the Club other than their proximity. Among the witnesses who felt the Club’s sounds are annoying, there was substantial disagreement and the evidence was entirely subjective. The rights of the entire community are not equally impacted by sounds from the Club. Therefore, as a matter of law, the trial court’s conclusion that the sounds constitute a public nuisance within two miles of the Club was erroneous. The public noise nuisance decision should be reversed.

¹¹ The claim in *Crawford* was not a “public” nuisance claim, but the court treated it like one because the plaintiffs were a group of ten people who owned or occupied property in the vicinity of a steam laundry, which they sought to enjoin as a nuisance.

C. The Club Is Not a Safety Nuisance.

The trial court expressly found that the U.S. Navy inspected the Club's pistol range while it was used for small arms military training between 2004 and 2010 and determined the facility was acceptable for training. CP 4072 (FOF 75–76). Despite the Navy's determination, with all its expertise, the trial court concluded the Club is so unsafe as to constitute a public nuisance. CP 4075–78 (COL 3, 11, 21).

The trial court supported its decision with three findings of fact regarding the safety of the range. CP 4070 (FOF 67–69). They include no finding that any particular activity at the Club is unsafe. They include no finding that any bullet from the Club ever struck a person or a nearby property. Instead, the court found that “more likely than not, bullets escaped from the Property's *shooting areas*” and “more likely than not, bullets will escape the Property's *shooting areas*[.]” CP 4070 (FOF 68) (emphasis added). The Club's “shooting areas” cover only eight of its 72 acres. CP 4054–55 (FOF 8).

The trial court added that the Club's facilities, safety protocols, and enforcement are “inadequate to contain bullets to the Property[.]” CP 4070 (FOF 69). Yet the court could not find that bullets are *likely* to leave the Club Property and cause substantial harm. The court found only that bullets from the Club “will *possibly* strike persons or damage private

property in the future.” CP 4070 (FOF 68) (emphasis added). The trial court’s findings of fact do not support its conclusion that the Club is a safety nuisance.

Washington courts recognize that a mere possibility of harm does not constitute a safety nuisance. In *Hite v. Cashmere Cemetery Assn.*, the Washington Supreme Court affirmed that a cemetery was not a nuisance to public health and safety in spite of landowners’ allegations that the cemetery could contaminate their drinking water well. 158 Wash. 421, 424, 290 P. 1008 (1930). The evidence showed the groundwater flowed in the direction of the well, so there was a possibility of harm. *Id.* The court held that for there to be a nuisance the likelihood of harm must be “reasonable and probable.” *Id.*

The Indiana Court of Appeals applied similar reasoning in *Woodsmall v. Lost Creek Township Conservation Club, Inc.*, where it affirmed that a shooting range was not a safety nuisance. 933 N.E.2d 899 (Ind. App. 2011). An expert testified it was “possible” for an errant bullet from the range to “potentially” strike a nearby property. *Id.* at 904. In addition, there was evidence bullets had been found on nearby properties, bullets could ricochet off rocks in the range backstop, bullets had impacted nearby trees, and the overall safety of the range could have been improved. *Id.* Yet, no one had ever been struck by a bullet leaving the

range, and there was no proof that any bullets found off-range had come from the range itself, as opposed to other potential sources in the area. The court found this evidence did not prove a nuisance. *See also Lehman v. Windler Rifle & Pistol Club*, 44 Pa. D. & C.3d 243, 1986 WL 20804 (Pa. Com. Pl. 1986) (dismissing claims that rifle range was safety nuisance where the chance of an accidental shooting was largely speculative and conjectural, ruling: “[t]he wrong or injury resulting from the pursuits of a trade or business must be *plainly manifest or certain*”).

The Club acknowledges it is possible for a hypothetical person to violate the Club’s well-enforced rules and safety protocols and shoot into the air, causing a bullet to leave Club property. VT 2109:19–2114:16 (discussing Club safety protocols). Such inappropriate behavior could occur almost anywhere, however, and there is no evidence the Club allows, encourages, or assists in such conduct. Enforcement of rules to prevent misbehavior militates against a nuisance claim. *See State v. Hayes Inv. Corp.*, 13 Wn.2d 306, 312, 125 P.2d 262 (1942) (finding public beach was not a nuisance where operator policed rules prohibiting profanity, drinking, and other misbehavior).

Moreover, whether the Club poses an unlawful safety risk that constitutes a public nuisance should be measured against the County’s lax firearm safety regulations. The County permits shooting outside the Club

with few restrictions, allowing any lawful firearm to be shot on virtually any parcel larger than five acres. *See* KCC 10.24.090. Given the County's minimal standards for shooting safety, it is ironic that one of the few organizations that invests substantial resources into providing a safe place for shooting has been deemed a safety nuisance.

As the trial court's findings indicate, the County failed to prove any bullet fired on the Club property has ever caused any actual harm to any person or property. The County also failed to prove that such harm was likely to occur. The evidence fell far short of the "reasonable and probable" likelihood of harm required by Washington law. The trial court's decision that the Club is a safety nuisance was in error.

D. There Was No Expansion, Change of Use, or Enlargement.

The trial court concluded, on multiple grounds, that the Club unlawfully expanded, changed, and enlarged its use between 1993 and 2009. CP 4075–76 (COL 8–10); CP 4079–82 (COL 25–28, 30, 32–33).¹² This conclusion was in error. The Club has not expanded its use because its areas of active use are confined within the same historical eight acres that were in use when the County affirmed its nonconforming use right in 1993. There was no change of use because the Club has continuously

¹² The reference to 1993 alludes to September 7, 1993 when the County acknowledged the Club's vested nonconforming use right. CP 4055 (FOF 10). The reference to 2009 alludes to May 11 and 13, 2009 when the parties entered into the Deed. CP 4058 (FOF 22); CP 4087–90 (Deed).

used its Property as a nonconforming shooting range. The Club has intensified its use gradually over the years, largely as a result of the County's own policies. *See* VT 2102:13–17. Its intensification is protected by the Washington constitution.

The trial court first erred by finding that some activities at the Property constitute “new or changed uses” because they do not fall within the current zoning definition of “private recreational facility.” *See* CP 4080 (COL 25.b–26) (quoting KCC 17.110.647). This was error because, by its very nature, a nonconforming use is not defined or limited by later-enacted zoning classifications.

Under Washington law, a nonconforming use right is described by the historical use of the property, not by a subsequent zoning classification. *See Keller v. City of Bellingham*, 92 Wn.2d 726, 727–28 (1979) (“chlorine operations”); *Miller v. City of Bainbridge Island*, 111 Wn. App. 152, 164 (2002) (“concrete casting business”). In addition, a “use” should not be confused with the individual “activities” associated with it. *See* KCC 17.110.730 (defining “use” to mean “the nature of occupancy, type of activity or character and form of improvements to which land is devoted”).

To identify an expansion, change, or enlargement of a nonconforming use, the historical use must be identified and then

compared to the current use. Instead, the trial court erroneously compared the Club's current use to the type of use that would be permitted under the current zoning definition of "private recreational facility." This reversible error appears to have infected the court's entire analysis of expansion, change, and enlargement.

The trial court compounded its error by failing to identify the extent to which the Club has permissibly intensified its use. Under *Rhod-A-Zalea*, the Club's nonconforming use is protected by the "broad limits" of the Washington constitution. 136 Wn.2d 1, 7. One of those limits is that intensification of the use is allowed unless an ordinance "specifically prohibit[s] intensification of a nonconforming use by reference to a *specified volume* of such use[.]" *Keller v. City of Bellingham*, 92 Wn.2d 726 (1979) (emphasis added). There is no such ordinance here.

When there is no ordinance prohibiting a specific volume of intensification, *Keller* provides the applicable legal standard. *Keller* involved a nonconforming chlorine plant that added six cells to its electrolytic cell building. Local citizens brought suit to challenge this as a violation of the facility's nonconforming use right. *Id.* at 728–29. The Washington Supreme Court ruled:

"Intensification is permissible, however, where the *nature and character* of the use is unchanged and *substantially the same facilities are used*. The test is whether the intensified

use is ‘different in kind’ from the nonconforming use in existence when the zoning ordinance was adopted.”

Id. at 731 (citations omitted) (emphasis added). The court then applied this standard and held the additional manufacturing cells were a lawful intensification. *Id.* at 729, 732.

Under *Keller*, analysis of expansion, change, and enlargement requires a trial court to correctly identify not only the historical use, but also any permissible intensification of that use. This is the only way to determine the full scope of a nonconforming use right and whether and to what extent the limits of lawful intensification have been exceeded. It is the only way to account for the extent to which the County’s own policies contributed to increased use of the Club. VT 2102:13–17; (explaining intent of County code was to direct more shooters to ranges such as the Club). It is the only way to determine what, if anything, must be done to remedy a violation of the Club’s nonconforming use right. The trial court’s failure to identify the Club’s lawful intensification is reversible error.

The trial court also erred in concluding the Club’s intensification of use constitutes an expansion, change, or enlargement. Though the Club’s nonconforming use has intensified over time, it has always been the same kind of use: a gun club and shooting range for “sport and

national defense.” CP 4054 (FOF 6) (emphasis added). This use has not unlawfully expanded, changed, or enlarged.

“Expansion” refers to the geographic area or footprint of the use. See KCC 17.460.020.C (“the area of such [nonconforming use] may not be expanded”). The trial court correctly found that shooting was not historically confined to the developed ranges and cleared areas at the Property, but also took place in “wooded or semi-wooded areas of the Property, on the periphery of the pistol and rifle ranges and *within [the] claimed eight-acre ‘historic use’ area.*” CP 4059 (FOF 29) (emphasis added). The trial court correctly found the Club’s current active and intensive use and occupancy is confined to “approximately eight acres.” CP 4054–55 (FOF 8); Exs. 438, 486 (maps delineating eight acres). The trial court correctly found the remainder of the Club’s 72-acre Property consists of “resource-oriented lands *passively utilized* by the Club to provide buffer and safety zones[.]” CP 4054–55 (FOF 8) (emphasis added). As these findings show, the Club conducts its shooting activities within the same geographic area or footprint used historically. This is not an expansion of the nonconforming shooting range use.

A “change” of a nonconforming use occurs when a historical use is discontinued and a property becomes devoted to new and different activities. For example, in *Miller* there was a change of use when a

historical concrete casting business in a residential zone was discontinued, the property changed ownership, and the new owner leased the property for a variety of new purposes. 111 Wn. App. at 158, 164–66. There was a change of the nonconforming use.

The trial court correctly decided the Club: “enjoyed a legal protected nonconforming status for historic [sic] use of the existing eight acre range.” CP 4075 (COL 6). The court also referred to “the nonconforming use at the Property as a shooting range[.]” CP 4080 (COL 26). The court even construed the 2009 Deed as “an acknowledgement of eight geographic acres of land that were used for shooting range purposes.” CP 4083 (COL 36).

In this case, the nonconforming use has not changed—it has always been a shooting range. The Club was founded in 1926 “for sport and national defense.” CP 4054 (FOF 6) (emphasis added). The Club has occupied the Property “[f]rom its inception.” CP 4054 FOF (6, 7). In 1993, the County affirmed the Club’s nonconforming use right to operate its shooting range. CP 4055 (FOF 10). Until 2009, the State owned the Property and leased it to the Club under a series of agreements. CP 4055 (FOF 11). Since 2009, the Club has owned the Property. CP 4056 (FOF 14). These findings show the Club has continuously used its Property as a

gun club and shooting range since long before 1993, without a change of that specific use.

As discussed above, the test for whether intensification is so severe as to constitute a “change” or “enlargement” is whether the use has become “different in kind.” *Keller*, 92 Wn.2d at 731. A use is not different in kind if “the nature and character of the use is unchanged and substantially the same facilities are used.” *Id.* Careful review of the findings and evidence shows the Club’s use has lawfully intensified and is not of a different nature or character.

The Club’s historical use of the Property included a wide variety of shooting and firearm-related activities. As of 1993, Club activities included rapid-fire shooting, use of fully automatic firearms, use of cannons, use of explosives, and “sight in” season for hunters. CP 4059, 4071–74 (FOF 30, 72, 83, 87). Current activities still include these same activities: rapid fire shooting, use of fully automatic firearms, use of cannons, and use of explosives. CP 4073–74, 82 (FOF 81–82, 85–87; COL 32–33). The trial court found these activities have become more common, but such intensification is lawful and does not constitute a change or enlargement of the use.

Next, the trial court concluded the Club’s use has changed or enlarged because its current activities include practical shooting practices

and competitions. CP 4070, 82 (FOF 70; COL 32–33). The trial court described this activity as involving “rapid-fire shooting in multiple directions.” CP 4070 (FOF 70). Two witnesses with personal knowledge of the Club’s historical activities testified in detail about shooting competitions and activities that involved rapid-fire shooting, sometimes in multiple directions, that historically took place at the Club. VT 1782:21–1784:12 (Andrew Casella); VT 1873:10–13, 1907:14–23 (County Sheriff Deputy Kenneth Roberts). The trial court was wrong to conclude practical shooting has turned the range into a different kind of use.

To ensure safety, the Club created berms and shooting bays within its historic eight acres using native materials from the Property. CP 4082–84 (FOF 33, 37). Earthen berms or backstops are among the features historically built and maintained at the shooting range. CP 4081 (FOF 29). Continuing that tradition by creating new berms and bays is not a change or enlargement of the use.

The Club has never been a historical preservation or re-enactment society. CP 825. It is and always has been a dynamic community shooting organization. Its historical support for practical shooting reflects the continuing interests of the community to provide for “sport and national defense,” as reflected in the Club’s charter. The Club supports these activities by improving its safety infrastructure in areas where

shooting historically took place with fewer berms and backstops. The Club's current use of its historical eight acres is not different in kind from the use that historically occurred there.

Next, the trial court concluded small arms military training activities that formerly occurred at the Club between 2002 and 2010 constitute a change or enlargement of the use. *See* CP 4071–73, 75–80 (FOF 71–79; COL 8(2), 25.a–b). Yet, as the trial court found, firearm qualification exercises occurred at the Club in the early 1990s. CP 4071 (FOF 72). The Navy training from 2002 to 2010 took place only on the pistol range and on no more than nine days per month. CP 4072 (FOF 75). This limited activity is consistent with the Club's historical mission of supporting national defense. CP 4054 (FOF 6). This is an important interest in Kitsap County and the Bremerton area, where it is common knowledge that the U.S. Navy has had a robust presence for decades, and Navy personnel are members of the community. The Navy training was part of the Club's normal use as a shooting range. *See* VT 2291:12–23.

Moreover, official U.S. Navy training ceased at the Club in the Spring of 2010. CP 4073 (FOF 79). Such discontinued activities cannot establish a change of use. *See Rosema v. City of Seattle*, 166 Wn. App. 293, 301, 269 P.3d 393 (2012) (affirming nonconforming use of residential duplex where former unlawful use as triplex had ceased).

Health Servs., 122 Wn.2d 738, 743, 863 P.2d 535 (1993); *see also Strand v. State*, 16 Wn.2d 107, 115, 132 P.2d 1011 (1943) (defining equitable estoppel).

For estoppel to affect a “governmental” action, as opposed to a “proprietary” one, it must also be shown that (2) manifest injustice will occur without estoppel and (1) government functions will not be impaired. *Id.* at 743–44. Each element must be proven with “clear, cogent, and convincing evidence.” *Id.* at 744. Case law regarding estoppel against the government suggests it is highly fact dependent.

The first element of estoppel, inconsistency, can arise from a difference between the government’s current claims and a prior resolution regarding land. *See Finch*, 74 Wn.2d at 165 (resolution conveying title estopped city from disputing party’s title to property); *see also Green County v. Tennessee Eastern Elec. Co.*, 40 F.2d 184 (6th Cir. 1930) (resolution authorizing dam estopped county from claiming damages for raising of dam).

Inconsistency can also arise from a government’s attempt to repudiate its prior approval or commitment regarding a land use. *Spokane*, 6 Wash. at 521. In *Spokane*, a party authorized by ordinance to construct a railway did so in an unauthorized location. *Id.* at 522, 524. The city was estopped from seeking to remove the track because “the municipal

Likewise, the isolated instance in 2009 when U.S. Navy personnel practiced shooting from a military “Humvee” does not constitute a change or enlargement of use because it is within the Club’s chartered purpose and there is no finding or evidence that it was not a historic use or that it will ever happen again. *See* CP 4072 (FOF 78).

The fact that the Club allowed use of its facility for firearms training by the U.S. Navy and private firearm instructors (for a nominal fee) also fails to prove a change or enlargement of the use. *See* CP 4071–72 (FOF 73–75). When a Property hosting a nonconforming use is rented to a non-owner, the “decisive inquiry” is not the nature of the entities involved but whether there is a “common use that the various operations share.” *Hendgen v. Clackamas County*, 836 P.2d 1369, 1371 (Or. App. 1992) (finding off-premises business rented property for same nonconforming use as former on-premises business).

The Club has a long history of firearm training. VT 1875:2–20, 1877:3–21; VT 1917:16–1918:25. From 1976 to 1980, the Club trained “over a thousand” students how to shoot firearms, including .44 magnum pistols and shotguns. VT 1917:16–1919:21. This historical use of the Club is comparable to the Navy’s small arms military training between 2002 and 2010. VT 1320:5–12, 1321:23–1323:7, 1327:21–1328:6, 2027:20–2031:7. Administration of firearm training by a third party, as

opposed to the Club, does not change the use to something other than a shooting range.

Next, the trial court concluded there was a change or enlargement of use because of increased hours of shooting at the Club. Yet the trial court specifically found shooting historically occurred at the Club “during daylight hours.” CP 4059 (FOF 30). One of the County’s witnesses and staunch Club opponent, Terry Allison, has lived adjacent to the Club since 1988. He testified that in 1988, hunters shot at the Club as early as 6 am, which is around daybreak in September. VT 1027:24–1028:14, 1096:10–18. Daylight can last until as late as 10:15 pm. VT 1068:18–21. Mr. Allison specifically recalled shooting as late as 9 pm, though he could not recall whether the Club allowed shooting until 10 pm. VT 1068:28–25, 1069:7–9. Ken Roberts, a County Sherriff Deputy, who has been a member of the Club since 1975, confirmed that prior to 1993 the Club allowed shooting until 10 pm. VT 1872:14–19, 1895:6–8. At the time of trial, the Club’s hours were from 7 am to 10 pm. CP 4073 (FOF 80). These hours are within its historical hours of operation and not a change or enlargement of the use.

The trial court found hours of active shooting, historically, were “considerably fewer” than they are today. CP 4073 (FOF 80). The trial court found that as of 1993 shooting occurred at the Property “only

occasionally, and usually on weekends and during the fall “sight-in” season for hunters. CP 4059 (FOF 30). Similarly, the trial court found that in the early 1990s shooting sounds from the range were “typically audible for short times on weekends, or early in the morning during hunter sight-in season (September)”;

and hours of active shooting were “considerably fewer.” CP 4073 (FOF 80). These vague findings are not supported by substantial evidence in the record because the County’s only evidence is circumstantial testimony regarding perceptions of audible sounds from a distance. Moreover, any increase in the total hours of active shooting throughout the year or the number of shooters at any particular time is a lawful intensification.

Next, the trial court concluded the Club expanded and changed its use when it installed stormwater culverts across the rifle range and constructed of berms in and to the north of shooting Bay 4 in 2006. CP 4065–69 (FOF 52–57, 64–65); CP 4081–82 (COL 28, 30). There was no finding that this work expanded the Club’s geographic area of active use beyond its historical eight acres. This work did not change the kind of use or activities at the Property. It simply routed water away from potential spent metals to protect the nearby wetland from contamination.

Next, the trial court concluded the Club’s clearing and grading in 2005 of an area referred to as the “300 meter range” was an expansion of

its use of the Property. CP 4081 (COL 27). This area was outside the historical eight acres, though it had been harvested for timber in 1991. CP 4063 (FOF 41). When the County became aware of the Club's exploratory work in 2005 and issued an oral "stop work" order, the Club complied with the order. CP 4063 (FOF 41-42). The County then informed the Club it was required to obtain a CUP because the work had expanded the Club's land use. CP 4063-64 (FOF 44). In response, the Club abandoned its plans to develop the 300 meter range. CP 4064 (FOF 46). The Club attempted to reforest the area in 2007 but the new trees did not survive. *Id.* (FOF 48).

If the Club had developed and used the area as a 300-meter range, it would have constituted an expansion of the geographic footprint of the Club's use. Because the Club abandoned the idea, however, there was no expansion of the use or need for a CUP. At trial, chief building official Jeff Rowe confirmed this when he suggested an expansion of a nonconforming use could be brought "back into nonconformity," and then agreed that "if the Club were to withdraw and retract this alleged expansion then it would not need a conditional use permit[.]" VT 278:17-279:15. This was consistent with the County's position in 2006, as described by its code compliance supervisor who met with the Club

regarding the proposed 300 meter range before the project was abandoned. VT 590:7–22; VT 591:13–17, 596:22–597:6, 604:1–11; CP 2371–72.

The testimony of Mr. Rowe and the County’s code compliance supervisor is contrary to the trial court’s decision and consistent with decisions by other courts. For example, in *Richland Township v. Prodex, Inc.*, 634 A.2d 756 (Pa. Com. 1993), the trial court determined both the scope of the expansion *and* the scope of the lawful nonconforming use right. The court did not abruptly terminate the entire use or require it to obtain a conditional use permit for its lawful operations to continue. *Id.* It only required the use to retract. On appeal, the court affirmed this approach, and modified the trial court’s order to allow a 20% expansion in area of use based on a local ordinance. *Id.* at 766.

Mr. Rowe’s testimony highlights the trial court’s errors in terminating the Club’s nonconforming use and failing to identify the extent to which the Club has lawfully intensified. According to Mr. Rowe, if there were some expansion, change, or enlargement, the Club would have the option to retract or return to nonconformity without a conditional use permit. The trial court’s decision forecloses this option and forces the Club to obtain a CUP in order for any operations, however, minimal, to continue. This makes all the difference in the world to the Club for two reasons. First, there is no guarantee that the Club can obtain

a CUP. VT 283:1–17. Second, the CUP process would give the County carte-blanche to micromanage virtually every aspect of the Club—without the safeguards provided by civil rules of procedure and injunction law. *See* KCC 17.421.030.B (authorizing broad range of CUP conditions).

In sum, the trial court’s decision regarding expansion, change, and enlargement of the Club’s nonconforming shooting range use is riddled with errors. This Court should either decide on this record that the Club has not unlawfully expanded, changed, or enlarged, or it should remand the case with instructions for the trial court to determine the precise contours of what the Club can and cannot do within its nonconforming use right and its constitutional right of intensification.

E. The Trial Court Erred in Denying the Club’s Breach of Contract Counterclaim and Accord and Satisfaction Defense.

The trial court denied the Club’s affirmative defense of accord and satisfaction and its closely related counterclaim for breach of contract. The affirmative defense alleges the 2009 Deed settled their potential disputes regarding the Club’s nonconforming use and prior potential code violations, and affirmed the Club’s right to operate and improve its facilities within the historical eight acres without jeopardizing its nonconforming use right or obtaining a conditional use permit. CP 1778–80. The Club’s related counterclaim for breach of contract sought a

judgment declaring the Club's rights under the Deed and declaring the extent to which the County's claims in this lawsuit are in breach of the Deed. CP 1778–79; 83–84. The trial court erred by not granting the Club's affirmative defense and counterclaim.

The trial court concluded the Deed: “cannot be read as more than a contract transferring Property from the County to the KRRC.” CP 4083 (COL 36); *see also* CP 4087–89 (Deed). This conclusion is incorrect because the Deed contains numerous provisions regarding the rights and obligations of the parties. *See generally*, CP 4087–89 (¶¶2–4). It is not a mere conveyance of the Property. *Id.*

The trial court also concluded the language in the Deed does not prohibit or have any effect on the County's enforcement of its ordinances against the Club. CP 4083 (COL 36). This conclusion is in error because it: (1) it fails to give effect to the plain language of the “improvement” clause in paragraph three of the Deed; (2) it fails to give effect to the County's implied duty to allow the Club to provide public access as required by paragraph four of the Deed; (3) it fails to give effect to the County's implied duty not to frustrate the purpose of the contract, which was to allow the Club to continue operating its shooting range at the Property; and (4) it disregards extrinsic evidence that the Deed was

intended to clarify the Club's nonconforming use rights and allow the Club to continue as it then existed.

The trial court's first error was in failing to effectuate the plain language of the "improvement" clause in paragraph three of the Deed. Washington follows the "objective manifestation theory of contracts." *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262, 267 (2005). Under this approach, the parties' intent is determined by the "objective manifestations of the agreement," and not by the "unexpressed subjective intent of the parties." *Id.* The goal is to determine "the reasonable meaning of the words used." *Id.*

Paragraph three of the Deed grants the Club the right to "upgrade or improve" its facilities within its historical eight acres so long as they are "consistent with management practices for a modern shooting range." CP 4089 (¶ 3). With this clause, the parties identified the controlling standard by which the Club's improvements within its historical eight acres would be judged and permitted to continue. The clause does not require improvements within the eight acres to comply with the rules and regulations of Kitsap County for development of private land. This omission must be given effect because the next clause, regarding "expansion," expressly provides that such rules and regulations would apply to any "expansion beyond the historical eight (8) acres[.]" *Id.* If the

parties intended land development ordinances to apply to improvements within the eight acres, the Deed would have said so. Instead, it says the Club may improve the eight acres consistent with management practices for a modern shooting range.

The County never alleged, and the trial court did not find, that any of the Club's improvements violated the "modern shooting range" standard. Instead, the trial court applied County land development ordinances to find certain past, unpermitted improvements within the eight acres are unlawful. *See* CP 4060–69 (FOF 33–36, 40–46, 49–51, 54–56, 62–64); CP 4079–83 (COL 24–34). The trial court should have effectuated the Deed by holding the improvements were authorized by the Deed, do not require any land development permits, and do not constitute an unlawful expansion, change of use, or enlargement of the nonconforming use. The trial court should have enforced the improvement clause by dismissing the County's claims regarding improvements within the eight acres.

The trial court's second error was in failing to give effect to the County's implied duty to allow the Club to perform the public access provision in the Deed. Washington courts recognize an implied duty in every contract for each party to allow the other to perform its contractual obligations, *i.e.*, a party cannot take action to prevent or interfere with the

other's performance of the contract. *E.g.*, *Long v. T-H Trucking Co.*, 4 Wn. App. 922, 926, 486 P.2d 300 (1971); *G.O. Geyen v. Time Oil Co.*, 46 Wn.2d 457, 460–61, 282 P.2d 287 (1955); *McCartney v. Glassford*, 1 Wash. 579, 20 P. 423 (1889).

G.O. Geyen is particularly instructive. There, an oil company leased property with a requirement that the lessor maintain a service station there. *G.O. Geyen*, 46 Wn.2d at 460. The oil company controlled the products the lessee was permitted to sell. *Id.* When the lessee agreed to maintain the service station, it was depending on the company to deliver its products. After entering into the lease, the oil company stopped delivery of its products, preventing the lessee from maintaining the station. *Id.* at 459. The court held there was an implied obligation for the company to deliver the products because this was necessary for the lessee to maintain the station as the lease required. *Id.* at 460–61. The oil company breached the contract by preventing the lessee from performing its side of the contract, and it was liable for damages.¹³

Paragraph four of the Deed requires the Club to immediately offer public access to its existing shooting range at the Property being sold by the County. CP 4089 (¶ 4). At the time of the Deed, the County

¹³ See also, *McCartney v. Glassford*, 1 Wash. 579, 582, 20 P. 423 (1889) (“If the act to be done by the party binding himself can only be done upon a corresponding act being done or allowed by the other party, an obligation by the latter to do, or allow to be done, the act or things necessary for the completion of the contract, will be necessary implied”).

controlled whether the Club would be allowed to continue or whether its existing facilities and operations would be subject to an enforcement action. The Club was depending on the County's approval of its then existing facilities and operations when it agreed to provide public access. After the parties entered into the Deed, the County brought suit to shut the Club down based on alleged violations that existed at the time of the Deed. The suit constitutes breach of contract because it seeks to prevent the Club from performing its side of the contract. The trial court erred in failing to recognize this.

The trial court's third error was in failing to give effect to the County's implied duty not to frustrate the Deed's purpose of allowing the Club to continue operating its nonconforming shooting range as it existed within the historical eight acres of active use. This purpose is evident in the public access provision discussed above and in the confinement clause of paragraph three. CP 4088–4089. That clause provides that the Club "shall confine its active shooting range facilities on the property consistent with its historical use of approximately eight (8) acres of active shooting ranges[.]" *Id.* This language expresses the manifest understanding between the parties that the Club was purchasing the Property for the purpose of continuing to operate its nonconforming shooting range within its historical eight acres.

When a sale is for a particular purpose, the seller implies that what is sold is suitable for that purpose, and bears the risk if it is not. *Tiegs v. Boise Cascade Corp.*, 83 Wn. App. 411, 426, 922 P.2d 115 (1996) *aff'd sub nom. Tiegs v. Watts*, 135 Wn.2d 1, 954 P.2d 877 (1998). In *Tiegs*, the Washington Court of Appeals held the defendant breached a lease that required him to supply water because the water turned out to be contaminated. The seller had an implied obligation to supply clean water because the contract showed the water was intended to be used for irrigation. 83 Wn. App. at 414. The defendant did not know the water was contaminated when he delivered it. Nevertheless, the seller bore the risk that what he sold was not suitable for its intended purpose.

The Deed shows its purpose was to allow the Club to continue operating its nonconforming shooting range within the eight acres. As seller, the County implied the Property was suitable for that purpose, and bears the risk if it is not. The purpose of the Deed should be given effect by dismissing the County's claims and declaring that the County must allow the Club to continue operating its nonconforming shooting range—as it existed on the date of the Deed—within the eight acres. Alternatively, if the Property is not suitable for its intended purpose, the County should be held liable for the Club's defense,

abatement, and other costs related to Property's inability to satisfy the purpose of the sale.

The trial court's fourth error was in disregarding the extrinsic evidence affirming the plain meaning and implication of the provisions discussed above. Washington contract law allows extrinsic evidence to be used to show the meaning of "specific words and terms used," though not to show an intention independent of the contract or to vary or modify the written words. *Hearst*, 154 Wn.2d at 493. Extrinsic evidence may be used to show: (1) the subject matter and objective of the contract; (2) the circumstances surrounding its formation; (3) subsequent acts and conduct of the parties; and (4) the reasonableness of the parties' respective interpretations. *Id.* at 502. In *Chevalier v. Woempner*, this Court reversed a trial court's erroneous contract interpretation that was contrary to the words in the contract and the extrinsic evidence of its intended meaning. 290 P.3d 1031, 1036 (Wash. Ct. App. 2012). The Court should do the same here.

The trial court found that the 2009 Deed came about because the County did not want ownership of the Property but had to take it in order to acquire desirable parkland from the State. CP 4056–57 (FOF 16–17, 19). The County commissioners first initiated the idea of the Club taking title to the property and approached the Club with that idea. VT 2842:11–

25. Retaining ownership was not an option for the County because its appraiser found a \$2–3 million environmental cleanup might be required at the Property. CP 4057 (FOF 21). The Deed reflects the County’s strategy for avoiding this liability by selling the Property to the Club subject to the Club’s agreement to indemnify the County against any environmental liability at the Property. CP 4088–89 (¶ 1). The trial court found the Club’s interest in the Deed was motivated by concern that if the County took ownership of the Property it might cancel the Club’s long-term lease. CP 4057 (FOF 18). As this finding suggests, the Club’s only interest in the Property was so that it could continue operating there, and the County knew this. This explains why the Club’s attorney drafted the “improvement” clause in paragraph three, which the County accepted. VT 2881:25–2882:2; Ex. 400 at 1–2.

The parties’ motivations for entering into the Deed are also reflected in the County’s resolution, approved in a public meeting on May 11, 2009, with representatives of the Club present. Ex. 477 at 3–4.¹⁴ The resolution is, by definition, an expression of the County’s intent. *See Baker v. Lake City Sewer Dist.*, 30 Wn.2d 510, 518, 191 P.2d 844 (1948) (“[a resolution] is simply an expression of the opinion or mind of the

¹⁴ The resolution for the Deed is unsigned because it was approved verbally by the Board of County Commissioners during a public meeting. Ex. 552 at 6 (documenting commissioners’ unanimous verbal adoption of resolution); Ex. 555 (audio recording of meeting).

official body concerning some particular item of business”). It contains the following finding of the County regarding the intent of the Deed:

“WHEREAS *the County finds that it is in the public interest* for firearm safety as well as in the best economic interest of the County to provide that KRRC continue to operate with full control over the property on which it is located[.]”

Ex. 477 at 3 (resolution) (emphasis added). The resolution also contains statements supporting the Club’s existing facilities and operation, its prior use for military training, and the public benefits of allowing the Club to continue. *Id.*

During the negotiations leading up to the resolution and Deed, both parties were aware that some individuals within the County had taken issue with the Club in the past. In 2005, the Club was exploring the possibility of developing a 300 meter rifle range outside its historical eight acres. CP 4063 (FOF 40). The Club had already done some exploratory work in this area when the County issued a stop work order and alleged the Club would need a conditional use permit (CUP) and other permits, including a site development activity permit (SDAP) if it wanted to continue with its plans. CP 4063 (FOF 40–44). The County had never taken action to substantiate those allegations, but the potential for dispute was known to both parties.

The parties were also both aware, prior to the Deed, that landowners were making allegations against the Club regarding noise, safety, nonconforming use violations, and unpermitted site development. In 2009 the County hosted public meetings regarding its plans for the Property and adjacent parkland owned by the State. Club representatives attended those meetings, where landowners publicly alleged excessive noise, unpermitted land development, and unsafe facilities at the Club. VT 1850:13–1853:21, 2213:1–20. At least one of the Commissioners was informed by the Club’s neighbor, Terry Allison, that he took issue with the Club’s noise, safety, and perceived expansion and change of use. VT 1091:3–25. The County had been aware of some of these allegations since as early as 2005. VT 420:25–427, 432:22–437:13 (testimony of County code compliance supervisor Steve Mount describing complaints as of 2005). Moreover, Mount expressly informed the County’s employee charged with negotiating the Deed, Matt Keough, that there were unresolved zoning enforcement issues regarding clearing of the property and expansion of Club activities, and that he was concerned about the Club’s hours of operation, noise, and safety. VT 2827:3–9, 2828: 19–23, 2829:19–2831:3.

Not only was the County fully aware of the potential issues surrounding the Property, but it had substantial knowledge of the Property

and full access to it prior to entering into the Deed. In 2005, personnel from the County Department of Community Development visited the Property on at least three occasions. CP 4064 (FOF 47). On at least one of these visits, County personnel walked through the developed shooting areas en route to and from the 300 meter range area. *Id.* In 2009, the County's appraiser visited and inspected the Property prior to the execution of the Deed. CP 4057–58 (FOF 21).

Keough also visited and inspected the Property prior to the execution of the Deed. VT 2078:6–2079:8; 2851:2–2852:14. The County was given full access to the Property prior to the Deed. *Id.* Keough himself testified there were discussions between the parties about what the Club could continue to do on each portion of the Property upon taking title. VT 2827:3–9, 2828:19–23, 2845:22–2646:13. Keough knew the Club was concerned about the long term viability of its operations at the Property. VT 2833:8–13. He knew it was concerned about its existing facilities and its ability to renovate them. VT 2844:21–24.

Keough testified that in his discussions with the Club it was understood that part of the Property was an “active range,” the active range with its “existing facilities” was “expected to continue,” and “expansion” or “going beyond the existing facilities” was “an item for future discussion” that “was going to require County review.” VT

2827:3–9, 2828:19–23, 2845:22–2846:13. Keough was very clear that when he referred to the Club’s “active range” he was referring to it as it existed “under the lease of the DNR,” which was in effect up until the Club took title to the Property. VT 2848:18–2849:3; CP 4055 (FOF 11); Ex. 136 (lease). The parties were clearly negotiating over the Club’s ability to continue as it then existed, and not as it existed at some earlier time.

The trial court found the unpermitted improvements at issue in this case occurred between approximately 1996 and May 2010. CP 4061 (FOF 33). These improvements include shooting bays and culverts within the Club’s historical eight acres. CP 4059–61, 65–66 (FOF 29, 33, 52–54); *see* Exs. 438. With the exception of one bay created between April 2009 and May 2010, each of these improvements was found to have pre-dated the Deed. The trial court found the County did not know about the culverts until after the Deed. CP 4067 (FOF 57). This was in error because the Club informed the County DCD about the culvert work before it took place, and there is no evidence of any inquiry or objection whatsoever from the County. VT 2049:1–2054:8, Ex. 416 at 2–3.

The County was familiar with the Club and the potential for further dispute when Commissioner Josh Brown entered a letter into the public record stating that the Commissioners had already granted assurance “that the Club and its improvements were not at odds with the County’s long-

term interest in the property, and would not jeopardize future planning efforts.” Ex 293. This shows the Deed was a land use policy decision by the County to reject the allegations that had been raised regarding the Club’s compatibility with the community. *See also*, Exs. 330, 332, 336, 293, 405 (additional extrinsic evidence of Commissioners’ intent to support Club as it existed).

Considering the compelling extrinsic evidence regarding the intent of the Deed, the trial court erred when it found, “[t]he only evidence produced at trial to discern the County’s intent at the time of the 2009 Bargain and Sale Deed was the deed itself.” CP 4058 (FOF 26). The extrinsic evidence consistently and overwhelmingly supports the Club’s interpretation of the Deed, which is that it was intended to clarify the Club’s nonconforming use rights and allow the Club to continue as it existed.

The trial court also erred when it found the minutes and recordings of the BOCC meetings regarding the Deed do not reveal *any* intent to settle disputed claims or land use status, and that the parties did not negotiate for resolution of such issues. CP 4058 (FOF 23, 25). This finding is in error because the evidence discussed above shows the parties were aware of landowner allegations and prior issues raised by the County that could threaten the Club’s future and resolved to clarify the Club’s

rights and allow it to continue. The parties never discussed a “release” or “settlement” in those express terms because there were no pending claims or adversarial allegations by the County that would have caused the Club’s volunteer attorney to negotiate an express release or settlement. *See* VT 2886:16–2888:4; 2890:6–2893:2; 2893:13–2894:4. On the contrary, the County was voicing strong public support for the Club, and the parties’ negotiating agents discussed the land sale as a “win/win” situation and a “partnership” between the parties. VT 2869:5–15; 2872:24–2873:24; *see also* VT 2096:3–22. The Deed and other evidence manifest the mutual desire to secure the Club’s future for the public benefit by clarifying the Club’s nonconforming use rights and agreeing it had the right to continue.

Another error in the trial court’s analysis is apparent in its conclusion that the Washington Open Public Meetings Act (“OPMA”), 42.30 RCW, somehow limits the legal effect of the Deed. CP 4083–84. As shown above, the resolution and Deed were public actions in full compliance with OPMA. County commissioners have “broad general powers” to “have the care of the county property . . . and, in the name of the county to prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law.” *Finch v. Matthews*, 74 Wn.2d 161, 173, 443 P.2d 833, 841 (1968); RCW 36.32.120(2). The power to prosecute and defend includes the power to

reasonably settle or compromise disputes. There is no finding that the Commissioners acted unreasonably or exceeded their authority in supporting the Club and entering into the Deed. The County has never sought rescission of the Deed and the Club is not seeking to enforce a separate contract entered into secretly behind closed doors without public notice or opportunity for comment. OPMA is not a rule of contract interpretation. The only dispute is over the legal effect of the Deed.

Although the Prosecutor's office bringing this case may not have been in control of the County's decision to enter into the Deed, the County and public received the benefit of that decision and the County must be bound by that decision in this action. The intent of the Deed should be given effect by reversing the trial court's judgment for the County and directing the Court to enter judgment in favor of the Club approving all conditions and activities existing as of the 2009 Deed, declaring that the Club's improvements within its historical eight acres must be judged by whether they are consistent with management standards at a modern shooting range, and remanding for a determination of the County's liability to the Club for breach of contract.

F. The Club's Estoppel Defense Should Be Granted.

Like the Club's accord and satisfaction defense and contract counterclaim, the Club's affirmative defense of estoppel is rooted in the

Deed. CP 1780–81, 4087–92 (Deed). The trial court denied the Club’s estoppel defense without making any conclusions of law regarding estoppel. This is troubling because the estoppel defense was a focal point of the case and the trial court denied the County’s pre-trial motion to strike it from the pleadings. CP 1608 (order); CP 1452–81 (motion). The trial court may have denied the defense on the grounds that the County’s allegations in this case are not inconsistent with what the County did or said to induce the Club to enter into the Deed. *See* FOF 24. There are numerous inconsistencies, however, and the estoppel defense does not require the Club to show that the County had already made an official decision to sue the Club when the Deed was executed. Even without such a blatant misrepresentation, the record presents a compelling case for estoppel.

The estoppel defense should have been granted because the Club entered into the Deed in reliance on the words and conduct of the County. The County led the Club to reasonably believe the Deed was intended to secure the Club’s right to continue and improve its nonconforming use within the eight acres. The County now denies this intent. The County led the Club to reasonably believe the County had made a final determination that the Club’s existing facilities and operations were

lawful. Shockingly, the County failed to disclose the internal allegations of its chief enforcement officer that the Club was an unlawful nuisance.

The Club would not have executed the Deed as it was written if it had known what the County is now saying regarding the intent of the Deed, the lack of a final determination by the County, and the allegations of its chief enforcement officer. As a result of the Deed and the County's inconsistent positions, the Club's existence, future, and control of its operations are in jeopardy. This manifest injustice can be corrected by reversing the trial court's decision and granting the estoppel defense. This will improve the way the government functions and increase trust in the government by creating an incentive for it to act more honestly and openly with its citizens.

Government entities have been subject to equitable estoppel in property and land use disputes for over 100 years. *See Spokane St. Ry. v. Spokane Falls ("Spokane")*, 6 Wash. 521, 33 P. 1072 (1893) (estopping city from denying prior approval of railway). Estoppel consists of the following elements: "(1) a party's admission, statement or act inconsistent with its later claim; (2) action by another party in reliance on the first party's act, statement or admission; and (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission." *Kramarevcky v. Dept. of Social and*

officers, from the mayor down” knew the company was acting in reliance on the city’s approval, and “no objection was made.” *Id.* at 524. The city’s claim was inconsistent with its prior approval.¹⁵

Silence can be inconsistent with a party’s later assertion of an adverse claim, especially when “honesty and fair dealing” demand disclosure of information. *Board of Regents of the Univ. of Washington v. City of Seattle* (“*BRUW*”), 108 Wn.2d 545, 741 P.2d 11 (1987) (estopping state from challenging condemnation award to which it had previously acquiesced); *Bunn v. Walch*, 54 Wn.2d 457, 463, 465, 342 P.2d 211 (1959) (estopping lienholder from objecting to auction and disbursement of proceeds to which it had previously acquiesced).

The law requires a property seller to disclose any known material fact not apparent to the buyer. *Sorrell v. Young*, 6 Wn. App. 220, 225, 491 P.2d 1312 (1971). A material fact is any “information that substantially adversely affects the value of the property . . . or operates to materially impair or defeat the purpose of the transaction.” RCW 18.86.010(9); *accord Sorrell*, 6 Wn. App. at 225. In *Sorrell*, the seller had a duty to

¹⁵ See also, *State ex rel. Shannon v. Sponburgh*, 66 Wn.2d 135, 143–44, 401 P.2d 635 (1965) (holding liquor control board could be estopped from objecting to change of location it had previously approved); *City of Charlestown Advisory Planning Commn. v. KBJ, LLC*, 879 N.E.2d 599 (Ind. App. 2008) (estopping city from enforcing development ordinance against land use it had previously approved). A change in “political winds” does not justify repudiation of a prior approval. *Id.* at 603.

disclose the presence of fill at an undeveloped property because the fact was not apparent to the buyer. *Id.*

Knowledge of a code violation is a material fact that must be disclosed by a seller with superior knowledge of the violation. *Barder v. McClung*, 93 Cal. App. 2d 692, 694, 697, 209 P.2d 808 (1949). In *Barder*, the seller had not been cited for an unpermitted dwelling unit over the garage, but there was evidence the seller knew it was unlawful. 93 Cal. App. 2d 692, 694, 697, 209 P.2d 808 (1949). The buyer knew the apartment was there, but did not know it was unlawful. *Id.* at 697. The seller had a legal duty to disclose that information. *Id.* The information affected the value of the property and undermined the purpose of the sale because the seller told the buyer she would be able to rent the unlawful apartment for income. *Id.* at 694; *accord*, *Morgera v. Chiappardi*, CV990172388S, 2003 WL 22705753, *3 (Conn. Super. Ct. Oct. 28, 2003) *aff'd*, 87 Conn. App. 903, 864 A.2d 885 (2005) (holding seller had duty to disclose knowledge of alleged code violations and fraudulently induced buyer to believe city approved of properties).

Here, the County's present claims are inconsistent with its resolution regarding the intent of the Deed, its approvals and commitments to the Club, its nondisclosure of the allegations of its chief enforcement officer, and its other words and conduct that induced the Club to enter into

the Deed. *See supra*, Part E (regarding manifest intent of Deed). The evidence regarding the County's nondisclosure of the allegations of its chief enforcement officer, Steve Mount, is particularly compelling.

Prior to the Deed, the County DCD's chief enforcement officer communicated to the Commissioners and the County's Deed negotiator the same allegations of land use violations and public nuisance that form the bulk of the County's case. VT 2827:3-9, 2828:19-23, 2829:19-2831:3 (negotiator); VT 415:17-25; 574:9-576:3 (compliance supervisor) The Club was never informed of these facts; it was never informed that anyone from the County believed there were any code violations at the Property; it was never informed that anyone from the County believed it to be in violation of law. VT 2887:1-7, 2891:18-25; VT 2090:4-15, 2095:6-10, 2097:2-7.

The County's silence regarding the adverse claims of its enforcement officer is inconsistent with the County's later assertion of the claims in this lawsuit. Although the Club knew landowners were making these types of allegations, it is a completely different matter for the allegations to be made by the County's own land use enforcement authority. The Commissioners and Keough knew about Mount's allegations. Keough knew the Club was concerned about potential land use disputes and its ability to continue. The Commissioners made numerous statements approving of the Club and confirming the Deed was

intended to allow the Club to continue. Yet the Commissioners and Keough never disclosed their knowledge that the County's chief enforcement officer was alleging the Club to be an unlawful nuisance.

Similarly, there is no evidence the County disclosed to the Club that the Deed was not intended to secure its right to continue and improve its nonconforming use. There is no evidence the County disclosed to the Club that its approval of the Club was not a final determination. There is no evidence the County disclosed its position that the Club could be sued for its existing facilities and operations and shut down at any time after giving the County the benefits of the Deed. The County's astounding silence regarding these material facts is inconsistent with its present case.

This evidence shows the County's words, actions, and nondisclosure constitute a conscious concealment of material facts, and not a simple mistake. But even if the County had been suffering from some mistaken understanding when it dealt with the Club, estoppel would be appropriate. A government cannot correct an earlier mistake to the detriment of those who relied on it. *See Kramarevcky*, 122 Wn.2d at 743; *Strand v. State*, 16 Wn.2d 107, 119–20, 132 P.23d 1011 (1943) (holding "actual knowledge of the state's officials of the falsity of their representations" is not necessary).

In *Strand*, the state sold public land as “attached tidelands” and later approved a subsequent owner’s title. *Id.* at 108–09. Later, the state decided the property actually included detached tidelands or islands, the conveyance was a mistake, and the land should be returned to the state for use as public shooting grounds. *Id.* at 109. The court held such a mistake could not defeat estoppel because the state, as property seller, had a “duty and responsibility to investigate” before selling the property as attached tidelands, and if it was mistaken the landowner who had relied on that mistake should not bear the consequences. *Id.* at 120–21.

The second element, reliance, is proven by showing a party would have acted differently if the opposing party had always acted consistently with the allegations in its lawsuit. Reliance may result from communications that create a predictable misunderstanding. *Harbor Air Serv., Inc. v. Board of Tax Appeals*, 88 Wn.2d 359, 367, 569 P.2d 1145 (1977) (estopping department of revenue where it could have easily prevented misunderstanding). A citizen may rely on the acts of a government subdivision that are within its “general powers . . . even though such powers have been exercised in an irregular and unauthorized manner[.]” *Finch*, 74 Wn.2d at 171. Such powers include the broad power of county commissioners to sell property and settle disputes. *Id.* at 166, 172–73; see also *Franklin County v. Carstens*, 68 Wash. 176, 122

P.999 (1912), *overruled in part on other grounds by Gustaveson v. Dwyer*, 83 Wash. 303, 310, 145 P. 458, 460 (1915). A citizen is entitled to rely on government officials and assume they know what they are doing. *Strand v.* 16 Wn.2d at 119.

Here, if the Club is mistaken about the intent and contractual effect of the Deed, then the words and conduct of the County predictably created that misunderstanding. The County's position in this lawsuit is that the Deed was intended to reserve and not affect the County's right to bring enforcement action against the Club's existing facilities and operations. Yet the County never communicated this to the Club and its words and actions led the Club to believe the exact opposite.

There is no question that the Club negotiated and executed the Deed in reliance on the County's words and conduct that were inconsistent with its present allegations. For example, the Club's attorney testified that if the Club had known there was "any kind of possibility that the Club was facing potential loss of its land use status," she "would have said absolutely don't sign [the Deed]." VT 2893:13–2894:4. As she explained, the Club could not accept the Deed's indemnity provision unless the Deed also secured the Club's nonconforming use right because if the shooting range were shut down the Property would be a hazardous waste site. VT 2894:7–2895:9. In that event, the indemnity provision

would expose the Club to the multi-million dollar cleanup liability found by the County's appraiser. CP 4087-88 (Deed indemnity provision); CP 4057-58 (FOF 21); VT 2840:3-2841:8 (testimony of County negotiating agent Matt Keough).

The Club's Executive Officer confirmed that if the Club had any idea its legality was a lingering issue within the County, the Club would not have agreed to the indemnity provision. VT 2097:8-16. He explained the Club's decision to sign the Deed and take on the potential liabilities at the Property as follows:

"The totality of it, again, gave us control to be able to operate in a way that we had which had been forward thinking. We have an environmental program we had a good grasp of, we were going to be able to limit better certain liabilities that had been a concern to us in the past such as the ability to fence the property off to keep people from wandering inadvertently into an active shooting range area. And with the knowledge that we've had in being able to run a facility safely and cleanly, we felt that it was worth the risk as it were."

VT 2098:6-19; *see also* VT 2092:3-20; 2090:4-23. The evidence clearly proves the Club agreed to the indemnity provision in reliance on the specific words and conduct of the County. *See also* VT 2097:2-7; 2098:6-19, 2222:18-2223:8 (testimony that Club agreed to public access provision and later spent approximately \$40,000 improving the Property in reliance on specific words and conduct of the County).

Further evidence shows the internal allegations of the County's code compliance supervisor were unknown to the Club and that it reasonably believed the Deed would secure its right to continue operating and improving its nonconforming shooting range. In 2005 the Club was informed it would need a CUP and other permits to proceed with the 300 meter range project it was exploring. CP 4063–64 (FOF 44). It was also informed that if the Club abandoned the project and retracted to its historical eight acres it would not need a CUP. VT 278:17–279:15, 590:7–22, 591:13–17, 596:22–597:6, 604:1–11; CP 2371–72. The Club attempted to resolve the issue by abandoning its development of the 300 meter range and replanting trees. VT 2041:24–2043:14. In 2007 the Club confirmed the owner of the Property, DNR, was satisfied with the replanting, and shared that information with the County. VT 2043:9–14. The County never informed the Club a permit was still required, never inspected the replanting, and never issued a notice of violation. VT 2043:9–14. Based on the County's conduct and DNR's satisfaction, the Club reasonably believed it had resolved the issue. VT 2038:10–2041:6; 2041:24–2043:14 (describing interactions between Club and code compliance supervisor Steve Mount).

The third element, injury, is satisfied where a landowner takes title and improves a property in reliance on the government's words and

actions. *See Finch*, 74 Wn.2d at 175; *Strand*, 16 Wn.2d 123–24. It is also satisfied where “the whim of an administrative body could bankrupt an applicant who acted in good faith in reliance upon a solemn written commitment.” *State ex rel. Shannon v. Sponburgh*, 66 Wn.2d at 143. As discussed above, the Club signed the Deed and took title to the Property in reliance on the County’s words and conduct. VT 2097:2–2098:19, 2090:4–23, 2092:3–20, 2893:13–2894:4. It also spent tens of thousands of dollars improving the Property. VT 2222:18–2223:8. The Club’s existence, future, and control over its shooting range are now in jeopardy. *See* 283:1–17 (issuance of CUP not guaranteed); KCC 17.421.030.B (authorizing broad range of CUP conditions). The element of injury is satisfied.

Moreover, the greatest injury may be that the County’s inequitable conduct induced the Club to accept the Deed as drafted without giving it fair notice and an opportunity to negotiate over the specific allegations the County was concealing. The County now argues the Deed gives the County all of the benefits it sought but omits the benefits the Club thought it was receiving. This is precisely the type of injury equitable estoppel prevents. *See Finch*, 74 Wn.2d at 175 (applying estoppel to prevent unjust enrichment of city). The primary elements of inconsistency, reliance, and injury are clearly proven in this case.

To the extent the Club seeks to estop the County from acting in a “governmental” as opposed to “proprietary” capacity, the additional elements of “manifest injustice” and “impairment of government functions” must be analyzed. *Kramarevsky*, 122 Wn.2d at 743–44. In this case, the Club’s estoppel defense applies to both types of conduct by the County.

At minimum, the Club seeks to estop the County from denying that the Deed was intended to secure the Club’s right to continue and improve its nonconforming shooting range. The Deed was a proprietary action because the government “acts in its proprietary capacity when it undertakes to dispose of public lands.” *Strand*, 16 Wn.2d at 117. Therefore, the County can be estopped in its proprietary capacity from denying the intent of the Deed. As a result, the County’s enforcement action would be a breach of the Deed but it would only suffer proprietary consequences. The enforcement action could continue but the County would be declared liable for any resulting damages, including defense and abatement costs. Failing to estop the County in its proprietary capacity would give the County an unfair advantage in the marketplace by immunizing it from the legal consequences of its proprietary actions. *Id.* at 118 (holding government can be estopped where it “puts itself on the plane of the ordinary citizen”).

The estoppel defense also applies if some or all of the County's actions are governmental. The defense seeks dismissal of the County's claims alleging code violations and a public nuisance, which are brought in its governmental capacity. The County should be estopped in every capacity and its claims should be dismissed because this will prevent manifest injustice to the Club while improving, and not impairing, government functions.

"Manifest injustice" exists if there is harm and injustice to the party seeking estoppel. *Kramarevcky*, 122 Wn.2d at 748. The manifest injustice in this case is evident in the numerous facts discussed above. In particular, the County's concealment and nondisclosure of material facts, especially the allegations of its code compliance official, show the County was not dealing with the Club honestly and in good faith. Moreover, considering the County's numerous assurances that induced the Club to enter into the Deed, it engaged in both active deception and passive concealment. As in *Finch*, it is "unlikely that any state of facts . . . would impose more manifest injustice" than what the County seeks and the trial court decided in this case. 74 Wn.2d at 175.

In evaluating estoppel, Washington courts hold that "in its business relations with individuals the state must not expect more favorable treatment than is fair between men." *Finch*, 74 Wn.2d at 161. Some

courts even require the government to act with “a more scrupulous regard to justice than belongs to the ordinary person.” *Strand*, 16 Wn.2d at 107. This is because the government exists to secure “impartial justice” and must “not be heard to repudiate its solemn agreement, relied on by another to his detriment.” *Id.*

As evident, Washington courts have improved the government by holding it to the same standards of fairness that apply between private citizens. They suggest government functions will be enhanced still further by applying the highest and most scrupulous standards of justice. This reasoning prevailed in *Kramarevcky*, where estoppel prevented the government from recovering public assistance benefits paid by mistake. 122 Wn.2d at 749. The court emphasized that the mistake arose from the government’s error alone, and estoppel would improve governmental functions by providing an incentive for the government to avoid such mistakes in the future. *Id.*

The County’s intentional nondisclosure and misleading statements create an even more compelling case for estoppel than the mistake at issue in *Kramarevcky*. As in that case, estoppel will improve and not impair the County’s governmental functions because it will prevent the County from repeating the type of conduct exhibited here. It will create an incentive for the County to fully and honestly disclose material information about

public lands before selling them to its citizens. Creating an incentive for the County to act more honestly and fairly in the future will only improve the way it functions. The benefit of granting the Club's estoppel defense in this case far outweighs the benefit of allowing the type of manifest injustice present here. 122 Wn.2d at 749.

The Club's defense of equitable estoppel should be granted. The County should be estopped from denying any duty to disclose the allegations of its code compliance supervisor prior to selling the Property to the Club. The County should be estopped from denying that the Deed was intended to secure the Club's right to continue and improve its nonconforming shooting range. The County should be estopped from denying that it made a final determination that the Club's facilities and operations were lawful at the time of the Deed. The County's claims should be dismissed and the Club's breach of contract counterclaim should be granted.

G. The Injunctions and Warrant of Abatement Should Be Reversed and Set Aside.

After abruptly terminating the Club's nonconforming use right, the trial court issued two injunctions. The first prohibits all shooting at the Club without a CUP. CP 4085. The second injunction prohibits: (1) the use of automatic firearms; (2) the use of rifles larger than "nominal .30

caliber”; (3) the use of exploding targets and cannons; and (4) shooting before 9 am or after 7 pm. CP 4085. These injunctions were in error because there is no legal basis to terminate any aspect of the Club’s nonconforming use right or hold any of its facilities or activities unlawful, for the reasons discussed above. In addition, even if some aspect of the Club were unlawful, the injunctions would be arbitrary, overbroad, and not appropriately tailored to address specific harms without prohibiting reasonable activities.

Injunctive relief cannot be upheld if it is based upon untenable grounds, manifestly unreasonable, or arbitrary. *Walmart, Inc. v. Progressive Campaigns, Inc.*, 139 Wn.2d 623, 628, 989 P.2d 524, 526 (1999). A decision is manifestly unreasonable if “it is outside the range of acceptable choices, given the facts and the applicable legal standard[.]” *In re Marriage of Horner*, 151 Wn.2d 884, 894, 93 P.3d 124 (2004). It is based upon untenable reasons if “it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Id.* The terms, scopes, or duration of an injunction are proper grounds for appeal. *King v. Riveland*, 125 Wn.2d 500, 504, 886 P.2d 160, 163 (1994).

A trial court “must *precisely* tailor a permanent injunction to prevent a *specific* harm[.]” *DeLong v. Parmelee*, 157 Wn. App. 119, 236 P.3d 936 (2010). The order must “set forth the reasons for its issuance,” it

must be “specific in terms,” and must “describe in reasonable detail . . . the act or acts sought to be restrained.” CR 65(d).

Appellate courts routinely reverse and modify an injunction that is excessively broad and not precisely tailored to prevent a specific harm. For instance, in *Chambers v. City of Mount Vernon*, 11 Wn. App. 357, 361 (1974), the Washington Court of Appeals reversed and modified an injunction enjoining “any quarry operations” because the alleged nuisance conditions could have been remedied without completely shutting down the quarry. *Id.* at 361.¹⁶

Under Washington law, an injunction must be narrowly tailored to prevent a specific harm, and may only prohibit activities to the extent they create a nuisance. In addition, courts are reluctant to require more mitigation of a nuisance than is practicable. *E.g.*, *Payne v. Johnson*, 20 Wash.2d 24, 145 P.2d 552 (1944).

At least one court has applied these principles to reverse an excessive injunction of a shooting range. In *Christensen v. Hilltop Sportsman Club, Inc.*, the Ohio Court of Appeals reversed an injunction prohibiting all shooting at a rifle club after neighbors brought a nuisance action alleging excessive noise. 573 N.E.2d 1183 (Ohio App. 1990). The prohibition was “excessive and far out of proportion” because it prevented

¹⁶ See also, *Mathewson v. Primeau*, 64 Wn.2d 929, 395 P.2d 183 (1964); *State v. Stubblefield*, 36 Wn.2d 664, 220 P.2d 305 (1950).

the club's "reasonable use" of its property at "reasonable times." *Id.* at 1186. The court reversed with instructions for the injunction to prohibit "no more than is required to eliminate the nuisance." *Id.*

Here, it appears the trial court issued the first injunction, shutting the Club down unless it obtains a CUP, on the grounds that the Club's nonconforming use right is terminated. Because the Club retains its nonconforming use right, the zoning ordinance does not apply and a CUP is not necessary.

The trial court may have also issued the first injunction to abate common law public nuisance activities or violations of code or statute. *See* CP 4073, 4077–78, 4081–85 (FOF 67–69, 84–85, COL 16–20, 27–32). However, even if some aspect of the Club were held a nuisance, expansion, change of use, enlargement, or site permitting violation, the injunction would be arbitrary, excessive, and inappropriately tailored.

If any aspect of the Club were a nuisance, the harm would have to be abated by an appropriately tailored injunction. With respect to sound, that would require an objective standard to identify when the sound from the Club is and is not a nuisance. With respect to safety, that would require a clear standard to identify when and under what conditions an activity at the Club is and is not so unsafe as to constitute a nuisance. The trial court found no such standards here. The injunction would also have

to allow the Club to continue with any activities that do not cause a specific harm, including its historical activities. After all, the Club operated for decades without allegations of a noise or safety nuisance, so it is acceptable under some circumstances. The trial court's injunction do not satisfy these tailoring requirements.

Likewise, the first injunction is not narrowly tailored to abate an unlawful expansion, change of use, or enlargement of the Club's nonconforming use. The injunction prohibits even those activities lawfully within the Club's nonconforming use right and right to intensify. To be appropriately tailored, the injunction would have to allow those lawful activities, but the trial court did not determine what they are.

The trial court's findings of site permitting violations at the Club should be reversed by the Deed and estoppel defenses. But even if they were allowed to stand, they would fail to support the excessive scope of injunction. These violations relate to specific improvements in specific parts of the Property. The remainder of the Club's improvements are lawful, and shutting the Club down over site development permits would cause the Club irreparable harm. By analogy, a person is not evicted from her home simply because of an unpermitted electrical outlet. A tailored injunction would either order the Club to obtain the permits or, at worst,

prohibit the use of only those improvements that require permits, pending abatement.

The requirement of a CUP does not change the disproportionate nature of the first injunction. A CUP would give the County broad power to limit, control, and condition the Club's activities without any narrow tailoring requirement. The first injunction must be reversed. If there were some unlawful condition or activity that had to be enjoined, the case would have to be remanded with instructions for the trial court to determine clear standards for distinguishing between lawful and unlawful activities and improvements.

In addition, the trial court's second injunction prohibiting specific activities should be reversed because it is both arbitrary and excessive. There is no finding or conclusion that the activities enjoined are nuisances per se. These activities are not nuisances per se because no ordinance or statute prohibits them outright. *See* RCW 9.41.190; KCC 10.24.090; WAC 173-60-050. The only possible grounds for these specific injunctions is that they are nuisances in fact that cannot possibly be allowed at the Property without creating a nuisance. Yet, no such finding of fact or conclusion of law exists in this case. Like the first injunction shutting the Club down, these injunctions are not based on any clear standard determined by the trial court for distinguishing between nuisance

and non-nuisance activities. They only reflect the trial court's arbitrary opinions, while corroborating the court's statements at trial suggesting a lack of personal familiarity with firearms. *See* VT 254:16–25; 521:6–523:1; 254:16–25; 521:6–523:1; 522:24–523:1.

To illustrate, the fourth injunction limits the Club's hours of operation to 9 am to 7 pm. CP 4085. At the time of trial, the Club allowed shooting from 7 am to 10 pm, which corresponds with the hours in which shooting ranges are exempt from state noise regulations and the County's noise ordinance. 2045:1–5; WAC 173-60-050(1)(b); KCC 10.28.050(2). There is no finding to suggest shooting from 7–9 am or 7–10 pm constitutes a safety nuisance. The trial court concluded to allow shooting from 7 am to 10 pm constituted "expanded hours," which have increased noise emanating from the Club and contributed to the noise nuisance. CP 4074 (FOF 85); CP 4078 (COL 21). Yet the trial court also found the Club historically allowed shooting during daylight hours, which are from as early as 6 am to as late as 10:15 pm. CP 4059 (FOF 30). By prohibiting all shooting during early and late hours, the trial court fails to distinguish between an amount of shooting that was historically acceptable within the community and an amount of shooting that is unacceptable.

The same is true for the other specific injunctions because they prohibit activities that historically existed at the Club, yet they are not

based on any clear standard. Each of the specific injunctions is arbitrary and excessive.

Finally, the trial court erred by granting the County a warrant of abatement. CP 4085. Pursuant to RCW 7.48.010 and KCC 17.530.030, the County may seek a warrant authorizing it to abate a specific code violation at a property. If there is no violation, there is no basis for a warrant of abatement. Even if there were a violation, however, the warrant of abatement would be in error because it fails to set forth the conditions of abatement in any specific terms. CP 4085 (“the detail of [the warrant of abatement] shall be determined . . . at a later hearing”). The trial court’s failure to craft specific relief again reflects the County’s inability to establish any clear standards to distinguish between lawful and unlawful activities and improvements at the Property. Because there is no basis for the warrant of abatement and it fails to authorize any specific abatement measures, it should be set aside along with the injunctions.

VI. CONCLUSION

For the reasons stated above, the Club respectfully requests entry of an order:

1. Reversing the trial court’s declaratory judgment terminating the Club’s nonconforming use right;

2. Reversing the trial court's judgment declaring the Club a public nuisance, and declaring it is not a nuisance;
3. Reversing every aspect of the trial court's injunction and warrant of abatement and either permanently setting them aside or remanding with instructions for the trial court to narrowly tailor the injunction and warrant of abatement to reflect clear and objective standards and to prevent specifically identified harms.

DATED: March 8, 2013

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APPENDIX

Pursuant to RAP Rule 10.3(8) and 10.4(c), Appellant Kitsap Rifle and Revolver Club respectfully submits the attached Appendix. The Appendix consists of Kitsap County Code provisions effective at the time of trial and cited herein:

KCC 2.116 (“Civil Enforcement”);

KCC 9.56 (“Public Nuisances”);

KCC 10.24 (“Weapons”);

KCC 10.28 (“Noise”);

KCC 17.110 (excerpts of Title 17, Chapter 110—“Definitions”);

KCC 17.381 (“Allowed Uses”);

KCC 17.420 (“Administrative Conditional Use Permit”);

KCC 17.421 (“Hearing Examiner Conditional Use Permit”);

KCC 17.455 (“Interpretations and Exceptions”);

KCC 17.460 (“Nonconforming Uses and Structures”);

KCC 17.530 (“Enforcement”).

**Chapter 2.116
CIVIL ENFORCEMENT**

Sections:

- 2.116.010 Purpose.
- 2.116.020 Applicability.
- 2.116.030 Enforcement.
- 2.116.040 Violations – Investigations – Evidence.
- 2.116.050 Notice of infraction – Service.
- 2.116.060 Notice of infraction – Form – Contents.
- 2.116.070 Notice of infraction – Filing – Hearing in district court.
- 2.116.080 Notice of infraction – Determination infraction committed.
- 2.116.090 Notice of infraction – Response requesting hearing – Failure to respond or appear – Order to set aside.
- 2.116.100 Notice – Failure to sign – Nonappearance – Failure to satisfy penalty.
- 2.116.110 Representation by attorney.
- 2.116.120 Infraction – Hearing – Procedure – Burden of proof – Order – Appeal.
- 2.116.130 Infraction – Explanation of mitigating circumstances.
- 2.116.140 Monetary penalties – Restitution.
- 2.116.150 Order of court – Civil nature – Modification of penalty – Community service.
- 2.116.160 Costs and attorney's fees.
- 2.116.170 Severability.

2.116.010 Purpose.

The ordinance codified in this chapter provides the procedure for the investigation of suspected violations and enforcement of other ordinances.

(Ord. 209 (1997) § 1, 1997)

2.116.020 Applicability.

(a) This chapter shall apply to the enforcement of Kitsap County ordinances and codes, including those related to building, zoning, environmental health and safety, and quality of life, which specifically reference this chapter or the ordinance codified in this chapter.

(b) Violations of the applicable codes shall be corrected under the provisions of this chapter, in coordination with existing ordinance and code provisions.

(Ord. 209 (1997) § 2, 1997)

2.116.030 Enforcement.

Only an authorized official may enforce the provisions of this chapter. For purposes of this chapter, an authorized official is defined as any one of the following:

(a) The Kitsap County sheriff and his or her authorized representatives shall have the authority to enforce the provisions of this chapter;

(b) The director of the Kitsap County department of community development and his or her authorized representatives shall have the authority to enforce the provisions of this chapter;

(c) The Kitsap County prosecuting attorney shall have authority to enforce the provisions of this chapter and may institute any legal proceedings necessary to enforce the provisions of this chapter; and

(d) The Kitsap County board of commissioners may designate other persons to administer the provisions of this chapter.

(Ord. 209 (1997) § 3, 1997)

2.116.040 Violations – Investigations – Evidence.

An authorized official may investigate alleged or apparent violations of this chapter. In the performance of that investigation, an authorized official may enter upon any land and make examinations and surveys, provided that such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof. Upon request of the authorized official, the person allegedly or apparently in violation of this chapter shall provide information identifying themselves.

(a) Violations – Failure to Provide Information Identifying Person. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

(Ord. 209 (1997) § 4, 1997)

2.116.050 Notice of infraction – Service.

Whenever an authorized official determines that a violation has occurred or is occurring, he or she may pursue reasonable attempts to secure voluntary corrections, failing which he or she may issue a notice of infraction. An authorized official may issue a notice of infraction if the authorized official reasonably believes that the provisions of this chapter have been violated. A notice of infraction may be served either by:

(a) The authorized official serving the notice of infraction on the person named in the notice of infraction at the time of issuance; or

(b) The authorized official filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his or her address.

(Ord. 209 (1997) § 5, 1997)

2.116.060 Notice of infraction – Form – Contents.

The notice of infraction shall include the following:

A. A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

B. A statement that the infraction is a noncriminal offense for which imprisonment shall

not be imposed as a sanction;

- C. A statement of the specific infraction for which the notice was issued;
- D. A statement that monetary penalties as set forth below have been established for each infraction;
- E. A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;
- F. A statement that at any hearing to contest the determination that the county has the burden of proving by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized official who issued and served the notice of infraction;
- G. A statement, which the person who has been served with the notice of infraction shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;
- H. A statement that refusal to sign the infraction as directed in subsection (G) of this section is a misdemeanor and may be punished by a fine and/or imprisonment in jail; and
- I. A statement that a person's failure to respond to a notice of infraction as promised is a misdemeanor and may be punishable by a fine and/or imprisonment in jail.

(Ord. 209 (1997) § 6, 1997)

2.116.070 Notice of infraction – Filing – Hearing in district court.

A notice of infraction shall be filed in district court within forty-eight hours of issuance, excluding Saturdays, Sundays, and holidays. Kitsap County District Court shall have jurisdiction to hear and determine these matters.

(Ord. 209 (1997) § 7, 1997)

2.116.080 Notice of infraction – Determination infraction committed.

Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction.

(Ord. 209 (1997) § 8, 1997)

2.116.090 Notice of infraction – Response requesting hearing – Failure to respond or appear – Order to set aside.

- A. A person who receives a notice of infraction shall respond to the notice as provided in this section within fifteen days of the date the notice was served.
- B. If the person named in the notice of infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination

penalty. All violations of this chapter shall be denominated Class I civil infractions. The maximum penalty and default amount for a Class I civil infraction shall be two hundred fifty dollars, not including statutory assessments.

B. Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time, the court may grant an extension of the period of time in which the penalty may be paid. If the penalty is not paid on or before the time established for payments the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting attorney of the failure to pay. The court shall also notify the department of the failure to pay the penalty, and the department shall not issue the person any future permits for any work until the monetary penalty has been paid.

C. The court may also order a person found to have committed a civil infraction to make restitution.

(Ord. 209 (1997) § 14, 1997)

2.116.150 Order of court – Civil nature – Modification of penalty – Community service.

A. An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the civil infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

B. The court may waive, reduce, or suspend the monetary penalty prescribed for the civil infraction. If the court determines that a person has insufficient funds to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour.

(Ord. 209 (1997) § 15, 1997)

2.116.160 Costs and attorney's fees.

A. Each party in a civil infraction case is responsible for costs incurred by that party, but the court may assess witness fees against a nonprevailing respondent. Attorney's fees may be awarded to either party in a civil infraction case.

(Ord. 209 (1997) § 16, 1997)

2.116.170 Severability.

If any section, subsection, clause or phrase of the ordinance codified in this chapter or amendment thereto, or its application to any person or circumstance, is held by a court of competent jurisdiction to be invalid, the remainder or application to other persons, or circumstances shall not be affected.

(Ord. 209 (1997) § 17, 1997)

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**Chapter 9.56
PUBLIC NUISANCES**

Sections:

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- 9.56.020 Definitions.
- 9.56.030 Voluntary correction.
- 9.56.035 Prerequisite to notice of abatement.
- 9.56.040 Notice of abatement.
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- 9.56.090 Removal of personal property and/or solid waste placed onto public access.
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9.56.010 Purpose.

This chapter provides for the abatement of conditions which constitute a public nuisance where premises, structures, vehicles, or PORT 70,58,71,233,128,187 ent of community development, or the director of the department of public works, or their authorized designee, or any designee of the board of county commissioners, empowered to enforce a county ordinance or regulation.

- (5) "Department" means the department of community development (DCD).
- (6) "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a county regulation.
- (7) "Emergency" means a situation which, in the opinion of the director, requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.
- (8) "Hulk hauler" means any person who deals in vehicles for the sole purpose of transporting and/or selling them to a licensed motor vehicle wrecker or scrap processor in substantially the same form in which they are obtained. A hulk hauler may not sell second-hand vehicle parts to anyone other than a licensed vehicle wrecker or scrap processor, except for those parts specifically enumerated in RCW 46.79.020(2), which may be sold to a licensed motor vehicle wrecker or disposed of at a public facility for waste disposal.
- (9) "Junk motor vehicle" means a motor vehicle meeting at least three of the following requirements:

- (a) Is three years old or older;
- (b) Is extensively damaged, such damage including, but not limited to, any of the following: a buildup of debris that obstructs use, broken window or windshield; missing wheels, tires, tail/headlights, or bumpers; missing or nonfunctional motor or transmission; or body damage;
- (c) Is apparently inoperable; or
- (d) Has an approximate fair market value equal only to the approximate value of the scrap in it.

"Junk motor vehicle" does not include a vehicle or part thereof that is stored entirely within a building in a lawful manner where it is not visible from the street or other public or private property, or a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to the requirements of RCW 46.80.130;

(10) "Nuisance," "violation" or "nuisance violation" means:

(a) Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission, which significantly affects, injures, or endangers the comfort, repose, health or safety of others, is unreasonably offensive to the senses, or obstructs or interferes with the free use of property so as to interfere with or disrupt the free use of that property by any lawful owner or occupant; or

(b) The existence of any of the following conditions:

(i) Premises containing visible accumulations of trash, junk, litter, boxes, discarded lumber, ashes, bottles, boxes, building materials which are not properly stored or neatly piled, cans, concrete, crates, empty barrels, dead animals or animal waste, glass, tires, mattresses or bedding, white goods, numerous pieces of broken or discarded furniture and furnishings, old appliances or equipment or any parts thereof, iron or other scrap metal, packing cases or material, plaster, plastic, rags, wire, yard waste or debris, salvage materials or other similar materials, except that kept in garbage cans or containers maintained for regular collection. Nothing in this subsection shall prevent the temporary retention of waste in approved, covered receptacles;

(ii) Dangerous structures including, but not limited to, any dangerous, decaying, unkempt, falling or damaged dwelling, or other structure;

(iii) Any junk motor vehicle including, but not limited to, any junk motor vehicle, vehicle hulk or any part thereof which is wrecked, inoperable or abandoned, or any disassembled trailer, house trailer, or part thereof, with one exception:

(A) A property may store up to six junk motor vehicles on private property outside of a permitted building, only if the vehicles are: (i) completely screened (as defined in Section 9.56.020(17)) by sight-obscuring fence or natural vegetation to the satisfaction of the director (a covering such as a tarp over the vehicles will not constitute an acceptable visual barrier); or (ii)

more than two-hundred and fifty feet away from all property lines. The owner of any such screened junk motor vehicle(s) must successfully enter into an environmental mitigation agreement with the department regarding the property where such vehicle(s) will be located or stored, as set forth in Section 9.56.070. Any junk motor vehicle that is stored outside on private property without an approved environmental mitigation agreement with the department shall be considered a nuisance in accordance with this chapter;

- (iv) Vehicle lots without approved land use;
 - (v) Attractive Nuisances. Any nuisance defined in this subsection which is detrimental to children, whether in or on a building, on the premises of a building, or upon an unoccupied lot, which is left in any place exposed or accessible to children including, but not limited to, unused or abandoned refrigerators, freezers, or other large appliances or equipment or any parts thereof; abandoned motor vehicles; any structurally unsound or unsafe fence or edifice; any unsecured or abandoned excavation, pit, well, cistern, storage tank or shaft; and any lumber, trash, debris or vegetation which may prove a hazard for minors;
 - (vi) Obstructions to the public right-of-way including, but not limited to, use of property abutting a public street or sidewalk or use of a public street or sidewalk which causes any obstruction to traffic or to open access to the streets or sidewalks. This subsection shall not apply to events, parades, or the use of the streets or public rights-of-way when authorized by the county. This section includes the existence of drainage onto or over any sidewalk, street or public right-of-way, and the existence of any debris or plant growth on sidewalks adjacent to any property, and any personal property and/or solid waste that has been placed onto a public right-of-way pursuant to a court-ordered eviction per Title 59 RCW which has not been removed after twenty-four hours;
 - (vii) Illegal dumping including, but not limited to, dumping of any type by any person on public or private property not designated as a legal dump site; and
 - (viii) Dumping in waterways including, but not limited to, dumping, depositing, placing or leaving of any garbage, ashes, debris, gravel, earth, rock, stone or other material upon the banks, channels, beds or bars of any navigable water, or the felling of any tree or trees, so that the same shall in whole or in part project within the high water bank of any navigable watercourse, or the casting, placing, depositing or leaving of any logs, roots, snags, stumps or brush upon the banks or in the bed or channel of any navigable watercourse, unless otherwise approved by the appropriate governmental agency.
- (11) "Omission" means a failure to act.
- (12) "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.
- (13) "Person responsible for the violation" means any person who has an interest in or resides on the property where the alleged violation is occurring, whether as owner, tenant, occupant, or otherwise.

(14) "Repeat violation" means a violation of the same regulation in any location by the same person, for which voluntary compliance previously has been sought or a notice of abatement has been issued, within the immediately preceding twelve consecutive month period.

(15) "Scrap" means any manufactured metal or vehicle parts useful only as material for reprocessing.

(16) "Scrap processor" means a licensed establishment that maintains a hydraulic baler and shears, or a shredder for recycling salvage.

(17) "Screened" means not visible from any portion or elevation of any neighboring or adjacent public or private property, easement or right-of-way.

(18) "Vehicle" means every device capable of being moved upon a highway and in, upon, or by which any person or property is or may be transported or drawn upon a highway. Motorcycles shall be considered vehicles for the purposes of this chapter. Mopeds and bicycles shall not be considered vehicles for the purposes of this chapter.

(19) "Vehicle lot" means a single tax parcel where more than ten vehicles are regularly stored without approved land use by the department.

(20) "Violation" means a violation that constitutes a nuisance under this chapter for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation.

(21) "Violations hearing examiner" means a hearing examiner employed by the Board of County Commissioners and authorized to enforce the provisions of this chapter.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.030 Voluntary correction.

(1) Issuance.

(a) When the director determines that a violation has occurred or is occurring, he or she shall attempt to secure voluntary correction by contacting the person responsible for the alleged violation and, where possible, explaining the violation and requesting correction.

(b) Voluntary Correction Agreement. The person responsible for the alleged violation may enter into a voluntary correction agreement with the county, acting through the director.

(i) Content. The voluntary correction agreement is a contract between the county and the person responsible for the violation in which such person agrees to abate the alleged violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

(A) The name and address of the person responsible for the alleged

violation;

(B) The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the alleged violation has occurred or is occurring;

(C) A description of the alleged violation and a reference to the regulation which has been violated;

(D) The necessary corrective action to be taken, and a date or time by which correction must be completed;

(E) An agreement by the person responsible for the alleged violation that the county may enter the property and inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;

(F) An agreement by the person responsible for the alleged violation that the county may abate the violation and recover its costs and expenses (including administrative, hearing and removal costs) and/or a monetary penalty pursuant to this chapter from the person responsible for the alleged violation if the terms of the voluntary correction agreement are not satisfied; and

(G) An agreement that by entering into the voluntary correction agreement, the person responsible for the alleged violation waives the right to a hearing before the violations hearing examiner under this chapter or otherwise, regarding the matter of the alleged violation and/or the required corrective action.

(ii) Right to a Hearing Waived. By entering into a voluntary correction agreement, the person responsible for the alleged violation waives the right to a hearing before the violations hearing examiner under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.

(iii) Extension and Modification. The director may grant an extension of the time limit for correction or a modification of the required corrective action if the person responsible for the alleged violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances have delayed correction under the original conditions.

(iv) Abatement by the County. The county may abate the alleged violation in accordance with Section 9.56.060 if all terms of the voluntary correction agreement are not met.

(v) Collection of Costs. If all terms of the voluntary correction agreement are not met, the person responsible for the alleged violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with Section 9.56.040(5), plus all costs and expenses of abatement, as set forth in Section 9.56.060(4) and allowed by RCW 35.80.030.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.035 Prerequisite to notice of abatement.

Absent conditions which pose an immediate threat to the public health, safety or welfare of the environment, the procedures for abatement of conditions constituting a nuisance pursuant to this chapter should be utilized by the county only after correction of such conditions has been attempted through use of the civil infraction process, as specified in Title 17 and Chapter 2.116 of the Kitsap County Code. Once it has been determined by the county that correction of such conditions has not been adequately achieved through use of the civil infraction process, then the county shall proceed with abatement of such conditions pursuant to the provisions of this chapter.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.040 Notice of abatement.

(1) Issuance.

(a) When the director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction pursuant to Section 9.56.030, he or she may issue a notice of abatement to the person responsible for the alleged violation.

(b) Under the following circumstances the director may issue a notice of abatement without having attempted to secure voluntary correction as provided in Section 9.56.030:

- (i) When an emergency exists;
- (ii) When a repeat violation occurs;
- (iii) When the violation creates a situation or condition which cannot be corrected;
- (iv) When the person responsible for the violation knew or reasonably should have known that the action was in violation of a county regulation; or
- (v) When the person responsible for the violation cannot be contacted when reasonable attempts to contact the person have failed, or the person refuses to communicate or cooperate with the county in correcting the alleged violation.

(2) Content. The notice of abatement shall include the following:

- (a) The name and address of the person responsible for the alleged violation;
- (b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the alleged violation has occurred or is occurring;
- (c) A description of the violation and a reference to the provision(s) of the county regulation(s) which has been allegedly violated;
- (d) The required corrective action and a date and time by which the correction must be completed and, after which, the county may abate the unlawful condition in accordance with Section 9.56.060;

(e) The date, time and location of an appeal hearing before the violations hearing examiner which will be at least twenty, but no more than sixty days from the date of the notice of abatement, unless such date is continued by the violations hearing examiner for good cause shown;

(f) A statement indicating that the hearing will be canceled and no monetary penalty will be assessed, if the director approves the completed, required corrective action prior to the hearing; and

(g) A statement that the costs and expenses of abatement incurred by the county pursuant to Section 9.56.060(4), and a monetary penalty in an amount per day for each violation as specified in subsection (5) of this section, may be assessed against the person to whom the notice of abatement is directed as specified and ordered by the violations hearing examiner.

(3) Service of Notice. The director shall serve the notice of abatement upon the person responsible for the alleged violation, either personally or by mailing a copy of the notice by certified or registered mail, with a five-day return receipt requested, to such person at their last known address. If the person responsible for the violation cannot be personally served within Kitsap County, and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of abatement conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made and, if by posting, the facts showing the attempts to serve the person personally or by mail. If the person responsible for the alleged violation is a tenant, a copy of the notice of abatement shall also be mailed to the landlord or owner of the property where the alleged violation is occurring. If the alleged violation involves a junk motor vehicle, notice shall be provided to the last registered and legal owner of record of said vehicle (unless the vehicle is in such condition that identification numbers are not available to determine ownership), as well as to the property owner of record, as shown on the last equalized assessment roll.

(4) Extension. Extensions of the time specified in the notice of abatement for correction of the alleged violation may be granted at the discretion of the director or by order of the violations hearing examiner.

(5) Monetary Penalty. The monetary penalty for each violation of this chapter is \$250.00 per day or portion thereof.

(6) Continuing Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of abatement was issued of the duty to correct the alleged violation.

(7) Collection of Monetary Penalty.

(a) A monetary penalty imposed pursuant to subsection (5) of this section constitutes a personal obligation of the person to whom the notice of abatement is directed. The

monetary penalty must be paid to the county within ten calendar days from either the date of mailing of the violations hearing examiner's decision following a hearing, or the date of mailing the violations hearing examiner's default order if the person responsible for the violation failed to appear for the hearing. Any such monetary penalty also constitutes a lien against the affected real property, in the manner set forth in Section 9.56.060(6).

(b) The prosecuting attorney is authorized to take appropriate action to collect the monetary penalty.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.050 Hearing before the violations hearing examiner.

(1) Notice. A person to whom a notice of abatement is issued will be scheduled to appear before the violations hearing examiner not less than twenty, nor more than sixty calendar days after the notice of abatement is issued. Continuances may be granted at the discretion of the director, or by the violations hearing examiner for good cause.

(2) Prior Correction of Violation. The hearing will be canceled and no monetary penalty will be assessed, if the director approves the completed required corrective action prior to the scheduled hearing.

(3) Procedure. The violations hearing examiner shall conduct a hearing on the notice of abatement and alleged violation pursuant to hearing examiner procedures approved by the board of county commissioners.

(a) Junk Motor Vehicles Placed or Abandoned on Private Property. If a junk motor vehicle is placed or abandoned on private property without the consent of the property owner, the owner of the property on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the property with his/her reasons for denial. If it is determined by the violations hearing examiner that the vehicle was placed on the property without the consent of the property owner and that he/she has not subsequently acquiesced in its presence, then the costs of administration or removal of the vehicle shall not be assessed against the property upon which the vehicle is located, or otherwise collected from the property owner.

(4) Hearing Decision. At the conclusion of the hearing on the violation, the violations hearing examiner shall either: (i) affirm the issuance of the notice of abatement if he or she determines by a preponderance of the evidence that the violation exists substantially as stated in the notice of abatement; (ii) dismiss the notice of abatement and grant the appeal if he or she determines that the violation does not exist substantially as stated in the notice of abatement; or (iii) modify the abatement depending on the specifics of the violation. A copy of the violations hearing examiner's ruling shall be mailed to the person found responsible for the violation, the county, and if the person responsible for the violation is a tenant, to the landlord or owner of the property where the violation is occurring.

(5) Monetary Penalties. The violations hearing examiner may assess monetary penalties in accordance with Section 9.56.040(5).

(a) The violations hearing examiner has the following options in assessing monetary penalties:

(i) Assess monetary penalties beginning on the date the notice of abatement was issued and thereafter;

(ii) Assess monetary penalties beginning on the correction date set by the director, or an alternate correction date set by the violations hearing examiner and thereafter;

(iii) Assess less than the established monetary penalty set forth in Section 9.56.040(5), based on the criteria of subdivision (5)(b), below, of this section; or

(iv) Assess no monetary penalties.

(b) In determining the monetary penalty assessment, the violations hearing examiner shall consider the following factors:

(i) Whether the person to whom the notice of abatement was issued responded to attempts to contact the person, and cooperated to correct the violation;

(ii) Whether the person failed to appear at the hearing;

(iii) Whether the violation was a repeat violation;

(iv) Whether the person showed due diligence and/or substantial progress in correcting the violation; and

(v) Any other relevant factors.

(c) The violations hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the violations hearing examiner shall consider the factors set forth in subdivision (5)(b), above, of this section.

(6) Failure to Appear. If the person to whom the notice of abatement was issued fails to appear at the scheduled hearing, the violations hearing examiner will enter an order of default with findings pursuant to subsection (4) of this section and assess the appropriate monetary penalty pursuant to subsection (5) of this section. The county may enforce the violations hearing examiner's order and recover all related expenses, including attorney fees, plus the costs of the hearing and any monetary penalty from the person to whom the notice of abatement was issued. A copy of the order of default shall be mailed to the person to whom the notice of abatement was issued and against whom the default order was entered, the county, and if the person found responsible for the violation is a tenant, to the landlord or owner of the property where the violation is occurring.

(7) Time Period for Correction. If a notice of abatement is affirmed by the

violations hearing examiner, the person responsible for the violation shall have thirty days to abate the violation and bring the property into compliance with the terms of this chapter or the county may perform the abatement required therein, and shall bill the costs in the manner provided in Section 9.56.060 of this chapter.

(8) **Judicial Review.** Any person with standing to bring a land use petition under Chapter 36.70C RCW, including the county, may seek review of the violations hearing examiner's decision by filing a land use petition in superior court and complying with all requirements of Chapter 36.70C RCW.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.060 Abatement by the county.

(1) The county may abate a condition which constitutes a nuisance under this chapter when:

- (a) The terms of the voluntary correction agreement pursuant to Section 9.56.030 of this chapter have not been met;
- (b) A notice of abatement has been issued pursuant to Section 9.56.040, a hearing has been held pursuant to Section 9.56.050, and the required correction has not been completed by the date specified in the violations hearing examiner's order; or
- (c) The condition is subject to summary abatement as provided for in subsection (2) of this section.

(2) **Summary Abatement.** Whenever any nuisance causes a condition, the continued existence of which constitutes an immediate threat to the public health, safety or welfare or to the environment, the county may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. If the person responsible for the violation is a tenant, notice of such abatement shall also be given to the landlord or owner of the property where the violation is occurring. No right of action shall lie against the county or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the county be entitled to recover any costs incurred for summary abatement, prior to the time that actual notice of same is provided to the person responsible for the violation.

(3) **Authorized Action by the County.** Using any lawful means, the county may enter upon the subject property and may remove or correct the condition that is subject to abatement. The county may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

(a) **Removal of Junk Motor Vehicles, Vehicle Hulk or Parts Thereof.** If the owner or person found responsible for a nuisance involving a junk motor vehicle, vehicle hulk or any parts thereof fails to correct his/her nuisance within the date specified in the violations hearing examiner's order or notice of summary abatement, the county, upon notification from the director, may enter the subject property to inspect and certify that a

vehicle meets the criteria of a junk motor vehicle as defined in this chapter. The law enforcement officer or county agent making the certification shall record the make and vehicle identification number or license number of the vehicle if available and/or legible, and shall also document in detail the damage or missing equipment to verify whether the approximate value of the vehicle is equivalent only to the approximate value of the scrap in it (only if that is one of the definitional criteria that was alleged in the notice of abatement issued by the county). The vehicle shall then be photographed by the officer or county agent, removed from the property by the county, and disposed of by a licensed vehicle wrecker, hulk hauler, or scrap processor with notice to the Washington State Patrol and the Washington State Department of Licensing that the vehicle has been wrecked. The vehicle shall only be disposed of as scrap.

(b) **Photographic Record.** The county shall maintain a photographic record of all abated junk motor vehicles for a period of two years following abatement. At the conclusion of the two-year period, a written report, along with copies of the photographs, shall be forwarded to the board of county commissioners.

(4) **Recovery of Costs and Expenses.** The costs of correcting a condition which constitutes a nuisance under this chapter, including all incidental expenses, shall be billed to the person responsible for the nuisance and/or the owner, lessor, tenant or any other person entitled to control the subject property, and shall become due and payable to the county within fifteen calendar days of the date of mailing the billing for abatement. The term "incidental expenses" includes, but is not limited to, personnel costs, both direct and indirect and including attorney's fees; costs incurred in documenting the violation; towing/hauling, storage and removal/disposal expenses; and actual expenses and costs of the county in preparing notices, specifications and contracts associated with the abatement, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing. All such costs and expenses shall constitute a lien against the affected property, as set forth in subsection (6) of this section.

(5) **Interference.** Any person who knowingly hinders, delays or obstructs any county employee acting on direction of the director in the discharge of the county employee's official powers or duties in abating a nuisance under this chapter, shall be guilty of a misdemeanor punishable by imprisonment not exceeding ninety days and/or a fine not exceeding \$1,000.00.

(6) **Lien – Authorized.** The county shall have a lien for any monetary penalty imposed, the cost of any abatement proceedings under this chapter, and all other related costs against the real property on which the monetary penalty was imposed or any of the work of abatement was performed. The lien shall run with the land, but shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall be on a parity.

(a) The director shall cause a claim for lien to be filed for record within ninety days from the later of the date that the monetary penalty is due, the work is completed, or the nuisance abated.

(b) The claim of lien shall contain sufficient information regarding the notice of abatement, as determined by the director, a description of the property to be charged with the lien and the owner of record, and the total amount of the lien.

(c) Any such claim of lien shall be verified by the director, and may be amended to reflect changed conditions.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.070 Environmental mitigation agreement for outdoor storage of junk motor vehicles on private property.

Pursuant to subdivision (10)(b)(iii)(A) of Section 9.56.020 of this chapter, an environmental mitigation agreement between a property owner and the department is required before the outdoor storage of up to six screened junk motor vehicles will be approved. A property owner may enter into such agreement with the department for a one-time fee of \$10.00 per vehicle, the proceeds from which shall be used to assist with clean up costs associated with this chapter. In order to mitigate any potential environmental impact from the storage of these junk motor vehicles, the property owner must agree to institute one of the following two preventative measures:

- (1) Each junk motor vehicle must be drained of all oil and other fluids including, but not limited to, engine crankcase oil, transmission fluid, brake fluid and radiator coolant or antifreeze prior to placing the vehicle on site; or
- (2) Drip pans or pads must be placed and maintained underneath the radiator, engine block, transmission and differentials of each junk motor vehicle to collect residual fluids.

Either preventative measure shall require that the owner of such vehicle(s) clean up and properly dispose of any visible contamination resulting from the storage of junk motor vehicles. The agreement will require the property owner to select one of the two preventative measures and to allow for an initial inspection of the property by the department to assure that the preventative measure has been implemented to the satisfaction of the department. By entering into the agreement, the property owner further agrees to allow the department entry onto the property on an annual basis for re-inspection to assure compliance with the approved agreement. If a property is found to be in compliance with the terms of the agreement for two consecutive inspections, the department may waive the annual inspection requirement. A property owner found to be in violation of the agreement may be fined a monetary penalty in accordance with Section 9.56.040(5), and the property may be deemed a nuisance in accordance with the provisions of this chapter.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.080 Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement provisions authorized by this code.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.090 Removal of personal property and/or solid waste placed onto public access.

(1) Once personal property and/or solid waste belonging to an evicted tenant has been placed onto public right-of-way pursuant to a court-ordered eviction per Title 59 RCW, the evicted tenant/owner of the personal property and/or solid waste or his/her designee shall have twenty-four hours to remove said personal property and/or solid waste from the public right-of-way. Notice of such removal after twenty-four hours shall be given to the evicted tenant/owner of the personal property and/or solid waste or his/her designee. If, after twenty-four hours, the evicted tenant/owner or his/her designee has not removed the personal property and/or solid waste from the public right-of-way, the property shall be deemed a nuisance, and the landlord/property owner or his/her designee shall remove the personal property and/or solid waste for proper disposal within forty-eight hours or the county shall seek to abate the nuisance, pursuant to Section 9.56.060, to be billed to the landlord/property owner or his/her designee.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.100 Conflicts.

In the event of a conflict between this chapter and any other provision of the Kitsap County Code or other county ordinance providing for a civil penalty, this chapter shall control.

(Ord. 261 (2001) § 1 (part), 2001)

9.56.110 Representation by attorney.

(1) A person subject to proceedings under this chapter may appear on his or her own behalf or be represented by counsel.

(2) The prosecuting attorney representing the county may, but need not, appear in any proceedings under this chapter.

(Ord. 261 (2001) § 1 (part), 2001)

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(Ord. 261 (2001) § 1 (part), 2001)

This page of the Kitsap County Code is current through Ordinance 461 (2010), passed September 13, 2010.

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**Chapter 10.24
WEAPONS**

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Article 1 – Snap-Blade Knives and Tear Gas Pens or Projectors

10.24.010 Definitions.

- (a) "Person" as used in this article means any individual, firm, partnership, association or corporation.
- (b) "Snap-blade knife" as used in this article means any knife having a blade which is or can be concealed in its handle and ejected therefrom by a mechanical or spring device. This definition shall not apply to fixed-blade knives having blades which pivot on and fold into their respective handles and can be opened only manually.
- (c) "Tear gas pen or projector" as used in this article means any container or device having the appearance of a pen or pencil flashlight, which is capable of

dispensing in the atmosphere a gas-loaded cartridge.

(Ord. 24 (1971) (part), 1971)

10.24.020 Conviction for display or possession.

(a) No person shall display, sell, give away, purchase or possess any snap-blade knife, or tear gas pen or projector.

(b) Upon the conviction of any person under the provisions of this article, the court having jurisdiction in the case shall order the Kitsap County sheriff to destroy any snap-blade knife or tear gas pen or projector entered as evidence in the case.

(Ord. 24 (1971) (part), 1971)

10.24.030 Exemptions.

This article shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers or to members of the Army, Navy, Coast Guard or Marine Corps of the United States or of the National Guard or organized reserves when on duty, or to officers or employees of the United States duly authorized to carry snap-blade knives or tear gas pens or projectors.

(Ord. 24 (1971) (part), 1971)

10.24.040 Penalty.

Violation of any provision of this article is a misdemeanor, punishable by a fine not exceeding two hundred fifty dollars or by imprisonment in the county jail for a term not exceeding ninety days.

(Ord. passed August 28, 1972: Ord. 24 (1971) (part), 1971)

Article 2 – Pistols and Other Short Firearms

10.24.050 Pistol defined.

"Pistol" as used in this article means any firearm with a barrel less than twelve inches in length.

(Ord. 25 (1971) (part), 1971)

10.24.060 General regulations.

(a) No person shall carry a pistol in any vehicle unless it is unloaded or carry a pistol concealed on his person, except in his place of abode or fixed place of business, without a license therefor as provided for in RCW 9.41.

(b) No person shall deliver a pistol to any person under the age of twenty-one

or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

(c) No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol. Possession of any pistol upon which any such mark has been changed, altered, removed or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same. This shall not apply to replacement barrels in old revolvers, which barrels are produced by current manufacturers and therefore do not have the marking on the barrels of the original manufacturers who are no longer in business.

(Ord. 25 (1971) (part), 1971)

10.24.070 Exemptions.

The provisions of this article shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers, or to members of the Army, Navy or Marine Corps of the United States or of the National Guard or organized reserves when on duty, or to regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state, or to regularly enrolled members of clubs organized for the purpose of target shooting or modern and antique firearm collecting or to individual hunters; provided, such members are at, or are going to or from their places of target practice, or their collector's gun shows and exhibits, or are on a hunting, camping or fishing trip, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing or dealing in firearms, or the agent or representative of any such person having in his possession, using or carrying a pistol in the usual or ordinary course of such business, or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving from one place of abode or business to another.

(Ord. 25 (1971) (part), 1971)

Article 3 – No-Shooting Areas

10.24.080 Definitions.

The following definitions shall apply in the interpretation and enforcement of the ordinance codified in this article:

- (1) "Firearm" means any weapon or device by whatever name known which will or is designed to expel a projectile by the action of an explosion. The term "firearm" shall include but not be limited to rifles, pistols, shotguns

and machine guns. The term "firearm" shall not include devices, including but not limited to "nail guns," which are used as tools in the construction or building industries and which would otherwise fall within this definition.

(2) "Shoreline" means the border between a body of water and land measured by the ordinary high water mark.

(3) "Ordinary high water mark" means that mark on all lakes, streams and tidal water which will be found by examining the bed and banks in ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years as to mark upon the soil a characteristic distinct from that of the abutting upland in respect to vegetation; provided, that in any area where the ordinary high water mark cannot be found the ordinary high water mark adjoining salt water shall be the line of mean higher high tide.

(4) "Range" means a place set aside and designated for the discharge of firearms for individuals wishing to practice, improve upon or compete as to their shooting skills.

(Ord. 50-C (1993) § 1, 1993: Ord. 50-B (1993) § 1, 1993: Ord. 50-A (1985) § 1, 1985)

10.24.090 Discharge of firearms – Areas where prohibited.

(a) The discharge of firearms is prohibited within five hundred yards of any shoreline in the unincorporated areas of Kitsap County.

(b) The discharge of firearms in the unincorporated areas of Kitsap County is further prohibited in the following instances:

(1) In any area designated as a "no shooting" area pursuant to Section 10.24.107 of this chapter; specifically:

(A) Section 23, Township 25, Range 1 West, Willamette Meridian, Kitsap County, Washington, except for the following area: The southwest quarter except that portion lying northeast of the Seabeck Highway, of Section 23, Township 25, Range 1 West, Willamette Meridian;

(B) That area bounded on the west by Bethel-Burley Road, on the north by Burley-Olalla Road, on the east by Bandix Road, and on the south by the Kitsap County/Pierce County line;

(C) That area bounded on the west by a line that begins at the southwest corner of tax parcel number 252301-4-012-1009,

thence in a straight line northeasterly to the northeast corner of tax parcel number 252301-1-019-1008, thence north along the east boundary of tax parcel number 252301-1-018-1009 to its intersection with the south boundary of tax parcel number 252301-4-013-1009, thence west along said south boundary to the southwest corner of said tax parcel, thence north along the western boundary of said tax parcel to the intersection of Southwest Lake Flora Road, thence easterly along the southerly right-of-way of said road to its intersection with J. M Dickenson Road Southwest, thence southwesterly along the westerly right-of-way of said road to its intersection with the eastern boundary of tax parcel number 252301-4-018-1003, thence north along said boundary to the northeast corner of said parcel, thence west along the northern boundary of said parcel to the Alpine Lake No-Shooting Area.

- (2) On any parcel of land less than five acres in size;
- (3) Towards any building occupied by people or domestic animals or used for the storage of flammable or combustible materials where the point of discharge is within five hundred yards of such building;
- (4) From one-half hour after sunset to one-half hour before sunrise;
- (5) Within five hundred yards of the following lakes located, in whole or in part, in the unincorporated areas of Kitsap County: Long Lake, Kitsap Lake, Wildcat Lake, Panther Lake, Mission Lake, Tiger Lake, William Symington Lake, Tahuya Lake, Island Lake, Horseshoe Lake, Carney Lake, Wye Lake, Buck Lake, Fairview Lake and Bear Lake.

(c) Nothing in this section shall be construed or interpreted as abridging the right of the individual guaranteed by Article I, Section 24 of the state Constitution to bear arms in defense of self or others.

(Ord. 270 (2002) § 1, 2002: Ord. 50-F (2000) § 1, 2000: Ord. 50-C (1993) § 2, 1993: Ord. 50-B (1993) § 2, 1993: Ord. 50-A (1985) § 2, 1985)

10.24.100 Exceptions.

The provisions of Section 10.24.090 shall not apply to the discharge of firearms:

- (1) By law enforcement officers, including Washington State Department of Fish and Wildlife officers, or security personnel in the course of their official duties;
- (2) On a range, provided that any such range shall comply with the

criteria for ranges adopted by the Kitsap County board of commissioners pursuant to Section 10.24.103 of this chapter;

- (3) In the course of farm slaughter activities;
- (4) Pursuant to RCW 77.12.265;
- (5) When such discharge is pursuant to and in compliance with any other valid state or federal law.

(Ord. 50-C (1993) § 3, 1993; Ord. 50-B (1993) § 2, 1993; Ord. 50-A (1985) § 3, 1985)

10.24.103 Ranges.

(a) The discharge of firearms shall be allowed on ranges which meet the criteria of this section. The property owner shall apply for and obtain a permit for a range. The application shall be submitted to the Kitsap County department of community development (DCD). An application for a range shall indicate whether the firearms to be used at the range are of the rim fire, elevated shot or other type or variety and whether the proposed range is to be a private or public range. Upon receipt of the application, DCD or its designated agent shall inspect the proposed range to ensure the suitability of the intended use, taking into consideration the most currently available guidelines for ranges promulgated by the National Rifle Association. Notice of the permit application shall be provided as required by the Land Use and Development Procedures Ordinance (Title 21 of this code). In addition, DCD shall post the property on which the proposed range is to be located with a notice of intended use. No permit shall be issued for a range unless the proposed range is first inspected and approved by a certified range technical advisor or equivalent.

(b) Permit applications for private ranges may be processed administratively by DCD. Permit applications for all other ranges shall be processed in accordance with existing procedures for the processing of unclassified use permits.

(c) Ranges shall be divided into two categories as more fully described in this subsection:

(1) Private Ranges. A range shall be deemed a private range if it meets the following criteria:

(A) No fee is charged for use of the range or for membership in the group of individuals allowed to use the range.

(B) Use of the range is limited to family members and up to two

guests of the property owner at any one time; provided, however, that the property owner may apply to DCD up to twice annually for a special event exemption allowing in excess of two guests at a shooting event.

(C) A permit has been issued for use of that property as a private range.

The provisions of this subsection shall be available to and apply equally to property being rented on at least a month-to-month basis from the property owner, provided, however, that both the individual renting the property and the property owner shall sign any application for a private range permit or special event exemption as to that property.

(2) Public Ranges. All ranges which do not meet the criteria for a private range shall be deemed to be public ranges.

(d) Nothing in this section or any other provision of this code shall be construed as authorizing an application or a permit for a range to be located in whole or in part in an area designated as an area where the discharge of firearms is prohibited; ranges in such areas are expressly prohibited. Nothing in this section shall be construed as permitting the discharge of firearms the ownership or possession of which is otherwise prohibited by law. Nothing in this section shall be construed as permitting the discharge of a firearm by an individual who is otherwise prohibited by law from owning or possessing a firearm.

(Ord. 50-G (2000) § 1, 2000; Ord. 50-C (1993) § 5, 1993; Ord. 50-A (1985) (part), 1985)

10.24.105 Review committee.

(a) A review committee is created for the purpose of recommending to the county board of commissioners the appropriate criteria for ranges and for petitions to establish additional "no shooting" areas within Kitsap County. Such committee shall consist of seven persons as follows:

- (1) The county sheriff, who shall chair such committee, or his designee.
- (2) The director of the county department of community development, or his designee.
- (3) The presidents of the Kitsap Rifle and Revolver Club and the Poulsbo Sportsman Club, or their designees.
- (4) Three citizens-at-large to be appointed by the county board of

commissioners.

(b) Upon the receipt of the review committee's recommendations, the board of commissioners shall set such matters for consideration at the next regularly scheduled public hearing or as soon thereafter as they may appropriately be heard.

(Ord. 50-B (1993) § 5, 1993)

10.24.107 Designation of additional no-shooting areas through petition method.

(a) The establishment or disestablishment of a "no shooting" area in addition to those described in Section 10.24.090 may be requested by petition by the registered voters residing in such proposed additional areas. Such petition may include a request that the discharge of certain types of firearms be nevertheless allowed during certain times and under certain conditions. The superintendent of a school district may also request by petition that school property within that district which is located in the unincorporated area of Kitsap County and on which a building having an occupancy classification of "E" under the Uniform Building Code is situated, together with the area within five hundred yards of the school property's perimeter, be designated as a "no shooting" area. Any such petition shall be presented to the Kitsap County board of commissioners and shall substantially comply in content with the following criteria:

(1) The proposed area shall contain a minimum of fifty dwelling units or, in the alternative, a minimum area of one square mile;

(2) The proposed area shall have readily identifiable boundaries, which shall be shown on a map attached to the petition;

(3) A petition requesting that the discharge of certain types of firearms be nevertheless allowed during certain times and under certain conditions shall set forth with specificity the types of firearms, times and conditions being proposed;

(4) The petition for the proposed area shall bear the signatures of at least fifty-one percent of the proposed area's registered voters; provided, however, that a petition for a "no shooting" area involving school property need be signed only by the superintendent of the school district in which the school property is located.

(b) A petition for a "no shooting" area shall be in substantially the following form:

PETITION TO CREATE A "NO SHOOTING" AREA

To: The Kitsap County Board of Commissioners

We, the undersigned citizens of Kitsap County, State of Washington, being legally registered voters within the respective precincts set opposite our names, do hereby respectfully request that the area generally known as _____ be established as a "No Shooting" area pursuant to Kitsap County Code Section 10.24.107.

We further request that the discharge of certain types of firearms, commonly known as _____, be nevertheless allowed during certain times of the year, namely, _____, under the following conditions:

1. _____
2. _____
3. _____
4. _____
5. _____

The proposed area's boundaries are shown on the attached map and are generally described as follows:

[Here insert proposed area boundary description]

Each of us says:

- (1) I am a legally registered voter of the State of Washington in the precinct written after my name below.
- (2) The portion of such precinct within which I reside is included within the proposed "No Shooting" area.
- (3) My residence address is correctly stated below.
- (4) I have personally signed this petition.

Petition Name and Signature	Precinct Name	Residence Address Number and Street	City or PO Box No.	Zip Code

Failure of a petition to comply with any of the above format shall not automatically invalidate such petition but shall be a matter for consideration by the Kitsap County board of commissioners as to whether the intent and standards of this section have been met.

(c) Upon the receipt of such a petition, the board of commissioners shall forward the petition to the Kitsap County auditor for verification of the signature requirements of this section. Upon the return of area verification from the auditor, the board shall set the matter for consideration at the next regularly scheduled public hearing or as soon thereafter as it may appropriately be heard.

(d) At any time after one year from the effective date of the establishment of a "no shooting" area pursuant to this section, the residents of such area may seek abrogation of such by the same procedure provided in this section for the establishment of a "no shooting" area, provided however, that in the event of such abrogation, Section 10.24.090 of this chapter shall remain in full force and effect as to that area.

(Ord. 50-C (1993) § 4, 1993; Ord. 50-B (1993) § 6, 1993)

10.24.110 Violation – Penalty.

Violation of Section 10.24.090 is a misdemeanor punishable as provided in Section 1.12.010 of this code. In addition to or as an alternative to the criminal penalty, any violation of Section 10.24.090 shall constitute a Class 1 civil infraction. Each violation shall constitute a separate infraction for each and every day or portion thereof during which the violation is committed, continued or permitted. Infractions shall be processed in accordance with the provisions of the Civil Enforcement Ordinance (Chapter 2.116 of this code). The choice of enforcement action taken and the severity of any penalty shall be based upon the nature of the violation and the damage or risk to the public.

(Ord. 50-D (1997) § 1, 1997; Ord. 50-A (1985) § 4, 1985)

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is received, an appropriate order shall be entered in the court's records, and a record of the response order shall be furnished to the department.

C. If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of the hearing, except by agreement.

D. If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified in the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of the hearing, except by agreement.

E. The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction, and may notify the prosecuting attorney of the failure to respond to the notice of civil infraction or to appear at a requested hearing if any person issued a notice of civil infraction:

- i. Fails to respond to the notice of civil infraction as provided in subsection (B) of this section; or
- ii. Fails to appear at a hearing requested pursuant to either subsection (C) or (D) of this section. If a default judgment is entered, the court shall notify the department of the entry of the default judgment, and the reason therefor.

(Ord. 209 (1997) § 9, 1997)

2.116.100 Notice – Failure to sign – Nonappearance – Failure to satisfy penalty.

- A. A person who fails to sign a notice of civil infraction is guilty of a misdemeanor.
- B. Any person willfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction; provided, that a written promise to appear in court or a written promise to respond to a notice of civil infraction may be complied with by appearance of counsel.

C. A person who willfully fails to pay a monetary penalty or to perform community service as required by a court under this chapter may be found in civil contempt of court after notice and hearing.

(Ord. 209 (1997) § 10, 1997)

2.116.110 Representation by attorney.

- A. A person subject to proceedings under this chapter may appear or be represented

by counsel.

B. The prosecuting attorney representing the county may, but need not, appear in any proceedings under this chapter, notwithstanding any statute or court rule to the contrary.

(Ord. 209 (1997) § 11, 1997)

2.116.120 Infraction – Hearing – Procedure – Burden of proof – Order – Appeal.

A. A hearing held to contest the determination that an infraction has been committed shall be without a jury.

B. The court may consider the notice of infraction and any sworn statements submitted by the authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized representative who has issued and served the notice, and has the right to present evidence and examine witnesses present in court.

C. The burden of proof is on the county to establish the commission of the infraction by a preponderance of evidence.

D. After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that a civil infraction has been committed, an appropriate order shall be entered in the court's records.

E. An appeal from the court's determination to order shall be to the Superior Court in the manner provided by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The decision of the Superior Court is subject only to discretionary review pursuant to the Rules of Appellate Procedure.

(Ord. 209 (1997) § 12, 1997)

2.116.130 Infraction – Explanation of mitigating circumstances.

A. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

B. After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's records.

C. There shall be no appeal from the court's determination or order.

(Ord. 209 (1997) § 13, 1997)

2.116.140 Monetary penalties – Restitution.

A. A person found to have committed a civil infraction shall be assessed a monetary

Chapter 10.28 NOISE*

* **Editor's Note:** Prior ordinance history: Ord. 3 (1969) and part of an unnumbered ordinance dated August 28, 1972.

Sections:

- 10.28.010 Definitions.
- 10.28.030 Environmental designations.
- 10.28.040 Maximum permissible environmental noise levels.
- 10.28.050 Exemptions from Sections 10.28.040 and 10.28.145 between 7:00 a.m. and 10:00 p.m.
- 10.28.060 Exemptions from Sections 10.28.040(b) and 10.28.145.
- 10.28.070 Exemptions from Section 10.28.040 relating to noise reception in Class A EDNAs and from Section 10.28.145.
- 10.28.080 Exemptions from all provisions of Sections 10.28.040 and 10.28.145.
- 10.28.085 Exemptions from all provisions of Section 10.28.145.
- 10.28.090 Variances – Granting when.
- 10.28.100 Variances – Implementation schedule.
- 10.28.110 Variances – Issuance – Hearings when.
- 10.28.120 Variances – Noise sources with overriding considerations for.
- 10.28.130 Measurement.
- 10.28.140 Enforcement policy.
- 10.28.145 Public disturbance noises.
- 10.28.146 Enforcement of public disturbance noises.
- 10.28.150 Violation – Penalty.

10.28.010 Definitions.

- (a) "Background sound level" means the level of all sounds in a given environment, independent of the specific source being measured.
- (b) "dBa" means the sound pressure level in decibels measured using the "A" weighting network on a sound level meter. The sound pressure level, in decibels, of a sound is twenty times the logarithm to the base ten of the pressure of twenty micropascals.
- (c) "EDNA" means the environmental designation for noise abatement, being an area or zone (environment) within which maximum permissible noise levels are established.
- (d) "Noise" means the intensity, duration and character of sounds, from any and all sources.
- (e) "Person" means any individual, corporation, partnership, association, governmental body, state agency or other entity whatsoever.
- (f) "Property boundary" means an imaginary line exterior to any enclosed structure, at ground surface, which separates the real property owned by one person from that owned by another person, and its vertical extension.
- (g) "Racing event" means any motor vehicle competition conducted under a permit issued by a governmental authority having jurisdiction or, if such permit is not required, then under the auspices of a recognized sanctioning body.

- (h) "Receiving property" means real property within which the maximum permissible noise levels specified herein shall not be exceeded from sources outside such property.
- (i) "Sound level meter" means a device which measures sound pressure levels and conforms to Type 1 or Type 2 as specified in the American National Standards Institute Specification S1.4-1971.
- (j) "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.

(Ord. 3-A (1975) § 2, 1975)

10.28.030 Environmental designations.

For purposes of establishing noise limitations, the unincorporated areas of Kitsap County shall be classified in accordance with Kitsap County zoning ordinance codified in Title 17, and any amendments thereto, as follows:

- (a) Residential Zones. Class A EDNA residential zones shall include the following:
 - (1) All single-family residential zones;
 - (2) All multiple-family residential zones;
 - (3) Residential mobile home zone;
 - (4) Agricultural zone;
 - (5) Forestry zone;
 - (6) Undeveloped land zone.
- (b) Commercial Zones. Class B EDNA commercial zones shall include the following:
 - (1) Business neighborhood zone;
 - (2) Business general zone;
 - (3) Commercial zone;
 - (4) Light manufacturing zone.
- (c) Industrial Zones. Class C EDNA industrial zones shall include the following:
Manufacturing zone.

Nonconforming uses, as defined by Chapter 17.460 of the Kitsap County Zoning Ordinance, and any amendments thereto, shall be classified according to the actual use of the property under the above EDNA classifications. The maximum permissible noise level for a nonconforming use shall be that level which is applicable to the EDNA classification of the nonconforming use limited by the EDNA of the receiving property.

(Ord. 3-A (1975) § 3, 1975)

10.28.040 Maximum permissible environmental noise levels.

- (a) The noise limitations established are as set forth in the following table after any applicable adjustments provided for herein are applied:

EDNA OF NOISE SOURCE	EDNA OF RECEIVING PROPERTY		
	Class A	Class B	Class C
Class A	55 dBA	57 dBA	60 dBA
Class B	57	60	65
Class C	60	65	70

(b) Between the hours of 10:00 p.m. and 7:00 a.m., the noise limitations of the foregoing table shall be reduced by 10 dBA for receiving property within Class A EDNAs.

(c) At any hour of the day or night, the applicable noise limitations in subsections (a) and (b) of this section may be exceeded for any receiving property by no more than:

- (1) 5 dBA for a total of fifteen minutes in any one-hour period; or
- (2) 10 dBA for a total of five minutes in any one-hour period; or
- (3) 15 dBA for a total of 1.5 minutes in any one-hour period.

(Ord. 3-A (1975) § 4, 1975)

10.28.050 Exemptions from Sections 10.28.040 and 10.28.145 between 7:00 a.m. and 10:00 p.m.

The following shall be exempt from the provisions of Sections 10.28.040 and 10.28.145 between the hours of 7:00 a.m. and 10:00 p.m.:

- (1) Sounds originating from residential property relating to temporary projects for the maintenance or repair of homes, grounds and appurtenances;
- (2) Sounds created by the discharge of firearms on authorized shooting ranges;
- (3) Sounds created by blasting;
- (4) Sounds created by aircraft engine testing and maintenance not related to flight operations, provided that aircraft testing and maintenance shall be conducted at remote sites whenever possible;
- (5) Sounds created by the installation or repair of essential utility services.

(Ord. 3-B (1995) § 2, 1995; Ord. 3-A (1975)q § 5(a), 1975)

10.28.060 Exemptions from Sections 10.28.040(b) and 10.28.145.

The following shall be exempt from the provisions of Sections 10.28.040(b) and 10.28.145:

- (1) Noise from electrical substations and existing stationary equipment used in the conveyance of water by a utility;
- (2) Noise from existing industrial installations which exceed the standards contained in these regulations and which, over the previous three years, have consistently operated in excess of fifteen hours per day as a consequence of process necessity and/or demonstrated routine normal operation. Changes in working hours, which would affect exemptions under this regulation, require approval of the Kitsap County commissioners, or their duly authorized representatives.

(Ord. 3-B (1995) § 3, 1995: Ord. 3-A (1975) § 5(b), 1975)

10.28.070 Exemptions from Section 10.28.040 relating to noise reception in Class A EDNAs and from Section 10.28.145.

The following shall be exempt from the provisions of Section 10.28.040, and from the provisions of Section 10.28.145, except insofar as such provisions relate to the reception of noise within Class A EDNAs between the hours of 10:00 p.m. and 7:00 a.m.:

- (1) Sounds originating from temporary construction sites as a result of construction activity;
- (2) Sounds originating from forest harvesting and silvicultural activity.

(Ord. 3-B (1995) § 4, 1995: Ord. 3-A (1975) § 5(c), 1975)

10.28.080 Exemptions from all provisions of Sections 10.28.040 and 10.28.145.

The following shall be exempt from all provisions of Sections 10.28.040 and 10.28.145:

- (1) Sounds created by motor vehicles when regulated by WAC Chapter 173-62 and motor vehicles, licensed or unlicensed when operated off public highways except when such sounds are received in Class A EDNAs;
- (2) Sounds originating from aircraft in flight and sounds that originate at airports which are directly related to flight operations;
- (3) Sounds created by surface carriers engaged in interstate commerce by railroad;
- (4) Sounds created by warning devices not operating continuously for more than five minutes, or bells, chimes and carillons;
- (5) Sounds created by safety and protective devices where noise suppression would defeat the intent of the device or is not economically feasible;
- (6) Sounds created by emergency equipment and work necessary in the interests of law enforcement or for health, safety or welfare of the community;
- (7) Sounds originating from motor vehicle racing events at existing, authorized facilities;
- (8) Sounds originating from officially sanctioned parades and other public events;
- (9) Sounds from existing refrigeration equipment for preservation of retail food goods;
- (10) Sounds emitted from petroleum refinery boilers during the startup of the boilers; provided that the startup operation is performed during daytime hours whenever possible;
- (11) (Repealed);
- (12) Sounds caused by a natural phenomena and unamplified human voices;
- (13) Sounds created by the discharge of legal fireworks only during the specific days, times and locations where discharge is allowable pursuant to existing state and local law.

(Ord. 3-B (1995) § 5, 1995: Ord. 133-A (1992) § 45, 1992: Ord. 133 (1989) § 45, 1989: Ord. 3-A (1975) § 5(d), 1975)

10.28.085 Exemptions from all provisions of Section 10.28.145.

The following shall be exempt from all provisions of Section 10.28.145 but not thereby made exempt from other applicable ordinances:

- (1) Sounds commonly associated with an existing commercial operation which has been approved through a public hearing process and is operating in compliance with all permit conditions relating to noise;
- (2) Sounds commonly associated with an existing commercial operation which was established prior to the effective date of any land use regulation(s) and is thereby nonconforming.

(Ord. 3-B (1995) § 6, 1995)

10.28.090 Variances – Granting when.

Variances may be granted by the Kitsap County commissioners, or their duly authorized representatives, to any person from any particular requirement of this chapter, if findings are made that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise source, or because of nonavailability of feasible technology or control methods. Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances.

(Ord. 3-A (1975) § 6(a), 1975)

10.28.100 Variances – Implementation schedule.

An implementation schedule for achieving compliance with this chapter shall be incorporated into any variance issued.

(Ord. 3-A (1975) § 6(b), 1975)

10.28.110 Variances – Issuance – Hearings when.

Variances shall be issued only upon application in writing and after providing such information as may be requested. No variance shall be issued for a period of more than thirty days except upon due notice to the public with opportunity to comment. Public hearings may be held, when substantial public interest is shown, at the discretion of the issuing agency.

(Ord. 3-A (1975) § 6(c), 1975)

10.28.120 Variances – Noise sources with overriding considerations for.

Sources of noise, subject to this chapter, upon which construction begins after the effective date of this chapter, shall immediately comply with the requirements of this chapter except in extraordinary circumstances where overriding considerations of public interest dictate the issuance of a variance.

(Ord. 3-A (1975) § 6(d), 1975)

10.28.130 Measurement.

Noise measurement for the purposes of enforcing the provisions of Section 10.28.040 shall be measured in dBA with a sound level meter with the point of measurement being at any point within the receiving property; provided, however, a violation of this chapter may occur without the above noise measurements being made.

(Ord. 3-A (1975) § 7, 1975)

10.28.140 Enforcement policy.

(a) Compliance with this chapter may be enforced by mandatory injunction brought by the owner or owners of land lying within the area affected by any violation of this chapter, or the prosecuting attorney may commence an action or proceeding for abatement and enjoinder thereof, in the manner provided by law, and shall apply to such court as may have jurisdiction to grant such relief as will abate, restrain and enjoin the violation.

(b) Any person, violating the provisions of this chapter, in addition to the penalties provided for in Section 10.28.150, shall, by order of the court in such action, be ordered to forthwith abate and remove such nuisance; and if the same is not done by such offender within twenty-four hours, the same shall be abated and removed under the direction of the officer authorized by order of the court, which order of abatement shall be entered upon the docket of the court and made a part of the judgment in the action. Any such offender shall be liable for all costs and expenses of the abatement when such nuisance has been abated by any officer or authorized agent of Kitsap County; the costs and expenses shall be taxed as part of the costs of the prosecution against the offender, liable to be recovered as other costs are recovered, and in all cases where the officer is authorized by the court to abate any such nuisance, he shall keep an account of all expenses attending such abatement; and in addition to other powers given to collect such costs and expenses, Kitsap County may bring suit for the same in any court of competent jurisdiction against the offender carrying on the nuisance so abated.

(c) In addition to or as an alternative to any other penalty provided in this chapter or by law, any violation of any provision of this chapter shall constitute a Class I civil infraction. Each violation shall constitute a separate infraction for each and every day or portion thereof during which the violation is committed, continued, or permitted. Infractions shall be processed in accordance with the provisions of the Civil Enforcement Ordinance (Chapter 2.116 of this code).

(Ord. 3-D (1997) § 1, 1997; Ord. 3-A (1975) § 9, 1975)

10.28.145 Public disturbance noises.

It is unlawful for any person to cause, or for any person in possession of real or personal property to allow to originate from such property, a public disturbance noise. Provided, that owners or possessors of real property shall not be responsible for public disturbance noises created by trespassers. The following sounds are public disturbance noises:

- (1) Frequent, repetitive or continuous sound of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;
- (2) Frequent, repetitive, or continuous sounds from starting, operating, repairing, rebuilding, or testing of any motor vehicle, motorcycle, dirt bike, or other off-highway vehicle, or any internal combustion engine, within a rural or residential district, and which unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property in the area affected by such noise;
- (3) Use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention of the public to any vehicle, structure, or property or the contents therein except as permitted by law, except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;
- (4) Any loud and raucous sound made by use of a musical instrument, whistle, sound amplifier, or other device capable of producing or reproducing sound which emanates

frequently, repetitively or continuously from any building, structure or property, such as sound originating from a band session, tavern operation, or social gathering, and which unreasonably disturb, or interfere with the peace, comfort and repose of possessors of real property in the area affected by such noise;

(5) Noise from portable or motor vehicle audio equipment, such as a tape player, radio or compact disc player, while in park areas, residential and commercial zones, or any area where residences, schools, human service facilities, or commercial establishments are in obvious proximity to the source of the sound, and where the volume of such audio equipment is such that it can be clearly heard by a person of normal hearing at a distance of fifty feet or more from the source of the sound; provided, however, that this section shall not apply to persons operating portable audio equipment within a public park pursuant to an event sanctioned by a responsible authority under valid permit or license.

(Ord. 3-B (1995) § 7, 1995)

10.28.146 Enforcement of public disturbance noises.

(a) The county sheriff's office shall enforce the provisions of Section 10.28.145. Evidence of sound level through the use of a sound level meter reading shall not be necessary to establish the commission of the offense. Provisions of Section 10.28.145 shall not affect any other claim, cause of action or remedy including any prosecution for violation of sections regulating environmental noise.

(b) For public disturbance noise that is not related to motor vehicles and noise emanating from vehicles, enforcement may be undertaken only upon receipt of a complaint made by a person residing or who is employed in an area affected by a public disturbance noise, except as provided in Section 10.28.145(5) in which event enforcement shall be undertaken upon complaint made by any person affected by the public disturbance noise.

(c) The subsections of Section 10.28.145 relating to motor vehicles and noise emanating from vehicles may be subject to enforcement with or without a citizen's complaint.

(Ord. 3-B (1995) § 8, 1995)

10.28.150 Violation – Penalty.

Inasmuch as this chapter is for the benefit of the life, health, welfare and safety of the inhabitants of the unincorporated areas of Kitsap County, and is passed under the power given to the county commissioners by the state, it is a misdemeanor to violate any of the provisions of this chapter or any amendments thereto, and such violation shall be punishable by imprisonment in the county jail for not more than ninety days, or by a fine of not more than two hundred fifty dollars. Each day charged shall constitute a separate offense. The prosecuting attorney shall have discretion in each violation of this chapter to proceed with prosecution, either criminally in accordance with this section or civilly in accordance with Section 10.28.140, or both.

(Ord. 3-A (1975) § 8, 1975)

The Kitsap County Code is current through Ordinance 501 (2013), passed January 14, 2013.

Disclaimer: The Clerk of the Board's Office has the official version of the Kitsap County Code. Users should contact the Clerk of the Board's Office for ordinances passed subsequent to the ordinance cited above.

County Website: <http://www.kitsapgov.com/>
(<http://www.kitsapgov.com/>)

County Telephone: (360) 337-5777 / (800) 825-4940

Email the county: openline@co.kitsap.wa.us
(<mailto:openline@co.kitsap.wa.us>)

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**Chapter 17.110
DEFINITIONS****Sections:**

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17.110.005 Generally.

Except as provided in Section 17.450.010, for the purpose of this title, certain terms, phrases, words and their derivatives shall be construed as specified in this section and elsewhere in this title where specific definitions are provided. Terms, phrases and words used in the singular include the plural and the plural the singular. Terms, phrases and words used in the masculine gender include the feminine and the feminine the masculine. The word "shall" is mandatory. The word "may" is discretionary. Where terms, phrases and words are not defined, they shall have their ordinary accepted meanings

- 17.110.530 Nursing or rest home.
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- 17.110.540 Ordinary high water mark.
- 17.110.545 Owner.
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- 17.110.548 Parcel.
- 17.110.550 Park.
- 17.110.555 Parking area, public.
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- 17.110.572 Performance based development (PBD).
- 17.110.575 Perimeter setback.
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- 17.110.585 Pet.
- 17.110.590 Pet, non-traditional.
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- 17.110.600 Places of worship.
- 17.110.605 (Repealed)
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- 17.110.670 Setback.
- 17.110.673 Shipping container.
- 17.110.674 (Repealed)

of residential and non-residential uses in a single or physically integrated group of buildings.(Ord. 367 (2006) § 5 (part), 2006)

17.110.490 Mobile home.

"Mobile home" means a factory-built single-family dwelling constructed prior to June 15, 1976, to standards other than the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act.

(Ord. 415 (2008) § 52, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.493 Mobile home park.

"Mobile home park" means a tract of land developed or operated as a unit with individual leased sites and facilities to accommodate two or more mobile homes or manufactured homes.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.503 Mono-pole.

"Mono-pole" means a structure composed of a single spire used to support telecommunication equipment.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.504 Movie/performance theater.

"Movie/performance theater" means a facility for showing films and performance art, including accessory retail sales of food and beverages. This definition excludes adult entertainment uses.

(Ord. 419 (2008) § 4, 2008: Ord. 367 (2006) § 5 (part), 2006)

17.110.506 Net developable area.

"Net developable area" means the site area after subtracting all rights-of-way, critical areas (including bald eagle habitat regulations) and their buffers, stormwater controls, recreational facilities, public facilities, community drainfields or other area-wide sanitary sewer facilities, and open space.

(Ord. 415 (2008) § 53, 2008)

17.110.508 Nonconforming lot.

"Nonconforming lot" means a lot was lawfully created but does not conform to the lot requirements of the zone in which it was located as established by this title or other ordinances or amendments thereto.

(Ord. 415 (2008) § 54, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998. Formerly 17.110.505)

17.110.510 Nonconforming use or structure.

"Nonconforming use or structure" means a use of land or structure which was lawfully established or built and which has been lawfully continued but which does not conform to

the regulations established by this title or amendments thereto.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4.(part), 1998)

17.110.515 Nuisance.

"Nuisance" means in addition to those definitions contained in RCW 9.66 and RCW 7.48, as amended, any violation of this title shall constitute a nuisance, per se.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.520 Nursery, retail.

"Nursery, retail" means an establishment where trees, shrubs and other plant materials are grown, propagated and/or stored for purpose of sale directly to the public.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.525 Nursery, wholesale.

"Nursery, wholesale" or "wholesale nursery" means an establishment where trees, shrubs or other plants are propagated on the property and/or continuously grown to a larger size for a period no less than one complete growing season and that is not open to the public on a regular basis. Temporary outdoor stands for the periodic and occasional sale of plants which are grown on the premises shall not disqualify an establishment for definition as a wholesale nursery. No bark, mulch, fertilizer or other similar landscape supply may be sold.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.530 Nursing or rest home.

See Section 17.110.190, Convalescent, nursing or rest home.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.535 Open space.

"Open space" shall mean land used for outdoor active and passive recreational purposes or for critical area or resource land protection, including structures incidental to these open space uses, including associated critical area buffers, but excluding land occupied by dwellings or impervious surfaces not related to the open space uses and yards required by this title for such dwellings or impervious surfaces. "Open space" is further divided into the following categories:

A. "Common open space" shall mean space that may be used by all occupants of a development complex or, if publicly dedicated, by the general public;

B. "Active recreational open space" shall mean space that is intended to create opportunities for recreational activity. Active recreational open space may be occupied by recreational facilities such as ball fields, playground equipment, trails (pedestrian, bicycle, equestrian or multi-modal); swimming pools, and game courts or sculptures, fountains, pools, benches or other outdoor furnishings;

C. "Passive open space" shall mean all common open space not meeting the definition

(Ord. 415 (2008) § 57, 2008)

17.110.575 Perimeter setback.

"Perimeter setback" means in a performance based development (PBD), the horizontal distance between a building line and the exterior boundary of the PBD.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.576 Permitted use.

"Permitted use" means a land use allowed outright in a certain zone without a public hearing or conditional use permit; provided, such use is developed in accordance with the requirements of the zone and general conditions of this title, and all applicable provisions elsewhere in the county code.

(Ord. 415 (2008) § 58, 2008)

17.110.580 Person.

"Person" means an individual, partnership, corporation, association, organization, cooperative, tribe, public or municipal corporation, or agency of the state or local governmental unit however designated.

(Ord. 415 (2008) § 59, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.585 Pet.

"Pet" means any animal less than one hundred fifty pounds in weight, other than exotic animals, kept for companionship, recreation or other non-agricultural purposes.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.590 Pet, non-traditional.

"Pet, non-traditional" or "non-traditional pet" means any pet other than a dog, cat, fish or non-raptor bird.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.591 Pharmacies.

"Pharmacies" shall mean businesses primarily engaged in the sale of prescription and over-the-counter drugs, vitamins, first-aid supplies, and other health-related products. Pharmacies that also sell a wide variety of other types of merchandise, such as beauty products, camera equipment, small consumer electronics, gift wares, housewares, and/or cleaning supplies are considered "general merchandise stores."

(Ord. 367 (2006) § 5 (part), 2006: Ord. 311 (2003) [Attachment 7 (part)], 2003)

17.110.595 Pier.

"Pier" means a fixed structure built over tidelands or shorelands used as a landing for marine or recreational purposes.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.600 Places of worship.

"Places of worship" means a permanently located building primarily used for religious worship.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.605 (Repealed)*

* **Editor's Note:** Former Section 17.110.605, "Performance based development (PBD)," was repealed by § 60 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

17.110.610 Planning commission.

"Planning commission" means the Kitsap County planning commission.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.615 Porch.

"Porch" means a covered attached structure providing a single entrance to a building, which may be either open or enclosed up to one third.

(Ord. 415 (2008) § 61, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.620 Portable sign.

"Portable sign" means a sign which has no permanent attachment to a building or the ground which include, but is not limited to, A-frame, pole attachment, banners and reader board signs.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.625 Premises.

"Premises" means a tract or parcel of land with or without habitable buildings.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.630 Private airport or heliport.

"Private airport or heliport" means any runway, landing area or other facility designed and used by individual property owners for private aircraft for the purposes of landing and taking off, including associated facilities, such as hangars and taxiways.

(Ord. 415 (2008) § 62, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.635 Prohibited use.

"Prohibited use" means any use which is not expressly allowed and does not meet the criteria under Section 17.100.040.

(Ord. 415 (2008) § 63, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.637 Project permit or project permit application

"Project permit" or "project permit application" means any land use or environmental permit or license required from Kitsap County for a project action, including, but not limited to, building permits, subdivisions, binding site plans, performance based developments, conditional uses, shoreline substantial development permits, permits or approvals required by critical area ordinances, and site-specific rezones authorized by the Kitsap County Comprehensive Plan (Plan) or a sub-area plan, but excluding the adoption or amendment of the Plan, a sub-area plan, or development regulations.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.640 Public facilities.

"Public facilities" means streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, waste handling facilities designated as public facilities in the comprehensive solid waste management plan, parks and recreational facilities, schools, public works storage facilities and road sheds, and utilities such as power, phone and cable television.

(Ord. 415 (2008) § 64, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.642 Race track, major.

"Race track, major" means a public or private facility developed for the purpose of operating and/or competitive racing of automobiles, motorcycles or similar vehicles. The facility may allow for up to six thousand spectators and may contain an oval, drag strip, road track and/or other course. Accessory uses may include the sale of concessions and souvenirs, a recreational vehicle camping park, community events and/or vehicle safety training.

(Ord. 415 (2008) § 65, 2008)

17.110.643 Race track, minor.

"Race track, minor" means a public or privately owned course designed for the operating and/or racing of automobiles, motorcycles, all-terrain vehicles or similar vehicles along a defined route that may include straight-aways, curves, jumps and/or other features.

(Ord. 415 (2008) § 66, 2008)

17.110.645 Receiving areas and parcels.

"Receiving areas and parcels" means areas within an urban growth area that are designated on the Kitsap County zoning map or by further action of the board of county commissioners, that may be eligible for additional residential development through the transfer of development rights.

(Ord. 367 (2006) § 5 (part), 2006)

17.110.646 Recreational amenity, active.

A "recreational amenity, active" means an area within a development intended for use by the residents, employees or patrons of the development for leisure activities. Such

facilities may include, but are not limited to, a paved sports court, children's play equipment, exercise fitness trail, community garden or gathering area with water service or similar facility.

(Ord. 415 (2008) § 67, 2008)

17.110.647 Recreational facility.

"Recreational facility" means a place designed and equipped for the conduct of sports and leisure-time activities. Examples include athletic fields, batting cages, amusement parks, picnic areas, campgrounds, swimming pools, driving ranges, skating rinks and similar uses. Public recreational facilities are those owned by a government entity.

(Ord. 415 (2008) § 68, 2008; Ord. 367 (2006) § 5 (part), 2006)

17.110.650 Recreational vehicle.

"Recreational vehicle" means a vehicle such as a motor home, travel trailer, truck and/or camper combination or camp trailer which is designed for temporary human habitation for recreational or emergency purposes and which may be moved on public highways without any special permit for long, wide or heavy loads.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.655 Recreational vehicle camping park.

"Recreational vehicle camping park" means a tract of land under single ownership or unified control developed with individual sites for rent and containing roads and utilities to accommodate recreational vehicles or tent campers for vacation or other similar transient, short-stay purposes.

(Ord. 415 (2008) § 69, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.660 Residential care facility.

"Residential care facility" means a facility that is the primary residence of a person or persons who are providing personal care, room and board, and medical care for at least five, but not more than fifteen, functionally disabled persons.

(Ord. 415 (2008) § 70, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.662 Restaurant.

"Restaurant" means an establishment where food and/or beverages are served to customers for compensation.

(Ord. 415 (2008) § 71, 2008)

17.110.663 Restaurant, high-turnover.

"High-turnover restaurant" means retail establishments providing food and/or beverages for sale, and which are distinguished by one or more of the following:

- A. Use of disposable food containers and utensils;

structure.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.710 Temporary sign.

"Temporary sign" means a sign or balloons intended for use which shall not be displayed for more than fourteen consecutive days and twice in a calendar year, which shall include, but is not limited to, portable signs, banners, A-boards and pennants.

(Ord. 415 (2008) § 79, 2008; Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.715 Temporary structure.

"Temporary structure" means a structure which does not have or is not required by the Uniform Building Code to have a permanent attachment to the ground. Temporary structures are subject to building permits.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.720 Temporary use.

"Temporary use" means a use which may occur on a lot on a seasonal basis or for a prescribed period of time which usually would not exceed one year's duration.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.725 Tract.

"Tract" means land reserved for specified uses including, but not limited to, reserve development tracts, recreation, open space, critical areas, stormwater facilities, utilities and access tracts. Tracts are not considered lots.

(Ord. 415 (2008) § 80, 2008)

17.110.730 Use.

"Use" means the nature of occupancy, type of activity or character and form of improvements to which land is devoted.

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.735 (Repealed)*

* **Editor's Note:** Former Section 17.110.735, "Use separation buffer," was repealed by § 81 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

17.110.740 Veterinary clinic.

"Veterinary clinic" means the same as "animal hospital."

(Ord. 367 (2006) § 5 (part), 2006; Ord. 216 (1998) § 4 (part), 1998)

17.110.745 Water-dependent use.

"Water-dependent use" means a use or portion of a use which requires direct contact

**Chapter 17.381
ALLOWED USES**

Sections:

- 17.381.010 Categories of uses established.
- 17.381.020 Establishment of zoning use tables.
- 17.381.030 Interpretation of tables.
- 17.381.040 Zoning use tables.
- 17.381.050 Footnotes for zoning use tables.
- 17.381.060 Provisions applying to special uses.

17.381.010 Categories of uses established.

This chapter establishes permitted, conditional, and prohibited uses, by zone, for all properties within Kitsap County. All uses in a given zone are one of four types:

- A. Permitted Use. Land uses allowed outright within a zone and subject to provisions within Kitsap County Code.
- B. Administrative Conditional Use. Land uses which may be permitted within a zoning designation following review by the director to establish conditions mitigating impacts of the use and to ensure compatibility with other uses in the designation.
- C. Hearing Examiner Conditional Use. Land uses with special characteristics that may not generally be appropriate within a zoning designation, but may be permitted subject to review by the hearing examiner to establish conditions to protect public health, safety and welfare.
- D. Prohibited Use. Land uses specifically enumerated as prohibited within a zone.

(Ord. 415 (2008) § 140, 2008; Ord. 367 (2006) § 105 (part), 2006)

17.381.020 Establishment of zoning use tables.

The tables in Section 17.381.040 establish allowed uses in the various zoning designations and whether the use is allowed as "Permitted," "Administrative Conditional Use," or "Hearing Examiner Conditional Use." Uses with approval processes that will be determined at a future date are identified as "Reserved." The zone is located at the top of the table and the specific use is located on the far-left of the vertical column of these tables.

(Ord. 367 (2006) § 105 (part), 2006)

17.381.030 Interpretation of tables.

A. Legend. The following letters have the following meanings when they appear in the box at the intersection of the column and the row:

P	Permitted Use
ACUP	Administrative Conditional Use Permit
C	Hearing Examiner Conditional Use Permit
PBD	Performance Based Development
X	Prohibited Use
R	Reserved

B. Additional Use-Related Conditions. The small numbers (subscript) in a cell indicate additional requirements or detailed information for uses in specific zones. Those additional requirements can be found in the table footnotes in Section 17.381.050. All applicable requirements shall govern a use whether specifically identified in this chapter or not.

C. Unclassified Uses. Except as provided in Section 17.100.040, Allowed uses, if a use is not listed in the use column, the use is prohibited in that designation.

(Ord. 415 (2008) § 141, 2008; Ord. 367 (2006) § 105 (part), 2006)

17.381.040 Zoning use tables.

There are five separate tables addressing the following general land use categories and zones:

A. Urban Residential Zones.

1. Urban Restricted (UR).
2. Urban Low Residential (UL).
3. Urban Cluster Residential (UCR).
4. Urban Medium Residential (UM).
5. Urban High Residential (UH).
6. Illahee Greenbelt Zone (IGZ).

B. Commercial and Mixed Use Zones.

1. Neighborhood Commercial (NC).
2. Urban Village Center (UVC).
3. Urban Town Center (UTC).
4. Highway Tourist Commercial (HTC).
5. Regional Commercial (RC).
6. Mixed Use (MU).

C. Airport and Industrial Zones.

1. Airport (A).
2. Business Park (BP).
3. Business Center (BC).
4. Industrial (IND).

D. Limited Areas of More Intensive Rural Development (LAMIRD).

1. Manchester Village Commercial (MVC).
2. Manchester Village Low Residential (MVLR).
3. Manchester Village Residential (MVR).
4. Port Gamble Rural Historic Town Commercial (RHTC).
5. Port Gamble Rural Historic Town Residential (RHTR).
6. Port Gamble Rural Historic Town Waterfront (RHTW).
7. Suquamish Village Commercial (SVC).
8. Suquamish Village Low Residential (SVLR).
9. Suquamish Village Residential (SVR).

E. Parks, Rural and Resource Zones.

1. Parks (P).
2. Forest Resource Lands (FRL).

3. Mineral Resource (MR).
4. Rural Protection (RP).
5. Rural Residential (RR).
6. Rural Wooded (RW).
7. Urban Reserve (URS).

Table 17.381.040(A)
Urban Residential Zones.

Use	Urban Low-Density Residential				Urban Medium/High-Density Residential	
	UCR (48)	IGZ (60)	UR (19)	UL (19)(48)	UM (30)(47)(48)	UH (19)(47)(48)
RESIDENTIAL USES						
Accessory dwelling units (1)	P	P	P	P	P	X
Accessory living quarters (1)	P	P	P	P	P	X
Accessory use or structure (1) (17) (18) (51)	P	P	P	P	P	P
Adult family home	P (41)	X	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	P	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	X
Caretaker's dwelling	X	X	X	X	ACUP	X
Convalescent home or congregate care facility	ACUP	X	X	C	C	ACUP
Cottage housing developments	P	ACUP	ACUP	ACUP	ACUP	X
Dwelling, duplex	P	P	P (3)	P (3)	P	X
Dwelling, existing	P	P	P	P	P	P
Dwelling, multi-family	ACUP	C	C	C	P	P

Dwelling, single-family attached	P	P	P	P	P	ACUP
Dwelling, single-family detached	P	P	P	P	P	ACUP
Guest house (1)	P	X	P	P	P	X
Home business (1) (52)	P	P	P	P	ACUP	ACUP
Hotel/Motel	X	X	X	X	X	ACUP
Manufactured homes	P (43)	P (43)	P (43)	P (43)	P (43)	X (43)
Mixed use development (44)	X	X	X	X	X	ACUP
Mobile homes	C (43)	C (24) (43)	C (24) (43)	C (24) (43)	C (24) (43)	X (43)
Residential care facility	P	ACUP	ACUP	ACUP	P	P
COMMERCIAL/BUSINESS USES						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P
Adult entertainment (1)	X	X	X	X	X	X
Ambulance service	X	X	X	X	X	X
Auction house	X	X	X	X	X	X
Auto parts and accessory stores	X	X	X	X	X	X
COMMERCIAL/BUSINESS USES (continued)						
Automobile rentals	X	X	X	X	X	X
Automobile repair and car washes	X	X	X	X	X	X
Automobile service station (6)	X	X	X	X	X	X
Automobile, recreational vehicle or boat sales	X	X	X	X	X	X
Boat/marine supply stores	X	X	X	X	X	X
Brew pubs	X	X	X	X	X	X

Clinic, medical	X	X	X	X	X	ACUP (37)
Conference center	X	X	X	P	X	X
Custom art and craft stores	X	X	X	X	X	X
Day-care center (14)	C	C	C	C	ACUP	ACUP (37)
Day-care center, family (14)	P	C	P	P	ACUP	ACUP (37)
Drinking establishments	X	X	X	X	X	X
Engineering and construction offices	X	X	X	X	X	X
Espresso stands (58)	X	X	X	X	X	P (37)
Equipment rentals	X	X	X	X	X	X
Farm and garden equipment and sales	X	X	X	X	X	X
Financial, banking, mortgage and title institutions	X	X	X	X	X	X
General office and management services – less than 4,000 s.f.	C (28)	X	X	X	X	ACUP (37)
General office and management services – 4,000 to 9,999 s.f.	X	X	X	X	X	ACUP (37)
General office and management services – 10,000 s.f. or greater	X	X	X	X	X	ACUP (37)
General retail merchandise stores – less than 4,000 s.f.	C (28)	X	X	X	X	ACUP (37)
General retail merchandise stores – 4,000 to 9,999 s.f.	X	X	X	X	X	X
General retail merchandise stores – 10,000 to 24,999 s.f.	X	X	X	X	X	X

COMMERCIAL/BUSINESS USES (continued)						
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X	X
Kennels or Pet day-cares	X	X	X	X	X	X
Kennels, hobby	P	P	P	P	P	X
Laundromats and laundry services	C (28)	X	X	X	X	ACUP (37)
Lumber and bulky building material sales	X	X	X	X	X	X
Mobile home sales	X	X	X	X	X	X
Nursery, retail	X	X	X	X	X	X
Nursery, wholesale	X	X	X	X	X	X
Off-street private parking facilities	X	X	X	X	X	X
Personal services – skin care, massage, manicures, hairdresser/barber	C	X	X	X	X	ACUP (37)
Pet shop – retail and grooming	X	X	X	X	X	ACUP (37)
Research laboratory	X	X	X	X	X	X
Restaurants	C (28)	X	X	X	X	ACUP (37)
Restaurants, high-turnover	X	X	X	X	X	X
Recreational vehicle rentals	X	X	X	X	X	X
Temporary offices and model homes (27)	P	P	P	P	ACUP	ACUP (37)
Tourism facilities, including outfitter and guide facilities	X	X	X	X	X	X
Tourism terminals, including seaplane and tour-boat terminals	X	X	X	X	X	X
Transportation terminals	X	X	X	X	X	X

Veterinary clinics/Animal hospitals	X	X	X	X	X	C (9) (37)
RECREATIONAL/CULTURAL USES						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P
Amusement centers	X	X	X	X	X	X
Carnival or Circus	X	X	X	X	X	X
Club, civic or social (12)	ACUP	C (12)	C (12)	C	ACUP	ACUP
Golf courses	ACUP	C	C	C	C	ACUP
Marinas	ACUP	C	C	C	C	C
Movie/Performance theaters, indoor	X	X	X	X	X	X
Movie/Performance theaters, outdoor	X	X	X	X	X	ACUP
Museum, galleries, aquarium, historic or cultural exhibits	X	X	X	X	X	ACUP
Parks and open space	P	P	P	P	P	P
Race track, major	X	X	X	X	X	X
Race track, minor	X	X	X	X	X	X
Recreational facilities, private	ACUP	C	C	C	C	ACUP
Recreational facilities, public	P	P	P	P	P	ACUP
Recreational vehicle camping parks	X	C	C	C	X	X
Zoo	X	X	X	X	X	X
INSTITUTIONAL USES						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P
Government/Public structures	ACUP	ACUP	ACUP	ACUP	ACUP	ACUP

Hospital	X	X	X	X	X	C
Places of worship (12)	C	C	C	C	C	ACUP
Private or public schools (20)	C	C	C	C	C	C
Public facilities, transportation and parking facilities, and electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	ACUP	C	C	C	C	ACUP
INDUSTRIAL USES						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P
Air pilot training schools	X	X	X	X	X	X
Assembly and packaging operations	X	X	X	X	X	X
Boat yard	X	X	X	X	X	X
Cemeteries, mortuaries, and crematoriums (10)	C	C	C	C	C	C
Cold storage facilities	X	X	X	X	X	X
Contractor's storage yard	X	X	X	X	X	X
Food production, brewery or distillery	X	X	X	X	X	X
Fuel distributors	X	X	X	X	X	X
Helicopter pads	X	X	X	X	X	X
Manufacturing and fabrication, light	X	X	X	X	X	X
Manufacturing and fabrication, medium	X	X	X	X	X	X
Manufacturing and fabrication, heavy	X	X	X	X	X	X
Manufacturing and fabrication, hazardous	X	X	X	X	X	X

Recycling centers	X	X	X	X	X	X
Rock crushing	X	X	X	X	X	X
Slaughterhouse or animal processing	X	X	X	X	X	X
Storage, hazardous materials	X	X	X	X	X	X
Storage, indoor	X	X	X	X	X	X
Storage, outdoor	X	X	X	X	X	X
Storage, self-service	C (40)	C (40)	C (40)	C (40)	C (40)	C
Storage, vehicle and equipment (1)	X (18)	X (18)	X (18)	X (18)	X (18)	X (18)
Top soil production and/or stump grinding	X	X	X	X	X	X
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	X	X	X	X
INDUSTRIAL USES (continued)						
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	X	X	X
Warehousing and distribution	X	X	X	X	X	X
Wrecking yards and junk yards (1)	X	X	X	X	X	X
RESOURCE LAND USES						
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P
Aggregate extractions sites	X	X	X	X	X	X
Agricultural uses (15)	X	P	P	P	P	P
Aquaculture practices	C	C	C	C	C	C

Forestry	X	P	P	P	P	P
Shellfish/fish hatcheries and processing facilities	X	X	X	X	X	X
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of agricultural products grown on site (27)	X	P (2)				

17.381.040(B)

Commercial and Mixed Use Zones.

Use	Low Intensity Commercial/Mixed Use		High-Intensity Commercial/Mixed Use			
	(NC) (19) (30) (48) (57)	UVC (30) (48) (57)	UTC (48) (57)	HTC (19) (29) (30) (48) (57)	RC (19) (48) (57)	MU (19) (44) (45) (48) (57)
RESIDENTIAL USES						
Accessory dwelling units	X	X	R	X	X	X
Accessory living quarters	X	X	R	X	X	X
Accessory use or structure (17) (18) (51)	P	P	R	P	P	P
Adult family home	X	ACUP P (41)	R	ACUP P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	ACUP C (34)	ACUP C (34)	R	X	X	X
Caretaker's dwelling	ACUP	ACUP	R	ACUP	ACUP	ACUP
Convalescent home or congregate care facility	C	ACUP	R	ACUP	ACUP	ACUP
Cottage housing	X	ACUP	R	X	X	ACUP

developments						
Dwelling, duplex	X	ACUP	R	X	X	X
Dwelling, existing	P	P	R	P	P	P
Dwelling, multi-family	X	ACUP	R	ACUP	ACUP	ACUP
Dwelling, single-family attached	X	P	R	ACUP	ACUP	ACUP
Dwelling, single-family detached	X	P	R	X	X	X
Guest house	X	X	R	X	X	X
Home business (1) (52)	ACUP	P	R	X	X	ACUP
Hotel/Motel	C	ACUP	R	P	P	ACUP
Manufactured homes	X	X (43)	R	X	X	X
Mixed use development (44) (49)	ACUP	ACUP	R	ACUP	ACUP	ACUP
Mobile homes	X	X (43)	R	X	X	X
Residential care facility	X	ACUP	R	ACUP	ACUP	ACUP
COMMERCIAL/BUSINESS USES						
Accessory use or structure (1) (17) (51)	P	P	R	P	P	P
Adult entertainment (1)	X	X	R	C	C	X
Ambulance service	C	C	R	P	P	ACUP
Auction house (55)	X	ACUP	R	P	P	X
Auto parts and accessory stores	P	X	R	P	P	ACUP
COMMERCIAL/BUSINESS USES (continued)						
Automobile rentals	P (56)	P (56)	R	P	P (61)	ACUP
Automobile repair and car washes	ACUP (54)	X	R	P	P	ACUP
Automobile service station (6)	ACUP	X	R	P	P (61)	X

Automobile, recreational vehicle or boat sales	X	X	R	ACUP	ACUP	X
Boat/marine supply stores	X	X	R	P	P	ACUP
Brew pubs	ACUP	ACUP	R	P	P	ACUP
Clinic, medical	ACUP	ACUP	R	P	P	ACUP
Conference center	X	P	R	P	P	ACUP
Custom art and craft stores	P (54)	P (54)	R	P	P	ACUP
Day-care center (14)	P (54)	P (54)	R	P	P	ACUP
Day-care center, family (14)	ACUP (54)	ACUP (54)	R	P	P (61)	P
Drinking establishments	C	ACUP	R	C	C	C
Engineering and construction offices	P (54)	P (54)	R	P	P	ACUP
Espresso stands (33) (58)	P	X	R	P	P (61)	P
Equipment rentals	X	ACUP	R	P	P (61)	ACUP
Farm and garden equipment and sales	X	X	R	P	P (61)	ACUP
Financial, banking, mortgage and title institutions	P (54)	P (54)	R	P	P	ACUP
General office and management services – less than 4,000 s.f.	P	P	R	P	P	ACUP
General office and management services – 4,000 to 9,999 s.f.	ACUP	ACUP	R	P	P	ACUP
General office and management services – 10,000 s.f. or greater	X	ACUP	R	P	P	ACUP

COMMERCIAL/BUSINESS USES (continued)

General retail merchandise stores – less than 4,000 s.f.	P	P	R	P	P	ACUP
General retail merchandise stores – 4,000 to 9,999 s.f.	ACUP	ACUP	R	P	P	ACUP
General retail merchandise stores – 10,000 to 24,999 s.f.	C	C	R	P	P	ACUP
General retail merchandise stores – 25,000 s.f. or greater	X	X	R	ACUP (62)	ACUP (62)	X
Kennels or Pet day-cares	C	X	R	C	C (61)	C
Kennels, hobby	P	P	R	X	X	P
Laundromats and laundry services	P (54)	P (54)	R	P	P	ACUP
Lumber and bulky building material sales	X	X	R	ACUP (42)	ACUP (42) (61)	X
Mobile home sales	X	X	R	ACUP	ACUP (61)	X
Nursery, retail	ACUP	ACUP	R	P	P	ACUP
Nursery, wholesale	ACUP	ACUP	R	P	P (61)	ACUP
Off-street private parking facilities	ACUP	ACUP	R	P	P	ACUP
Personal services – skin care, massage, manicures, hairdresser/barber	P (54)	P (54)	R	P	P	ACUP
Pet shop – retail and grooming	ACUP	ACUP	R	P	P	ACUP
Research laboratory	X	X	R	X	X	X
Restaurants	P (54)	P (54)	R	P	P	ACUP

Restaurants, high-turnover	C	ACUP	R	P	P (63)	ACUP
Recreation vehicle rentals	X	X	R	ACUP	ACUP (61)	X
Temporary offices and model homes	X	X	R	X	X	X
Tourism facilities, including outfitter and guide facilities	X	P	R	P	P	X
COMMERCIAL/BUSINESS USES (continued)						
Tourism facilities, including seaplane and tour-boat terminals	X	X	R	ACUP	ACUP	X
Transportation terminals	C	C	R	ACUP	ACUP	ACUP
Veterinary clinics/Animal hospitals	ACUP	ACUP	R	P	P	C
RECREATIONAL/CULTURAL USES						
Accessory use or structure (1) (17) (51)	P	P	R	P	P	P
Amusement centers	C	C (11)	R	ACUP (11)	ACUP (11)	ACUP (11)
Carnival or Circus	C	ACUP (11)	R	ACUP (11)	ACUP (11) (61)	ACUP (11)
Club, civic or social (12)	ACUP	ACUP	R	P	P	ACUP
Golf courses	ACUP	ACUP	X	ACUP	ACUP (61)	ACUP
Marinas	ACUP	C	X	ACUP	ACUP (61)	C
Movie/Performance theaters, indoor	ACUP	P	R	P	P	ACUP
Movie/Performance theaters, outdoor	X	ACUP	R	C	ACUP	C
Museum, galleries,						

aquarium, historic or cultural exhibits	ACUP	P	R	P	P	ACUP
Parks and open space	P	P	P	P	P	P
Race track, major	X	X	X	C	C (61)	X
Race track, minor	X	X	X	X	X	X
Recreational facilities, private	ACUP	ACUP	R	ACUP	ACUP	ACUP
Recreational facilities, public	ACUP	ACUP	R	ACUP	ACUP	ACUP
Recreational vehicle camping parks	C	X	R	C	X	X
Zoo	X	X	R	C	C (61)	X

INSTITUTIONAL USES

Accessory use or structure (1) (17) (51)	P	P	R	P	P	P
Government/Public structures	ACUP	ACUP	R	ACUP	ACUP	ACUP
Hospital	X	C	R	ACUP	ACUP	C

INSTITUTIONAL USES (continued)

Places of worship (12)	C	C	R	ACUP	ACUP	C
Private or public schools (20)	C	C	R	ACUP	ACUP	C
Public facilities, transportation and parking facilities, electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	ACUP	ACUP	R	ACUP	ACUP	ACUP
Accessory use or structure (1) (17) (51)	P	P	R	P	P	P

Air pilot training schools	X	P	R	P	P	X
Assembly and packaging operations	X	C	R	C	C (61)	C
Boat yard	X	X	R	ACUP	ACUP (61)	X
Cemeteries, mortuaries, and crematoriums (10)	C	C	R	ACUP	ACUP (61)	X
Cold storage facilities	X	X	R	X	X	X
Contractor's storage yard (21)	X	X	R	X	X	X
Food production, brewery or distillery	X	X	R	C	C (61)	C
Fuel distributors	X	X	R	C	C (61)	X
Helicopter pads (13)	X	C	R	C	C	C
Manufacturing and fabrication, light	X	C	R	C	C (61)	X
Manufacturing and fabrication, medium	X	X	R	X	X	X
Manufacturing and fabrication, heavy	X	X	R	X	X	X
Manufacturing and fabrication, hazardous	X	X	R	X	X	X
Recycling centers	X	X	R	X	X	X
Rock crushing	X	X	R	X	X	X
Slaughterhouse or animal processing	X	X	R	X	X	X
Storage, hazardous materials	X	X	R	X	X	X
INSTITUTIONAL USES (continued)						
Storage, indoor	X	X	R	C	C (61)	X

Storage, outdoor	X	X	R	X	X	X
Storage, self-service	C	C	R	ACUP	ACUP (61)	ACUP (40)
Storage, vehicle and equipment (1)	X	X	R	ACUP	X	X
Top soil production, stump grinding	X	X	R	X	X	X
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	R	X	X	X
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	R	X	X	X
Warehousing and distribution	X	X	R	X	X	X
Wrecking yards and junk yards (1)	X	X	R	X	X	X
RESOURCE LAND USES						
Accessory use or structure (1) (17) (51)	P	P	R	P	P	P
Aggregate extraction sites	X	X	R	X	X	X
Agricultural uses (15)	P	X	R	P	P	P
Aquaculture practices	C	C	R	C	C	C
Forestry	P	X	R	P	P	P
Shellfish/fish hatcheries and processing facilities	X	X	R	X	X	X
Temporary stands not exceeding 200 square feet in area and	P	X	R	P	P	P

exclusively for the sale of agricultural products grown on site (27)	(2)			(2)	(2)	(2)
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Table 17.381.040(C)
Airport and Industrial Zones.

Use	Airport	Industrial		
	A	BC (31) (42)	BP	IND (32) (42)
RESIDENTIAL USES				
Accessory dwelling units	X	X	X	X
Accessory living quarters	X	X	X	X
Accessory use or structure (1) (17) (51)	P	P	ACUP	ACUP
Adult family home	X	ACUP P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	X	X	X	X
Caretaker's dwelling	ACUP	P	P	P
Convalescent home or congregate care facility	X	X	X	X
Cottage housing developments	X	X	X	X
Dwelling, duplex	X	X	X	X
Dwelling, existing	P	P	P	P
Dwelling, multi-family	X	X	X	X
Dwelling, single-family attached	X	X	X	X
Dwelling, single-family detached	X	X	X	X
Guest house	X	X	X	X
Home business	X	X	X	X
Hotel/Motel	X	X	X	X
Manufactured homes	X	X	X	X

Mixed use development	X	X	X	X
Mobile homes	X	X	X	X
Residential care facility	X	X	X	X
COMMERCIAL/BUSINESS USES				
Accessory use or structure (1) (17) (51)	P	P	P	P
Adult entertainment (1)	X	C	X	C
Ambulance service	X	P	ACUP	ACUP
Auction house	X	ACUP	ACUP	P
Auto parts and accessory stores	X	X	X	X
Automobile rentals	X	X	X	X
Automobile repair and car washes	X	P (61)	ACUP	P (33)
Automobile service station (6)	X	C (33)	C (33)	P (33)
COMMERCIAL/BUSINESS USES (continued)				
Automobile, recreational vehicle or boat sales	X	ACUP (35)	X	ACUP (35)
Boat/marine supply stores	X	X	X	X
Brew pubs	X	ACUP (33)	ACUP (33)	ACUP
Clinic, medical	X	P	ACUP	C
Conference center	X	X	X	X
Custom art and craft stores	X	X	X	X
Day-care center (14)	X	P (33)	P (33)	P (33)
Day-care center, family (14)	X	P (33) (61)	P (33)	X
Drinking establishments	C	P (33)	C (33)	X

Engineering and construction offices	X	P	P (33)	P (33)
Espresso stands (58)	X	P (33) (61)	P (33)	P (33)
Equipment rentals	X	P	P	P
Farm and garden equipment and sales	X	X	X	X
Financial, banking, mortgage and title institutions	X	P	P (33)	ACUP (33)
General office and management services – less than 4,000 s.f.	X	P	P	P (33)
General office and management services – 4,000 to 9,999 s.f.	X	P	P	X
General office and management services – 10,000 s.f. or greater	X	P	P	X
General retail merchandise stores – less than 4,000 s.f.	X	P (33)	P (33)	ACUP (33)
General retail merchandise stores – 4,000 to 9,999 s.f.	X	X	X	X
General retail merchandise stores – 10,000 to 24,999 s.f.	X	X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X
Kennels or Pet day-cares	X	P	ACUP	ACUP
Kennels, hobby	X	X	X	X
COMMERCIAL/BUSINESS USES (continued)				
Laundromats and laundry services	X	P (33)	P	ACUP

Lumber and bulky building material sales	X	P (61)	X	P
Mobile home sales	X	X	X	X
Nursery, retail	X	X	X	X
Nursery, wholesale	X	X	X	X
Off-street private parking facilities	X	X	X	X
Personal services – skin care, massage, manicures, hairdresser/barber	X	X	X	X
Pet shop – retail and grooming	X	X	X	X
Research laboratory	X	P	P	P
Restaurants	ACUP	P (33)	C (33)	ACUP (33)
Restaurants, high-turnover (33)	P (59)	P (59)	P (59)	P (59)
Recreational vehicle rentals	X	ACUP (61)	ACUP	ACUP
Temporary offices and model homes (27)	X	X	X	X
Tourism facilities, including outfitter and guide facilities	P	P	P	ACUP
Tourism facilities, including seaplane and tour boat terminals	ACUP	X	X	X
Transportation terminals	ACUP	P	X	ACUP
Veterinary clinics/Animal hospitals	X	P	ACUP	ACUP
RECREATIONAL/CULTURAL USES				
Accessory use or structure (1) (17)	P	P	P	P
				C

Amusement centers	X	X	X	(11)
Carnival or Circus	X	X	X	ACUP (11)
Club, civic or social (12)	ACUP	ACUP	X	ACUP
Golf courses	X	X	X	X
Marinas	X	X	X	C
Movie/Performance theaters, indoor	X	X	X	X
RECREATIONAL/CULTURAL USES (continued)				
Movie/Performance theaters, outdoor	X	C	ACUP	X
Museum, galleries, aquarium, historic or cultural exhibits	ACUP	P	ACUP	X
Parks and open space	P	P	P	P
Race track, major	X	C (61)	C	C
Race track, minor	X	X	X	C
Recreational facilities, private	X	P	C	C
Recreational facilities, public	C	P	C	C
Recreational vehicle camping parks	X	X	X	X
Zoo	X	X	X	X
INSTITUTIONAL USES				
Accessory use or structure (1) (17) (51)	P	P	ACUP	ACUP
Government/Public structures	P	P	P	P
Hospital	X	C	C	C
Places of worship (12)	X	C	X	C
Private or public schools	X	P	ACUP	ACUP

(20)				
Public facilities and electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	C	ACUP	ACUP	ACUP
INDUSTRIAL USES				
Accessory use or structure (1) (17) (51)	P	P	P	ACUP
Air pilot training schools	P	P	P	P
Assembly and packaging operations	ACUP	P	X	ACUP
Boat yard	X	P (61)	ACUP	ACUP
Cemeteries, mortuaries, and crematoriums (10)	X	ACUP (61)	X	ACUP
Cold storage facilities	X	X	ACUP	P
Contractor's storage yard (21)	X	P (61)	X	P
Food production, brewery or distillery	X	ACUP	ACUP	C
INDUSTRIAL USES (continued)				
Fuel distributors	X	C (61)	X	C
Helicopter pads (13)	P	ACUP	X	ACUP
Manufacturing and fabrication, light	ACUP	P	P	P
Manufacturing and fabrication, medium	ACUP	C (52) (61)	ACUP	P
Manufacturing and fabrication, heavy	X	X	X	ACUP
Manufacturing and fabrication, hazardous	X	X	X	C

Recycling centers	X	X	X	ACUP
Rock crushing	X	X	X	C
Slaughterhouse or animal processing	X	X	X	C
Storage, hazardous materials	X	X	X	C
Storage, indoor	C	P (61)	P	P
Storage, outdoor	C	ACUP (61)	X	P
Storage, self-service	X	ACUP (61)	X	P
Storage, vehicle and equipment (1)	X	ACUP (61)	X	P
Top soil production, stump grinding	X	X	X	ACUP
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	P (61)	C	C
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	P	X	X	C
Warehousing and distribution	ACUP	P (61)	P	P
Wrecking yards and junk yards (1)	X	X	X	C
RESOURCE LAND USES				
Accessory use or structure (1) (17) (51)	P	P	ACUP	ACUP
Aggregate extractions sites	X	P	X	C
Agricultural uses (15)	X	P	P	P

Auto parts and accessory stores	ACUP	X	X	ACUP	X	X	X	X
Automobile rentals	CUP	X	X	X	X	X	X	X
Automobile repair and car washes	ACUP	X	X	X	X	X	ACUP	X
Automobile service station (6)	X	X	X	X	X	X	ACUP	X
Automobile, recreational vehicle or boat sales	X	X	X	X	X	X	X	X
Boat/marine supply stores	ACUP	X	X	ACUP	X	X	ACUP	X
Brew pubs	ACUP	X	X	X	X	X	ACUP	X
Clinic, medical	ACUP	X	X	ACUP	X	X	ACUP	X
COMMERCIAL/BUSINESS USES (continued)								
Conference center	X	X	X	X	X	X	ACUP	X
Custom art and craft stores	ACUP	X	X	ACUP	X	X	ACUP	X
Day-care center (14)	CUP	CUP	CUP	C	C	C	ACUP	C
Day-care center, family (14)	CUP	CUP	CUP	C	C	C	ACUP	C
Drinking establishments	CUP	X	X	C	X	X	C	X
Engineering and construction offices	ACUP	X	X	ACUP	X	X	ACUP	X
Espresso stands (58)	ACUP	X	X	ACUP	X	X	ACUP	X
Equipment rentals	X	X	X	X	X	X	X	X
Farm and garden equipment and sales	CUP	X	X	X	X	X	X	X
Financial, banking, mortgage and title institutions	ACUP	X	X	ACUP	X	X	ACUP	X

General office and management services – less than 4,000 s.f.	ACUP	X	X	ACUP	X	X	ACUP	X
General office and management services – 4,000 to 9,999 s.f.	ACUP	X	X	ACUP	X	X	PBD (38)	X
General office and management services – 10,000 s.f. or greater	ACUP	X	X	ACUP	X	X	X	X
General retail merchandise stores – less than 4,000 s.f.	ACUP	X	X	ACUP	X	X	ACUP	X
COMMERCIAL/BUSINESS USES (continued)								
General retail merchandise stores – 4,000 to 9,999 s.f.	ACUP	X	X	ACUP	X	X	PBD	X
General retail merchandise stores – 10,000 to 15,000 s.f.	CUP	X	X	X	X	X	X	X
General retail merchandise stores – 15,001 to 24,999 s.f.	CUP	X	X	X	X	X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X	X	X	X
Kennels or Pet day-cares (1)	CUP	X	X	X	C	C	X	X
Kennels, hobby	CUP	CUP	CUP	X	P	P	X	P
Laundromats and laundry services	CUP	X	X	C	X	X	ACUP	X

clinics/animal hospitals	ACUP	X	X	ACUP	X	X	ACUP	X
RECREATIONAL/CULTURAL USES								
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P
Amusement centers	CUP (11)	X	X	C (11)	X	X	X (11)	X
Carnival or circus	CUP (11)	X	X	C (11)	X	X	X (11)	X
Club, civic or social (12)	ACUP	X	X	ACUP	ACUP	ACUP	ACUP	C
Golf courses	CUP	X	X	X	C	C	ACUP	C
Marinas	ACUP	X	X	ACUP	X	X	X	X
Movie/Performance theaters, indoor	CUP	X	X	C	X	X	ACUP	X
RECREATIONAL/CULTURAL USES (continued)								
Movie/Performance theaters, outdoor	CUP	X	X	X	X	X	X	X
Museum, galleries, aquarium, historic or cultural exhibits	ACUP	X	X	ACUP	X	X	ACUP	C
Parks and open space	P	P	P	P	P	P	P	P
Race track, major	X	X	X	X	X	X	X	X
Race track, minor	X	X	X	X	X	X	X	X
Recreational facilities, private	CUP	CUP	CUP	C	C	C	ACUP	C
Recreational facilities, public	CUP	CUP	CUP	C	C	C	ACUP	C
Recreational vehicle camping parks	X	X	X	X	X	X	X	X
Zoo	ACUP	X	X	X	X	X	X	X

INSTITUTIONAL USES								
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P
Government/public structures	ACUP	CUP	CUP	ACUP	C	C	ACUP	C
Hospital	X	X	X	X	X	X	X	X
Places of worship (12)	ACUP	CUP	CUP	ACUP	C	C	C	C
Private or public schools (20)	ACUP	CUP	CUP	ACUP	C	C	ACUP	C
Public facilities and electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	ACUP	CUP	CUP	ACUP	C	C	PBD	X
INDUSTRIAL USES								
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P
Air pilot training schools	X	X	X	X	X	X	X	X
Assembly and packaging operations	X	X	X	X	X	X	PBD	X
Boat yard	ACUP	X	X	X	X	X	ACUP	X
Cemeteries, mortuaries, and crematoriums (10)	CUP	X	X	X	C	C	X	X
Cold storage facilities	X	X	X	X	X	X	X	X
Contractor's storage yard (21)	CUP	X	X	X	C	C	X	X

Food production, brewery or distillery	X	X	X	X	X	X	C	X
Fuel distributors	X	X	X	X	X	X	X	X
Helicopter pads (13)	X	X	X	X	X	X	X	X
Manufacturing and fabrication, light	X	X	X	X	X	X	PBD	X
Manufacturing and fabrication, medium	X	X	X	X	X	X	X	X
Manufacturing and fabrication, heavy	X	X	X	X	X	X	X	X
Manufacturing and fabrication, hazardous	X	X	X	X	X	X	X	X
Recycling centers	X	X	X	X	X	X	X	X
Rock crushing	X	X	X	X	X	X	X	X
INDUSTRIAL USES (continued)								
Slaughterhouse or animal processing	X	X	X	X	X	X	X	X
Storage, hazardous materials	X	X	X	X	X	X	X	X
Storage, indoor	X	X	X	X	X	X	X	X
Storage, outdoor	X	X	X	X	X	X	X	X
Storage, self-service	CUP	X	X	X	X	X	X	X
Storage, vehicle and equipment (1)	X	X (18)	X	X	X (18)	X (18)	X	X (18)
Top soil production, stump grinding	X	X	X	X	X	X	X	X
Transshipment facilities, including docks, wharves,	X	X	X	X	X	X	X	X

marine rails, cranes, and barge facilities								
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	X	X	X	X	X
Warehousing and distribution	X	X	X	X	X	X	X	X
Wrecking yards and junk yards (1)	X	X	X	X	X	X	X	X
RESOURCE LAND USES								
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P
Aggregate extractions sites	X	X	X	X	X	X	X	X
Agricultural uses (15)	X	P	P	X	P	P	P	P
Aquaculture practices	X	CUP	CUP	X	C	C	X	X
Forestry	X	X	X	X	P	P	P	P
Shellfish/fish hatcheries and processing facilities	CUP	X	X	X	X	X	X	X
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of agricultural products grown on site (27)	ACUP	ACUP (2)	ACUP (2)	X	P (2)	P (2)	P (2)	P (2)

Table 17.381.040(E)

Manufactured homes	X	C (43)	X	P (43)	P (43)	P (43)	X
Mixed use development (44)	X	X	X	X	X	X	X
Mobile homes	X	P (43)	P	P (43)	P (43)	P (43)	P
Residential care facility	X	X	X	X	X	X	X
COMMERCIAL/BUSINESS USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Adult entertainment (1)	X	X	X	X	X	X	X
Ambulance service	X	X	X	X	X	X	X
Auction house	X	X	X	X	X	X	X
Auto parts and accessory stores	X	X	X	X	X	X	X
Automobile rentals	X	X	X	X	X	X	X
Automobile repair and car washes	X	X	X	X	X	X	X
COMMERCIAL/BUSINESS USES (continued)							
Automobile service station (6)	X	X	X	X	X	X	X
Automobile, recreational vehicle or boat sales	X	X	X	X	X	X	X
Boat/marine supply stores	X	X	X	X	X	X	X
Brew pubs	X	X	X	X	X	X	X
Clinic, medical	X	X	X	X	X	X	X
Conference center	ACUP	X	X	X	X	X	X
Custom art and craft stores	X	X	X	X	X	X	X
Day-care center (14)	ACUP	X	X	C	C	C	X
Day-care center, family (14)	X	X	X	ACUP	P	P	X

Drinking establishments	X	X	X	X	X	X	X
Engineering and construction offices	X	X	X	X	X	X	X
Espresso stands (58)	X	X	X	X	X	X	X
Equipment rentals	X	X	X	X	X	X	X
Farm and garden equipment and sales	X	X	X	X	X	X	X
Financial, banking, mortgage and title institutions	X	X	X	X	X	X	X
General office and management services – less than 4,000 s.f.	X	X	X	X	X	X	X
General office and management services – 4,000 to 9,999 s.f.	X	X	X	X	X	X	X
General office and management services – 10,000 s.f. or greater	X	X	X	X	X	X	X
General retail merchandise stores – less than 4,000 s.f.	X	X	X	X	X	X	X
General retail merchandise stores – 4,000 to 9,999 s.f.	X	X	X	X	X	X	X
General retail merchandise stores – 10,000 to 24,999 s.f.	X	X	X	X	X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X	X	X
Kennels or Pet day-cares	X	X	X	C (12)	C (12)	C (12)	X
Kennels, hobby	X	X	X	P	P	P	P
Laundromats and laundry services	X	X	X	X	X	X	X

Lumber and bulky building material sales	X	X	X	X	X	X	X
Mobile home sales	X	X	X	X	X	X	X
COMMERCIAL/BUSINESS USES (continued)							
Nursery, retail	X	X	X	C	C	C	X
Nursery, wholesale	X	X	X	P	P	P	P
Off-street private parking facilities	X	X	X	X	X	X	X
Personal services – skin care, massage, manicures, hairdresser/barber	X	X	X	X	X	X	X
Pet shop – retail and grooming	X	X	X	X	X	X	X
Research laboratory	X	X	X	X	X	X	X
Restaurants	X	X	X	X	X	X	X
Restaurants, high-turnover	X	X	X	X	X	X	X
Recreational vehicle rentals	X	X	X	X	X	X	X
Temporary offices and model homes (27)	X	X	X	X	ACUP	ACUP	X
Tourism facilities, including outfitter and guide facilities	X	X	X	X	X	X	X
Tourism facilities, including seaplane and tour-boat terminals	X	X	X	X	X	X	X
Transportation terminals	X	X	X	X	X	X	X
Veterinary clinics/Animal hospitals	X	X	X	C	C (8)	C (8)	X
RECREATIONAL/CULTURAL USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P

Amusement centers	ACUP	X	X	X	X	X	X
Carnival or Circus	ACUP	X	X	X	X	X	X
Club, civic or social	ACUP	X	C (12)	X	C (12)	C (12)	X
Golf courses	ACUP	X	X	C (12)	C (12)	C (12)	X
Marinas	ACUP	X	X	X	X	X	X
Movie/Performance theaters, indoor	X	X	X	X	X	X	X
Movie/Performance theaters, outdoor	C	X	X	X	X	X	X
Museum, galleries, aquarium, historic or cultural exhibits	ACUP	X	X	X	X	X	X
Parks and open space	P	P	P	P	P	P	P
Race track, major	C (12)	X	X	X	X	X	X
Race track, minor	C (12)	C (12)	C (12)	X	X	X	C (12)

RECREATIONAL/CULTURAL USES (continued)

Recreational facilities, private	ACUP	X	X	C (12)	C (12)	C (12)	C
Recreational facilities, public	ACUP	X	X	ACUP	ACUP	ACUP	C
Recreational vehicle camping parks	ACUP	X	X	X	C (46)	C (46)	C (46)
Zoo	X	X	X	X	X	X	X

INSTITUTIONAL USES

Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Government/Public structures	P	X	X	P	ACUP	ACUP	X
Hospital	X	X	X	X	X	X	X
				C	C	C	

Places of worship	X	X	X	(12)	(12)	(12)	X
Private or public schools (20)	X	X	X	C	C	C	X
Public facilities, transportation and parking facilities, electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	P	C (5)	C	C	C	C	C
INDUSTRIAL USES							
Accessory use or structure (1) (17) (51)	X	P	P	P	P	P	P
Air pilot training schools	X	X	X	X	X	X	X
Assembly and packaging operations	X	X	X	X	X	X	X
Boat yard	X	X	X	X	X	X	X
Cemeteries, mortuaries, and crematoriums (10)	X	X	X	C	C	C	C
Cold storage facilities	X	X	X	X	X	X	X
Contractor's storage yard (21)	X	X	ACUP	X	C (12)	C (12)	X
Food production, brewery or distillery	X	X	X	X	X	X	X
Fuel distributors	X	X	X	X	X	X	X
Helicopter pads (13)	X	X	X	X	X	X	X
Manufacturing and fabrication, light	X	X	X	X	X	X	X
Manufacturing and fabrication, medium	X	X	X	X	X	X	X
Manufacturing and fabrication, heavy	X	X	X	X	X	X	X
Manufacturing and fabrication, hazardous	X	X	X	X	X	X	X

Recycling centers	X	X	X	X	X	X	X
INDUSTRIAL USES (continued)							
Rock crushing	X	C (39)	C (39)	X	X	X	C (39)
Slaughterhouse or animal processing	X	X	X	X	X	X	X
Storage, hazardous materials	X	X	X	X	X	X	X
Storage, indoor	X	X	X	X	X	X	X
Storage, outdoor	X	X	X	X	X	X	X
Storage, self-service	X	X	X	X	X	X	X
Storage, vehicle and equipment (1)	X	X	X	X (18)	X (18)	X (18)	X
Top soil production, stump grinding	X	X	C	X	C (22)	C (22)	X
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	X	X	X	X	X
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	X	X	X	X
Warehousing and distribution	X	X	X	X	X	X	X
Wrecking yards and junk yards (1)	X	X	X	X	X	X	X
RESOURCE LAND USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Aggregate extractions sites	X	P (4)	P	X	C	C	C
Agricultural uses (15)	P	X	P	P	P	P	P

					(7)	(7)	(7)
Aquaculture practices	P	X	X	C	C	C	C
Forestry	P	P	P	P	P	P	P
Shellfish/fish hatcheries and processing facilities	X	X	X	X	X	X	X

(Ord. 425 (2009) § 3 (Att. B) (part), 2009; Ord. 420 (2008) § 8 (part), 2008; Ord. 419 (2008) §§ 5 – 9, 2008; Ord. 415 (2008) §§ 142 – 146, 2008; Ord. 405 (2007) § 5 (part), 2007; Ord. 402 (2007) § 2 (part), 2007; Ord. 384 (2007) §§ 9, 10, 2007; Ord. 380 (2007) § 3 (part), 2007; Ord. 367 (2006) § 105 (part), 2006)

17.381.050 Footnotes for zoning use table.

A. Where noted on the preceding use tables, the following additional restrictions apply:

1. Where applicable subject to Section 17.381.060, Provisions applying to special uses.
2. Minimum setbacks shall be twenty feet from any abutting right-of-way or property line; provided, however, advertising for sale of products shall be limited to two on-premises signs each not exceeding six square feet.
3. When located within urban growth ares (except UR), duplexes shall require five thousand square feet of minimum lot area. Duplexes located in the UR zone or outside of urban growth areas shall require double the minimum lot area required for the zone.
4. No greater than two acres for the purpose of construction and maintenance of a timber management road system, provided the total parcel is at least twenty acres.
5. Provided public facilities do not inhibit forest practices.
6. Where permitted, automobile service stations shall comply with the following provisions:
 - a. Sale of merchandise shall be conducted within a building, except for items used for the maintenance and servicing of automotive vehicles;
 - b. No automotive repairs other than incidental minor repairs, battery, or tire changing shall be allowed;
 - c. The station shall not directly abut a residential zone; and

- d. All lighting shall be of such illumination, direction, and color as not to create a nuisance on adjoining property or a traffic hazard.
7. In rural wooded (RW), rural protection (RP), or rural residential (RR) zones:
 - a. Animal feed yards and animal sales yards shall be located not less than two hundred feet from any property line; shall provide automobile and truck ingress and egress; and shall also provide parking and loading spaces so designed as to minimize traffic hazards and congestion. Applicants shall show that odor, dust, noise, and drainage shall not constitute a nuisance, hazard, or health problem to adjoining property or uses.
 - b. All stables and paddocks shall be located not closer than fifty feet to any property line. Odor, dust, noise, flies, or drainage shall not be permitted to create or become a nuisance to surrounding property.
 8. A veterinary clinic or animal hospital shall not be located within fifty feet of a lot line in the rural protection (RP) or rural residential (RR) zones. In addition, the applicant may be required to provide additional measures to prevent or mitigate offensive noise, odor, light and other impacts.
 9. Veterinary clinics and animal hospitals are allowed, provided a major part of the site fronts on a street and the director finds that the proposed use will not interfere with reasonable use of residences by reason of too close proximity to such residential uses, or by reason of a proposed exterior too different from other structures and character of the neighborhood. All activities shall be conducted inside an enclosed building.
 10. A cemetery, crematorium, mausoleum, or columbarium shall have its principal access on a county roadway with ingress and egress so designed as to minimize traffic congestion, and shall provide required off-street parking spaces. No mortuary or crematorium in conjunction with a cemetery is permitted within two hundred feet of a lot in a residential zone.
 11. A circus, carnival, animal display, or amusement ride may be allowed through administrative review in all industrial zones and any commercial zones, except neighborhood commercial (NC), for a term not to exceed ninety days, with a written approval of the director. The director may condition such approval as appropriate to the site. The director's decision may be appealed to the hearing examiner.
 12. All buildings and activities shall be set back a minimum of fifty feet in FRL, MR, RW, RP, RR or Parks zones and thirty-five feet in all other zones

from a side or rear lot line. All such uses shall access directly to a county right-of-way determined to be adequate by the county engineer, and be able to provide access without causing traffic congestion on local residential streets. Any such use shall not be materially detrimental to any adjacent (existing or future) residential development due to excessive traffic generation, noise, light or other circumstances. The director may increase setback, buffer and landscaping standards or impose other conditions to address potential impacts.

13. Public use airports and heliports are allowed only within the airport (A) zone established by this title. Heliports for the purpose of medical emergency facilities may be permitted in certain zones subject to a conditional use permit. All private landing strips, runways, and heliports shall be so designed and oriented that the incidents of aircraft passing directly over dwellings during their landing or taking off patterns is minimized. They shall be located so that traffic shall not constitute a nuisance to neighboring uses. The proponents shall show that adequate controls or measures will be taken to prevent offensive noise, vibrations, dust, or bright lights.

14. In those zones that prohibit residential uses, family day-care centers are only allowed in existing residential structures. Day-care centers shall have a minimum site size of ten thousand square feet and shall provide and thereafter maintain outdoor play areas with a minimum area of seventy-five square feet per child of total capacity. A sight-obscuring fence of at least four feet in height shall be provided, separating the play area from abutting lots. Adequate off-street parking and loading space shall be provided.

15. The number of animals on a particular property shall not exceed one large livestock, three small livestock, five ratites, six small animals, or twelve poultry:

a. Per forty thousand square feet of lot area for parcels one acre or smaller or for parcels five acres or smaller located within two hundred feet of a lake or year round stream; provided, that when no dwelling unit or occupied structure exists within three hundred feet of the lot on which the animals are maintained the above specifications may be exceeded by a factor of two;

b. Per twenty thousand square feet of area for parcels greater than one acre, but less than or equal to five acres, not located within two hundred feet of a lake or year round stream; provided, that when no dwelling unit or occupied structure exists within three hundred feet of

the lot on which the animals are maintained the above specifications may be exceeded by a factor of two;

c. No feeding area or structure or building used to house, confine or feed livestock, small animals, ratites, or poultry shall be located closer than one hundred feet to any residence on adjacent property located within a rural wooded (RW), rural protection (RP), or rural residential (RR) zone, or within two hundred feet of any residence on adjacent property within any other zone; provided, a pasture (greater than twenty thousand square feet) shall not be considered a feed area.

16. The erection, construction, alteration, or maintenance of overhead or underground utilities by a public utility, municipality, governmental agency, or other approved party shall be permitted in any zone; provided, that any permanent above-ground structures not located within a right-of-way or easement shall be subject to the review of the director. Utility transmission and distribution lines and poles may exceed the height limits otherwise provided for in this title. Water towers which exceed thirty-five feet in height, solid waste collection, transfer and/or handling sites in any zone shall be subject to a conditional use permit. These provisions do not apply to wireless communication facilities, which are specifically addressed in Chapter 17.470.

17. For waterfront properties, accessory structures such as docks, piers, and boathouses may be permitted in the rear yards, shorelands or tidelands subject to the following limitations:

a. All requirements of the Kitsap County Shoreline Management Master Program must be met;

b. The building height of any boathouse shall not be greater than fourteen feet above the ordinary high water line;

c. Covered structures must abut or be upland of the ordinary high water line; and

d. No covered structure shall have a width greater than twenty-five feet or twenty-five percent of the lot width, whichever is most restrictive.

18. One piece of heavy equipment may be stored in any single-family zone; provided, that it is either enclosed within a permitted structure, or screened to the satisfaction of the director.

19. All development within the Silverdale Design District boundaries must

be consistent with the Silverdale Design Standards:

20. Site plans for public schools shall include an area identified and set aside for the future placement of a minimum of four portable classroom units. The area set aside may not be counted towards meeting required landscaping or parking requirements.
21. Outdoor contractor's storage yards accessory to a primary residence shall be limited to not more than ten heavy equipment vehicles or heavy construction equipment. The use shall be contained outside of required setbacks within a contained yard or storage building. The storage yard and/or building shall be screened from adjacent properties with a screening buffer a minimum of twenty-five feet in width and capable of providing functional screening of the use. Minimum lot size shall be one hundred thousand square feet.
22. Stump grinding, soil-combining and composting in rural protection and rural residential zones must meet the following requirements:
 - a. The subject property(ies) must be one hundred thousand square feet or greater in size;
 - b. The use must take direct access from a county-maintained right-of-way;
 - c. A fifty-foot natural vegetation buffer must be maintained around the-perimeter of the property(ies) to provide adequate screening of the use from neighboring properties;
 - d. The subject property(ies) must be adjacent to an industrial zone or a complementary public facility such as a sewage treatment plant or solid waste facility;
 - e. The proposed use must mitigate noise, odor, dust and light impacts from the project; and
 - f. The use must meet all other requirements of this title.
23. Home businesses located in the forest resource lands (FRL) must be associated with timber production and/or harvest.
24. Mobile homes are prohibited, except in approved mobile home parks.
25. All uses must comply with the Town Development Objectives of Section 17.321B.025.

26. Within the MVC zone, a new single-family dwelling may be constructed only when replacing an existing single-family dwelling. All replacement single-family dwellings and accessory structures within the MVC zone must meet the height regulations, lot requirements, and impervious surface limits of the MVR zone.
27. Subject to the temporary permit provisions of Chapter 17.455.
28. Allowed only within a commercial center limited in size and scale (e.g., an intersection or corner development).
29. The Bethel Road Corridor Development Plan sets forth policies and regulations for development within the Highway Tourist Commercial Zone located along the Bethel Corridor in South Kitsap from SE Ives Mill Road to the Port Orchard city limits. Development within the Bethel Road Corridor Highway Tourist Commercial Zone shall be conducted in a manner consistent with the policies and regulations of the Land Use Element of the Bethel Road Corridor Development Plan.
30. The Design Standards for the Community of Kingston set forth policies and regulations for properties within the downtown area of Kingston. All development within this area must be consistent with these standards. A copy of the Design Standards for the Community of Kingston may be referred to on the Kitsap County web page or at the department of community development front counter.
31. Uses permitted only if consistent with an approved master plan pursuant to Chapter 17.415. Where a master plan is optional and the applicant chooses not to develop one, all uses shown as permitted require an administrative conditional use permit.
32. For properties with an approved master plan, except as described in Section 17.370.025, all uses requiring a conditional use permit will be considered permitted uses.
33. Must be located and designed to serve adjacent area.
34. Bed and breakfast houses with one to four rooms require an administrative conditional use permit; bed and breakfast houses with five or more rooms require a hearing examiner conditional use permit. Bed and breakfast houses serving meals to patrons other than overnight guests require a hearing examiner conditional use permit.
35. The use shall be accessory and shall not occupy more than twenty-five percent of the project area.

36. Requires a conditional use permit when abutting SVR or SVLR zone.
37. Permitted only within a mixed use development or office complex.
38. Customer service-oriented uses over five thousand square feet are prohibited.
39. For the purpose of construction and maintenance of a timber management road system.
40. Self storage facilities must be accessory to the predominant residential use of the property, sized consistently for the number of lots/units being served and may serve only the residents of the single-family plat or multi-family project.
41. Adult family homes serving one to six residents (excluding proprietors) are permitted uses. Adult family homes serving more than six applicable residents (excluding proprietors) require an administrative conditional use permit (ACUP).
42. All business, service repair, processing, storage, or merchandise display on property abutting or across the street from a lot in any residential zone, shall be conducted wholly within an enclosed building unless screened from the residential zone by a sight-obscuring fence or wall.
43. Where a family member is in need of special, frequent and routine care and assistance by reason of advanced age or ill health, a manufactured home or mobile home may be placed upon the same lot as a single-family dwelling for occupancy by the individual requiring or providing such special care subject to the following limitations:
 - a. Not more than two individuals shall be the recipients of special care;
 - b. No rent, fee, payment or charge in lieu thereof may be made for use of the single-family dwelling or manufactured/mobile home as between the recipients or providers of special care;
 - c. The manufactured/mobile home must meet the setback requirements of the zone in which it is situated;
 - d. A permit must be obtained from the director authorizing such special care manufactured/mobile home. Such permit shall remain in effect for one year and may, upon application, be extended for one-year periods, provided there has been compliance with the requirements of this section;

- e. The manufactured/mobile home must be removed when the need for special care ceases; and
 - f. Placement of the manufactured/mobile home is subject to applicable health district standards for water service and sewage disposal.
44. Certain development standards may be modified for mixed use developments, as set forth in Section 17.382.035 and Chapter 17.400.
45. New or expanded commercial developments that will result in less than five thousand gross square feet of total commercial use within a development site or residential developments of fewer than four dwelling units are permitted outright outside of the Silverdale UGA.
46. Allowed only as an accessory use to a park or recreational facility greater than twenty acres in size.
47. As a hearing examiner conditional use, UM and UH zones adjacent to a commercial zone may allow coordinated projects that include commercial uses within their boundaries. Such projects must meet the following conditions:
- a. The project must include a combination of UM and/or UH and commercially zoned land;
 - b. The overall project must meet the density required for the net acreage of the UM or UH zoned land included in the project;
 - c. All setbacks from other residentially zoned land must be the maximum required by the zones included in the project;
 - d. Loading areas, dumpsters and other facilities must be located away from adjacent residential zones; and
 - e. The residential and commercial components of the project must be coordinated to maximize pedestrian connectivity and access to public transit.
48. Within urban growth areas, all new residential subdivisions, single-family or multifamily developments are required to provide an urban level of sanitary sewer service for all proposed dwelling units.
49. Mixed use development is prohibited outside of urban growth areas.
50. The 2007 Manchester Community Plan, Appendix A – Manchester

Design Standards sets forth policies and regulations for properties within the Manchester Village Commercial (MVC) district. All development within the MVC district must be consistent with these standards.

51. Storage of shipping containers is prohibited unless allowed as part of a land use permit and/or approval. Placement of storage containers allowed only with an approved temporary permit subject to the provisions of Section 17.455.090(I).

52. Aggregate production and processing only. Allowed only if directly connected to an approved surface mining permit approved by the Washington State Department of Natural Resources (DNR).

53. Commercial or industrial uses otherwise prohibited in the zone may be allowed as a component of a home business subject to the requirements of Section 17.381.060(B).

54. The gross floor area shall not exceed four thousand square feet.

55. Auction house and all items to be auctioned shall be fully enclosed within a structure.

56. There shall be no more than six rental vehicles kept on site.

57. When a component of development located within a commercial zone involves the conversion of previously undeveloped land which abuts a residential zone, it shall be treated as a Type II Administrative Decision.

58. In addition to the other standards set forth in Kitsap County Code, espresso stands are subject to the following conditions:

a. Drive aisles/stacking lanes shall be designed to accommodate a minimum of three vehicles per service window/door. Each stacking lane shall be sized measuring eight and one-half feet in width and twenty feet in length,

with direct access to the service window. The drive aisles/stacking lanes shall be designed to prevent any vehicles from interfering with public or private roadways, pedestrian circulation, traffic circulation, parking areas or other required development amenities.

b. Subject to provisions set forth in Chapter 17.435, drive aisles and parking areas must also be paved in urban growth areas and include, at minimum, hard compacted surfaces in rural areas. Such surfaces must be addressed with required drainage facilities. A joint parking agreement shall be required if parking cannot be accommodated on

site.

c. All structures must be permanently secured to the ground.

d. Restroom facilities must be available for employees. Portable or temporary restroom facilities shall not be used to meet this requirement.

59. Use is permitted in the South Kitsap Industrial Area only.

60. All development in Illahee shall be consistent with the Illahee Community Plan.

61. Use prohibited in the Waaga Way Town Center area (see the Silverdale Design Standards).

62. General retail merchandise stores greater than one hundred twenty-five thousand square feet in size are prohibited in the Waaga Way Town Center area (see the Silverdale Design Standards). Additional square footage may be allowed for projects greater than twenty-five acres in size.

63. Restaurants, high-turnover that provide drive-thru service must be compatible with the pedestrian focus of the Waaga Way Town Center (see the Silverdale Design Standards). Such businesses shall minimize potential conflicts with pedestrian and bicycle traffic and gathering areas by subordinating the drive-thru service to the overall development design.

(Ord. 425 (2009) § 3 (Att. B) (part), 2009; Ord. 420 (2008) § 8 (part), 2008; Ord. 419 (2008) § 10, 2008; Ord. 415 (2008) § 147; Ord. 405 (2007) § 5 (part), 2007; Ord. 384 (2007) § 11, 2007; Ord. 381 (2007) § 3, 2007; Ord. 367 (2006) § 105 (part), 2006)

17.381.060 Provisions applying to special uses.

A. In addition to other standards and requirements imposed by this title, all uses included in this section shall comply with the provisions stated herein. Should a conflict arise between the requirements of this section and other requirements of this title, the most restrictive shall apply.

B. Uses with additional restrictions:

1. Home Business. Home businesses may be allowed for commercial or industrial uses within residential zones subject to the following conditions:

a. Incidental home business, as defined below, shall be permitted in all residential zones and have no permit required.

- (1) Business uses shall be incidental and secondary to the dominant residential use;
- (2) The residential character of the building shall be maintained and the business shall be conducted in such a manner as not to give an outside appearance of a business;
- (3) The business shall be conducted entirely within the residence;
- (4) The residence shall be occupied by the owner of the business;
- (5) The business shall not infringe upon the right of the neighboring residents to enjoy the peaceful occupancy of their homes;
- (6) No clients or customers shall visit or meet for an appointment at the residence;
- (7) No employees or independent contractors are allowed to work in the residence other than family members who reside in the residential dwelling;
- (8) No activities that create noise, increase risk of fire, or in any way threaten the safety and tranquility of neighboring residents are permitted;
- (9) No more than two pick-ups and/or deliveries per day are allowed, not including normal U.S. mail;
- (10) The business shall not occupy more than twenty-five percent of the gross floor area of the residence; and
- (11) No signs to advertise the business/occupation shall be allowed on the premises (except attached to mailbox not to exceed one square foot).

b. Minor home business, as defined below, shall be permitted in all residential zones subject to approval by the director. Said approval is not transferable to any individual, future property owner or location.

- (1) Business uses shall be incidental and secondary to the dominant residential use;
- (2) The residential character of the building shall be maintained

and the business shall be conducted in such a manner as not to give an outside appearance of a business;

(3) The residence shall be occupied by the owner of the business;

(4) The business shall occupy no more than thirty percent of the gross floor area of the residence;

(5) The business shall not infringe upon the right of the neighboring residents to enjoy the peaceful occupancy of their homes;

(6) No more than two employees, including proprietors (or independent contractors), are allowed;

(7) Nonilluminated signs not exceeding four square feet are permitted, subject to a sign permit approved by the director;

(8) No outside storage shall be allowed; and

(9) In order to assure compatibility with the dominant residential purpose, the director may require:

- i. Patronage by appointment.
- ii. Additional off-street parking.
- iii. Other reasonable conditions.

c. Moderate home business, as defined below, shall be permitted in RW, RP, RR and URS zones subject to approval by the director. Said approval is not transferable to any individual, future property owner or location.

(1) Business uses shall be incidental and secondary to the dominant residential use;

(2) The residential character of the building shall be maintained and the business shall be conducted in such a manner as to moderate any outside appearance of a business;

(3) The residence shall be occupied by the owner of the business;

(4) The business shall not infringe upon the right of the

neighboring residents to enjoy the peaceful occupancy of their homes;

(5) No more than five employees (or independent contractors) are allowed;

(6) Nonilluminated signs not exceeding four square feet are permitted, subject to a sign permit approved by the director; and

(7) In order to ensure compatibility with the dominant residential purpose, the director may require:

- i. Patronage by appointment.
- ii. Additional off-street parking.
- iii. Screening of outside storage.
- iv. A conditional use permit (required for engine or vehicle repair or servicing).
- v. Other reasonable conditions.

2. Pets and Exotic Animals. Pets, nontraditional pets and exotic animals are subject to the following conditions:

a. Pets which are kept inside of a primary structure as household pets in aquariums, terrariums, cages or similar containers shall not be limited in number by this title. Other pets, excluding cats, which are kept indoors shall be limited to five;

b. Pets which are kept outside of the primary structure shall be limited to three per household on lots less than twenty thousand square feet in area, only one of which may be a nontraditional pet; five per household on lots of twenty thousand to thirty-five thousand square feet, only two of which may be nontraditional pets; with an additional two pets per acre of site area over thirty-five thousand square feet up to a limit of twenty;

c. The keeping or possession of exotic animals is subject to state and federal laws and, other than in a primary structure as described in subsection (B)(3) of this section, shall require approval of the director. Possession of any dangerous animal or potentially dangerous animal is prohibited in all zones except as provided in Section 7.14.010(9); and

d. No feeding area or structure used to house, confine or feed pets shall be located closer than the minimum yard setbacks for the zone in which they are located. No feeding area or structure used to house, confine or feed non-traditional pets or exotic animals shall be located closer than fifty feet from any residence on adjacent property.

3. Accessory Dwelling Unit (ADU). In order to encourage the provision of affordable and independent housing for a variety of households, an accessory dwelling unit may be located in residential zones, subject to the following criteria:

- a. An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary;
- b. An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary;
- c. Only one ADU shall be allowed per lot;
- d. Owner of the property must reside in either the primary residence or the ADU;
- e. The ADU shall not exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller;
- f. The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage);
- g. The ADU shall be designed to maintain the appearance of the primary residence;
- h. All setback requirements for the zone in which the ADU is located shall apply;
- i. The ADU shall meet the applicable health district standards for water and sewage disposal;
- j. No mobile homes or recreational vehicles shall be allowed as an ADU;
- k. An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking; and
- l. An ADU is not permitted on the same lot where an accessory living

quarters exists.

m. Existing, Unpermitted Accessory Dwelling Units.

(1) Applicability. The provisions of this subsection shall only apply to property and property owners who can establish all of the following criteria:

- i. The parcel is within the unincorporated area of Kitsap County;
- ii. An accessory dwelling unit (ADU), as defined in Section 17.110.020, or similar dwelling previously defined as an accessory living quarters (ALQ) or an accessory rental unit (ARU) is located on the parcel;
- iii. The accessory dwelling has not received any prior review and/or approval by Kitsap County;
- iv. The property owner did not construct or cause to have the accessory dwelling constructed;
- v. The property owner did not own the property when the accessory dwelling was constructed;
- vi. The property owner exercised due diligence when purchasing the property with the existing accessory dwelling to discover whether or not the accessory dwelling was approved when purchasing the property. Due diligence is presumed to have occurred if the property owner can document the following conditions:
 - (a) That county tax records or parcel records contain no inquiry or other notice that the ADU was unpermitted; and
 - (b) That the current owner requested and obtained a title report with no exceptions, restrictions, enforcement actions, permitting or similar issues pertinent to the ADU; and
 - (c) That the prior owner's property and improvement disclosures at the time of sale did not indicate any permitting, compliance or similar issues pertinent to the ADU; and
 - (d) That any third party involved in the sale or inspection of the ADU did not disclose any permitting, compliance or other issues pertinent to the ADU.

vii. The parcel has a history of property tax assessment and a history of continuous tax payments on the principal and the accessory dwelling.

viii. Acceptable documentation for subsections (B)(3)(m)(1) (i) through (vii) of this section may include but are not limited to current or previous county assessment records, real estate disclosure forms, listing agreements, records of sale, title reports and aerial photography establishing compliance with the required conditions.

(2) Application. Persons who meet the criteria of subsection (B)(3)(m)(1) of this section desiring to gain approval of their accessory dwelling shall make application to the director of the department of community development on forms provided by the department, with fees to be paid at the time of application as provided in subsection (B)(3)(m)(5) of this section. Such application shall be a Type II permit under Chapter 21.04.

(3) Approval. The director, or his designee, is authorized to approve submitted applications that satisfy all of the following:

- i. All the requirements of this section;
- ii. All the applicable zoning, health, fire safety and building construction requirements:
 - (a) The applicable requirements shall be those in effect when the accessory dwelling was constructed. The burden of proof of when the accessory dwelling was constructed shall be upon the applicant and may consist of dated aerial photography, tax assessments, surveys or similar documents.
 - (b) If the applicant cannot prove a date of construction, the applicable requirements shall be those currently in effect on the date of application.
 - (c) If the applicant can only show a date range for construction, the applicable requirements shall be the latest requirements of the range;
- iii. Proof of adequate potable water;
- iv. Proof of adequate sewage disposal systems for both the principal and the accessory dwelling. Proof shall be shown by

Kitsap County health district approval; and

- v. Verification by Kitsap County inspection staff that the accessory dwelling is habitable.

Applications approved subject to these provisions shall be considered legal nonconforming uses.

(4) Variances.

i. When reviewing the application, the director is authorized to grant an administrative variance to the requirements of subsection (B)(3)(m)(3)(ii) of this section only when unusual circumstances relating to the property cause undue hardship in the application of subsection (B)(3)(m)(3)(ii) of this section. The granting of an administrative variance shall be in the public interest. An administrative variance shall be granted at the director's sole discretion only when the applicant has proven all of the following:

- (a) There are practical difficulties in applying the regulations of subsection (B)(3)(m)(3)(ii) of this section;
- (b) The applicant did not create or participate in creating the practical difficulties;
- (c) A variance meets the intent and purpose of this section;
- (d) The variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and
- (e) The variance is the minimum necessary to grant relief to the applicant.

ii. The director is authorized to require mitigation in connection with the administrative variance to minimize the effect of the variance on surrounding properties.

iii. In reviewing a request for an administrative variance, the director shall notify and solicit comments from surrounding property owners of the application and the intended variance and mitigation. The director shall consider such comments when determining whether or not to approve the variance. The director is further authorized to require mediation to resolve issues arising from the notification process and the

costs of such mediation shall be paid by the applicant.

iv. Variance requests submitted as part of this subsection shall be considered as part of the original application and not subject to additional procedural or fee requirements.

(5) Fees. Applicants shall pay a fee established by resolution at the time of application. Additionally, applicants shall pay notification costs, reinspection fees, additional review and other applicable fees in accordance with Chapter 21.06. Applicants may initiate a staff consultation in considering or preparing an application under these provisions. The staff consultation fee established in Chapter 21.06 shall not, however, be credited towards any subsequent application submitted under these provisions.

(6) Land Use Binder. Following approval of the accessory dwelling and any administrative variance, the applicant shall record a land use permit binder with the county auditor using forms provided by Kitsap County department of community development.

(7) Expiration. Qualifying property owners shall have one year from the time that the noncompliant ADU is discovered to submit an application for approval of the ADU.

4. Accessory Living Quarters. In order to encourage the provision of affordable housing, accessory living quarters may be located in residential zones, subject to the following criteria:

- a. Accessory living quarters shall be located within an owner-occupied primary residence;
- b. Accessory living quarters are limited in size to no greater than fifty percent of the habitable area of the primary residence;
- c. The accessory living quarters are subject to applicable health district standards for water and sewage disposal;
- d. Only one accessory living quarters shall be allowed per lot;
- e. Accessory living quarters are to provide additional off-street parking with no additional street side entrance; and
- f. Accessory living quarters are not allowed where an accessory dwelling unit exists.

g. Existing Unpermitted Accessory Living Quarters. Existing unpermitted accessory living quarters may be approved under the provisions of subsection (B)(3)(m) of this section.

5. Adult Entertainment.

a. The following uses are designated as adult entertainment uses:

- (1) Adult bookstore;
- (2) Adult mini-motion picture theater;
- (3) Adult motion picture theater;
- (4) Adult novelty store; and
- (5) Cabaret.

b. Restrictions on Adult Entertainment Uses. In addition to complying with the other sections of the Zoning Ordinance, adult entertainment uses shall not be permitted:

- (1) Within one thousand feet of any other existing adult entertainment use; and/or
- (2) Within five hundred feet of any noncommercial zone, or any of the following residentially related uses:
 - i. Churches, monasteries, chapels, synagogues, convents, rectories, or church-operated camps;
 - ii. Schools, up to and including the twelfth grade, and their adjunct play areas;
 - iii. Public playgrounds, public swimming pools, public parks and public libraries;
 - iv. Licensed day care centers for more than twelve children;
 - v. Existing residential use within a commercial zone.
- (3) For the purposes of this section, spacing distances shall be measured as follows:
 - i. From all property lines of any adult entertainment use;
 - ii. From the outward boundary line of all residential zoning

districts;

iii. From all property lines of any residentially related use.

c. Signage for Adult Entertainment Uses.

(1) In addition to other provisions relating to signage in the Zoning Ordinance, it shall be unlawful for the owner or operator of any adult entertainment use establishment or any other person to erect, construct, or maintain any sign for the adult entertainment use establishment other than one primary sign and one secondary sign, as provided herein.

(2) Primary signs shall have no more than two display surfaces. Each such display surface shall:

- i. Be a flat plane, rectangular in shape;
- ii. Not exceed seventy-five square feet in area; and
- iii. Not exceed ten feet in height or ten feet in length.

(3) Primary and secondary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and may contain only:

- i. The name of the regulated establishment; and/or
- ii. One or more of the following phrases:
 - (a) "Adult bookstore,"
 - (b) "Adult movie theater,"
 - (c) "Adult cabaret,"
 - (d) "Adult novelties,"
 - (e) "Adult entertainment."

(4) Primary signs for adult movie theaters may contain the additional phrase, "Movie Titles Posted on Premises."

- i. Each letter forming a word on a primary or secondary sign shall be of a solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a

uniform and solid color.

ii. Secondary signs shall have only one display surface. Such display surface shall:

- (a) Be a flat plane, rectangular in shape;
- (b) Not exceed twenty square feet in area;
- (c) Not exceed five feet in height and four feet in width; and
- (d) Be affixed or attached to any wall or door of the establishment.

6. Storage of Junk Motor Vehicles.

a. Storage of junk motor vehicles on any property outside of a legally constructed building (minimum of three sides and a roof) is prohibited, except where the storage of up to six junk motor vehicles meets one of the following two conditions:

- (1) Any junk motor vehicle(s) stored outdoors must be completely screened by a sight-obscuring fence or natural vegetation to the satisfaction of the director (a covering such as a tarp over the vehicle(s) will not constitute an acceptable visual barrier). For the purposes of this section, "screened" means not visible from any portion or elevation of any neighboring or adjacent public or private property, easement or right-of-way; or
- (2) Any junk motor vehicle(s) stored outdoors must be stored more than two hundred fifty feet away from all property lines.

b. Environmental Mitigation Agreement. The owner of any such junk motor vehicle(s) must successfully enter into an environmental mitigation agreement with the department of community development (the "department") regarding the property where such vehicle(s) will be located or stored.

- (1) An environmental mitigation agreement between a property owner and the department is required before the outdoor storage of up to six screened junk motor vehicles will be approved. A property owner may enter into such agreement with the department for a one-time fee of \$10.00 per vehicle, the proceeds of which shall be used to assist with clean-up costs associated with the administration of Chapter 9.56.

(2) In order to mitigate any potential environmental impact from the storage of these junk motor vehicles, the property owner must agree to institute one of the following two preventative measures:

- i. Each junk motor vehicle must be drained of all oil and other fluids including, but not limited to, engine crankcase oil, transmission fluid, brake fluid and radiator coolant or antifreeze prior to placing the vehicle on site; or
- ii. Drip pans or pads must be placed and maintained underneath the radiator, engine block, transmission and differentials of each junk motor vehicle to collect residual fluids.
- iii. Either preventative measure shall require that the owner of such vehicle(s) clean up and properly dispose of any visible contamination resulting from the storage of junk motor vehicles. The agreement will require the property owner to select one of the two preventative measures and to allow for an initial inspection of the property by the department to assure that the preventative measure has been implemented to the satisfaction of the department. By entering into the agreement, the property owner further agrees to allow the department entry onto the property on an annual basis for reinspection to assure compliance with the approved agreement. If a property is found to be in compliance with the terms of the agreement for two consecutive inspections, the department may waive the annual inspection requirement. A property owner found to be in violation of the agreement may be issued a civil infraction pursuant to this title and could later be deemed a nuisance in accordance with Chapter 9.56.

7. Model Homes. Notwithstanding any other provision of this code, model homes may be constructed within a subdivision prior to final plat approval by the board. The purpose of the model homes shall be to demonstrate a variety of housing designs together with associated on-site improvements, e.g., landscaping, improved driveway, patios. Model homes shall be subject to the following requirements:

- a. The subdivision shall have received preliminary plat approval;
- b. One model home may be occupied as a temporary real estate office;
- c. A model home may not be occupied as a dwelling unit or sold until the approved final plat is recorded;

- d. The number of model home permits that may be issued for any approved preliminary plat or division thereof shall not exceed six;
 - e. If the lots to be used for model home purposes are in a block of two or more contiguous lots, temporary uses may be incorporated onto one or more lots, including temporary offices, parking, parks and playgrounds, subject to the approval of the director, and subject to obtaining a temporary use permit, which shall authorize the temporary uses for a period of one year. The director may extend the temporary use permit for up to two additional periods of six months each;
 - f. Lots used for model homes must be clear of restrictions or easements that may be subject to line changes before recording;
 - g. Stormwater management facilities must be in place and/or approved for recording. Temporary erosion control must be completed prior to occupancy of a model home;
 - h. Roads must be constructed to final alignment and grade such that the building inspector can determine if connecting driveways meet county standards prior to occupancy of a model home;
 - i. Permanent or temporary fire flow for the final plat must be approved by the fire marshal, constructed and operational prior to occupancy of a model home; and
 - j. Final plat restoration bonds must be posted prior to occupancy of a model home.
8. Guest Houses. Guest house may be located in those zones specified in Section 17.381.040 subject to the following conditions:
- a. Guest houses shall not exceed nine hundred square feet. Dimensions are determined by exterior measurements;
 - b. Guest houses shall not include any kitchen plumbing, appliances or provisions for cooking;
 - c. Guest houses shall not include more than one bathroom (may be full bathroom);
 - d. Guest houses shall not include more than two habitable rooms and a bathroom;
 - e. Guest houses shall not be rented separately from the primary residence;

- f. Only one guest house is allowed per parcel;
- g. No guest house is allowed on a parcel with an existing accessory dwelling unit or accessory living quarters;
- h. Newly constructed guest houses must meet the required setbacks for a single-family dwelling consistent with their zone. Legally established, existing structures built before May 7, 1998, may be remodeled into guest houses at their existing setback;
- i. Guest houses must be within one hundred fifty feet of the primary residence;
- j. Guest houses must use the same street entrance as the primary structure;
- k. Guest houses must meet all applicable health district standards for water provision and sewage disposal; and
- l. The property owner must record a notice to title outlining these conditions. This notice must be approved by the department and may not be extinguished without the county's written permission.

(Ord. 459-2010 § 2, 2010: Ord. 419 (2008) § 11, 2008: Ord. 415 (2008) § 148, 2008: Ord. 381 (2007) § 3, 2007: Ord. 367 (2006) § 105 (part), 2006)

This page of the Kitsap County Code is current through Ordinance 461 (2010), passed September 13, 2010.
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**Chapter 17.420
ADMINISTRATIVE CONDITIONAL USE PERMIT**

Sections:

- 17.420.010 Purpose and applicability.
- 17.420.020 Administrative conditional use permit procedure.
- 17.420.030 Previous use approval.
- 17.420.035 Third party review.
- 17.420.040 Decision criteria – Administrative conditional use permit.
- 17.420.050 Revision of administrative conditional use permit.
- 17.420.060 (Repealed)
- 17.420.070 (Repealed)
- 17.420.080 Transfer of ownership.
- 17.420.090 Land use permit binder required.
- 17.420.100 Effect.

17.420.010 Purpose and applicability.

The purpose of this chapter is to set forth the procedure and decision criteria for administrative conditional use permits. An administrative conditional use permit is a mechanism by which the county may place special conditions on the use or development of property to ensure that new development is compatible with surrounding properties and achieves the intent of the Comprehensive Plan. This chapter applies to each application for an administrative conditional use and to uses formerly permitted after site plan review.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.020 Administrative conditional use permit procedure.

- A. The department may approve, approve with conditions, or deny an administrative conditional use permit through a Type II process as set forth in Title 21 of this code.
- B. Applications for an administrative conditional use permit shall contain the information required by the submittal requirements checklist established by the department as set forth in Section 21.04.045.
- C. When an application is submitted together with another project permit application, the administrative conditional use permit shall be processed as set forth in Section 21.04.035.
- D. Upon a determination of a complete application, the director shall have fourteen calendar days to notify the applicant whether the application shall be reviewed administratively or by the hearing examiner at a scheduled public hearing. A public hearing will be required when a component of development located within a commercial zone involves the conversion of previously undeveloped land which abuts a residential zone. Further, the director may refer any proposal under this section to the hearing examiner for review and decision.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.030 Previous use approval.

Where, prior to December 11, 2006, approval was granted for establishing or conducting a particular use on a particular site through a site plan review process, such previous review and

use approvals are by this section declared to be continued as an administrative conditional use permit.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.035 Third party review.

The director may require a third party review from a technical expert to provide information necessary to support an administrative decision. The expert will be chosen from a list of prequalified experts prepared and kept current by an annual solicitation by the department. The applicant shall select the expert from a list of three names selected by the director from the larger pre-qualified list. The expert will be contracted to the county and report their findings to the director and the applicant. The cost of such report will be the responsibility of the applicant.

(Ord. 415 (2008) § 186, 2008)

17.420.040 Decision criteria – Administrative conditional use permits.

A. The department may approve, approve with conditions, or deny an administrative conditional use permit. Approval or approval with conditions may be granted only when all the following criteria are met:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements for the use set forth in this code;
3. The proposal is not materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.

B. The department may impose conditions to ensure the approval criteria are met.

C. If the approval criteria are not met or conditions cannot be imposed to ensure compliance with the approval criteria, the administrative conditional use permit shall be denied.

(Ord. 415 (2008) § 187, 2008; Ord. 367 (2006) § 110 (part), 2006)

17.420.050 Revision of administrative conditional use permits.

A. Revision of an administrative conditional use permit or of conditions of permit approval is permitted as follows:

1. Minor revisions may be permitted by the department and shall be properly recorded in the official case file. No revision in points of vehicular access to the property shall be approved without prior written concurrence of the director of the department of public works. Minor revisions shall be processed as a Type I application; and
2. Major revisions, including any requested change in permit conditions, shall be processed as a Type II application;

B. Minor and major revisions are defined as follows:

1. A "minor" revision means any proposed change which does not involve substantial alteration of the character of the plan or previous approval, including increases in gross floor area of no more than ten percent; and
2. A "major" revision means any expansion of the lot area covered by the permit or approval, or any proposed change whereby the character of the approved development will be substantially altered. A major revision exists whenever intensity of use is substantially increased, performance standards are reduced below those set forth in the original permit, detrimental impacts on adjacent properties or public rights-of-way are created or increased, including increases in trip generation of more than ten percent, or the site plan design is substantially altered.
3. Any increase in vehicle trip generation shall be reviewed to determine whether the revision is major or minor. The traffic analysis shall be filed by the applicant at the same time as the request for revision. The traffic analysis will follow Traffic Impact Analysis guidelines as set forth in Chapter 20.04.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.060 (Repealed)*

* **Editor's Note:** Former Section 17.420.060, "Vacation of administrative conditional use permit," was repealed by § 5(b) of Ord. 490 (2012). Section 110 (part) of Ord. 367 (2006) and § 188 of Ord. 415 (2008) were formerly codified in this section.

17.420.070 (Repealed)*

* **Editor's Note:** Former Section 17.420.070, "Revocation of permit," was repealed by § 5(c) of Ord. 490 (2012). Section 110 (part) of Ord. 367 (2006) and § 189 of Ord. 415 (2008) were formerly codified in this section.

17.420.080 Transfer of ownership.

An administrative conditional use permit runs with the land and compliance with the conditions of any such permit is the responsibility of the current owner of the property, whether that is the original applicant or a successor.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.090 Land use permit binder required.

The recipient of an administrative conditional use permit shall file a land use permit binder on a form provided by the department with the county auditor prior to initiation of any further site work; issuance of any development/construction permits by the county; or occupancy/use of the subject property or the building thereon for the use/activity authorized, whichever comes first. The binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the permit and as a notice to prospective purchasers of the existence of the permit.

(Ord. 367 (2006) § 110 (part), 2006)

17.420.100 Effect.

No building or other permit shall be issued until after the end of the period allowed to appeal the hearing examiner's decision. An appeal shall automatically stay the issuance of a building or other permit until such appeal has been heard and a decision rendered by the board of county commissioners.

(Ord. 415 (2008) § 190, 2008)

The Kitsap County Code is current through Ordinance 501 (2013), passed January 14, 2013.

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**Chapter 17.421
HEARING EXAMINER CONDITIONAL USE PERMIT**

Sections:

<u>17.421.010</u>	Purpose and applicability.
<u>17.421.020</u>	Hearing examiner conditional use permit procedure.
<u>17.421.025</u>	Third party review.
<u>17.421.030</u>	Decision criteria – Conditional use permit.
<u>17.421.040</u>	Revision of hearing examiner conditional use permits.
<u>17.421.050</u>	Vacation of hearing examiner conditional use permit.
<u>17.421.060</u>	Revocation of permit.
<u>17.421.070</u>	Transfer of ownership.
<u>17.421.080</u>	Land use permit binder required.
<u>17.421.090</u>	Effect.

17.421.010 Purpose and applicability.

The purpose of this chapter is to set forth the procedure and decision criteria for conditional use permits applications. A conditional use permit is the mechanism by which the county may gather input through an open record hearing and place special conditions on the use or development of land. The provisions of this chapter apply to hearing examiner conditional use permit applications.

(Ord. 367 (2006) § 111 (part), 2006)

17.421.020 Hearing examiner conditional use permit procedure.

A. The hearing examiner may approve, approve with conditions, or deny a hearing examiner conditional use permit through a Type III process as set forth in Title 21 of this code.

B. Applications for a hearing examiner conditional use permit shall contain the information required by the submittal requirements checklist established by the department as set forth in Section 21.04.045.

C. When an application is submitted together with another project permit application, the hearing examiner conditional use permit shall be processed as set forth in Section 21.04.035.

(Ord. 367 (2006) § 111 (part), 2006)

17.421.025 Third party review.

The director may require a third party review from a technical expert to provide information necessary to prepare a staff recommendation to the hearing examiner. The expert will be chosen from a list of pre-qualified experts prepared and kept current by an annual solicitation by the department. The applicant shall select the expert from a list of three names selected by the director from the larger pre-qualified list. The expert will be contracted to the county and report their findings to the director and the applicant. The cost of such report will be the responsibility of the applicant.

(Ord. 415 (2008) § 191, 2008)

17.421.030 Decision criteria – Conditional use permit.

A. The hearing examiner may approve, approve with conditions, or deny a hearing examiner conditional use permit. Approval or approval with conditions may be granted only when all the following criteria are met:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of this title;
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.

B. As a condition of approval, the hearing examiner may:

1. Increase requirements in the standards, criteria, or policies established by this title;
2. Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
3. Require structural features or equipment essential to serve the same purpose set forth in Chapter 17.382;
4. Include requirements to improve compatibility with other uses permitted in the same zone protecting them from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not, in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
5. Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
6. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
7. Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
8. Impose any requirement that will protect the public health, safety, and welfare.

C. If the approval criteria are not met or conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied.

(Ord. 415 (2008) § 192, 2008; Ord. 367 (2006) § 111 (part), 2006)

17.421.040 Revision of hearing examiner conditional use permits.

A. Revision of a hearing examiner conditional use permit or conditions of permit approval is permitted as follows:

1. Minor Revisions. Minor revisions may be permitted by the department. No revision in points of vehicular access to the property shall be approved without prior written concurrence of the director of the department of public works. Minor revisions shall be processed as a Type I application
2. Major revisions, including any requested change in permit conditions, shall be processed as a Type III application.

B. Minor and major revisions are defined as follows:

1. A "minor" revision means any proposed change which does not involve substantial alteration of the character of the prior approval, including dimensional or gross floor area increases of less than ten percent; and
2. A "major" revision means any expansion of the lot area covered by the permit or approval, or any proposed change whereby the character of the approved development will be substantially altered. A major revision exists whenever intensity of use is substantially increased, performance standards are reduced below those set forth in the original permit, detrimental impacts on adjacent properties or public rights-of-way are created or substantially increased, including increased trip generation of ten percent or more, or the site plan design is substantially altered, including dimensional or gross floor area increases of ten percent or more.

(Ord. 367 (2006) § 111 (part), 2006)

17.421.050 Vacation of hearing examiner conditional use permit.

A. Any conditional use permit issued pursuant to this chapter may be vacated by the current landowner upon county approval; provided, that:

1. The use authorized by the permit does not exist and is not actively being pursued; or
2. The use has been terminated and no violation of the terms and the conditions of the permit exists.

B. Landowner request for vacation of a conditional use permit shall be conducted as set forth in Title 21 of this code.

(Ord. 415 (2008) § 193, 2008; Ord. 367 (2006) § 111 (part), 2006)

17.421.060 Revocation of permit.

Any revocation proceeding shall be conducted in accordance with Chapter 17.525.

(Ord. 415 (2008) § 194, 2008; Ord. 367 (2006) § 111 (part), 2006)

17.421.070 Transfer of ownership.

A conditional use permit runs with the land and compliance with the conditions of any such permit is the responsibility of the current owner of the property, whether that is the original applicant or a successor.

(Ord. 367 (2006) § 111 (part), 2006)

17.421.080 Land use permit binder required.

The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit.

(Ord. 367 (2006) § 111 (part), 2006)

17.421.090 Effect.

No building or other permit shall be issued until after the end of the period allowed to appeal the hearing examiner's decision. An appeal shall automatically stay the issuance of a building or other permit until such appeal has been heard and a decision rendered by the board of county commissioners.

(Ord. 415 (2008) § 195, 2008)

The Kitsap County Code is current through Ordinance 501 (2013), passed January 14, 2013.

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**Chapter 17.455
INTERPRETATIONS AND EXCEPTIONS**

Sections:

- 17.455.010 Director authority to interpret code provisions and issue administrative decisions.
- 17.455.060 Existing uses.
- 17.455.080 Pending long or short subdivisions.
- 17.455.090 Temporary permits.
- 17.455.100 Number of dwellings per lot.
- 17.455.110 Obnoxious things.
- 17.455.120 Existing lot aggregation for tax purposes.

17.455.010 Director authority to interpret code provisions and issue administrative decisions.

It shall be the responsibility of the director himself/herself to interpret ambiguous and/or conflicting code and apply the provisions of this title, Kitsap County Countywide Planning Policies, Kitsap County Comprehensive Plan and applicable sub-area plans.

- A. The director may initiate an administrative code interpretation without an applicant request at any time, and the interpretation will be made available pursuant to Title 21 by the department with the development code to which it applies.
- B. Any person(s) may submit an application for code interpretations from the director and the interpretation will be made available by the department pursuant to Title 21 with the development code to which it applies.
- C. At the request of the applicant, in writing, the director may also authorize a variation of up to ten percent of any numerical standard, except density, when unusual circumstances cause undue hardship in the strict application of this title; provided, such a variance shall be approved only when all of the following conditions and facts exist:
 - 1. There are special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, that were not created by the applicant and do not apply to other property in the same vicinity or zone;
 - 2. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;

3. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and

4. The variance is the minimum necessary to grant relief to the applicant.

5. An approved variance shall become void in three years if a complete application has not been received. The director's response, including findings for granting the variation, shall be in writing and kept in the department files.

D. All code interpretations are binding and may be appealed by any party through the process pursuant to Title 21.

E. All code interpretations, hearings examiner decisions on such interpretations and board reviews shall be a permanent record of the department of community development and included in the Kitsap County Department of Community Development Policy Manual. Code interpretations shall be made available to the public and posted on the county website.

(Ord. 415 (2008) § 213, 2008; Ord. 256 (2001) § 2, 2001; Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

17.455.060 Existing uses.

A. Except as hereinafter specified, any use, building, or structure lawfully existing at the time of the enactment of this title may be continued, even though such use, building, or structure may not conform to the provisions of this title for the zone in which it is located. A use or structure not conforming to the zone in which it is located shall not be altered or enlarged in any manner, unless such alteration or enlargement would bring the use or structure into greater conformity with the uses permitted within, or requirements of, the zone in which it is located.

The hearing examiner shall review and approve requests for alteration or enlargement of the use or structure through the conditional permit review procedures as set forth in Chapter 17.420. In no case shall the enlargement of these uses be allowed beyond the limits of existing contiguously owned parcels at the time of the passage of the amended ordinance.

B. This section does not apply to any use, building, or structure established in violation of any zoning ordinance previously in effect.

All uses in existence occurring on a specific parcel of land which legally qualified as a permitted unclassified use under the provisions of any former Kitsap County zoning ordinance, shall continue as conforming uses after the effective date of this title, provided, however, in no case shall any use be allowed to expand into

adjoining or contiguous property without an approved zone change or conditional use permit, and further, any expansion on the original parcel shall comply with the standards contained in the zone within which the use is permitted.

(Ord. 415 (2008) § 214, 2008; Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

17.455.080 Pending long or short subdivisions.

Nothing herein shall require any change in the location, plans, construction, size or designated use of any residential plat, for which preliminary official approval has been granted prior to the adoption of this title.

(Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

17.455.090 Temporary permits.

The director may approve temporary permits, with conditions to mitigate negative impacts, valid for a period of not more than one year after issuance, for temporary structures or uses which do not conform to this title.

Upon the expiration of the temporary permit, the applicant shall have thirty days within which to remove and/or discontinue such temporary use structure.

Upon approval, temporary permits may be issued for the following uses or structures:

- A. Storage of equipment and materials during the building of roads or other developments;
- B. Temporary storage of structures for the housing of tools and supplies used in conjunction with the building of roads or other developments;
- C. Temporary office structures;
- D. Temporary housing/construction living quarters for personnel such as watchmen, labor crews, engineering, and management; provided:
 - 1. The building permit for the primary structure must have been issued;
 - 2. The temporary dwelling must not be permanently placed on the site;
 - 3. The temporary dwelling must meet the setback requirements of the zone in which it is located; and
 - 4. For the purpose of constructing a single-family dwelling, temporary living quarters (for example, a recreational vehicle) may be permitted only

in conjunction with a stick frame structure. This permit will remain active as long as the building permit for the single-family dwelling remains active.

E. Use of equipment essential to and only in conjunction with the construction or building of a road, bridge, ramp, dock, and/or jetty located in proximity to the temporary site; provided, that the applicant shall provide a construction contract or other evidence of the time period required to complete the project; and provided further, that the following equipment shall be considered essential to and in conjunction with such construction projects:

1. Portable asphaltic concrete-mixing plants.
2. Portable concrete-batching plants.
3. Portable rock-crushing plants.
4. Accessory equipment essential to the use of the aforementioned plants.

F. Temporary uses and structures otherwise permitted within the zone which will remain up to one hundred eighty days on an existing lot or parcel where compliance with an administrative conditional use permit and landscaping requirements are impractical.

G. Temporary uses and structures not specified in any zone classification subject to applicable provisions of the Kitsap County Code; provided, that such uses and structures may not be approved by the director for a period greater than ninety days.

H. The occupancy of a recreational vehicle (RV) for a period not to exceed three months subject to the following conditions:

1. The subject property must be located in the Rural Wooded (RW), Rural Protection (RP), or Rural Residential (RR) zones;
2. The RV must be occupied by the property owner or family member;
3. The RV must be provided with approved utilities including septic or sewer (health district approval), water, and electrical power;
4. The location of the RV must meet all setbacks required by the underlying zone;
5. The director may impose additional conditions as appropriate to ensure that the RV use is compatible with the surrounding properties;

6. The minimum RV size shall be two hundred square feet; and
 7. A permit will be required each time the RV is placed on a parcel. If the RV is placed on the same parcel each year the application fee will be half of the initial fee.
- I. Placement of a storage container on a property developed with single-family dwelling or properties with an active building permit for construction of a residential or commercial building is subject to the following conditions:
1. The container must meet all applicable setbacks for the zone; and
 2. The storage container may not be placed on site for more than ninety days; however, in instances where a building permit for a single-family dwelling or commercial development is active, the container may remain on site until thirty days after the permit expires or receives final inspection/certificate of occupancy.

(Ord. 415 (2008) § 215, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.100 Number of dwellings per lot.

Except as provided for elsewhere in this title, there shall be no more than one dwelling unit per lot.

(Ord. 415 (2008) § 216, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.110 Obnoxious things.

In all zones, except as provided for elsewhere in this title, no use shall produce noise, smoke, dirt, dust, odor, vibration, heat, glare, toxic gas or radiation which is materially deleterious to surrounding people, properties or uses. Lighting is to be directed away from adjoining properties. Not more than one foot candle of illumination may leave the property boundaries.

(Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.120 Existing lot aggregation for tax purposes.

For the purposes of this title, parcels which have been aggregated by the county for tax purposes shall be considered separate legally existing lots of record.

(Ord. 415 (2008) § 217, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

This page of the Kitsap County Code is current through Ordinance 461 (2010), passed September 13, 2010.
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**Chapter 17.460
NONCONFORMING USES AND STRUCTURES**

Sections:

- 17.460.010 Purpose.
- 17.460.020 Nonconforming uses of land.
- 17.460.030 Nonconforming structures.
- 17.460.040 Nonconforming uses of structures.

17.460.010 Purpose.

Unless specifically stated elsewhere in this title, a use lawfully occupying a structure or site on the effective date of this title or of amendments thereto which does not conform to the use regulations for the zone in which it is located, is deemed to be a non-conforming use and may be continued, subject to the regulations hereinafter.

(Ord. 281 (2002) § 11, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.460.020 Nonconforming uses of land.

A. The director may grant an application for a change of use if, on the basis of the application and the evidence submitted, the director makes the following findings:

1. That the proposed use is classified in a more restrictive category than existing or preexisting uses by the zone regulations of this title. The classifications of a nonconforming use shall be determined on the basis of the zone in which it is first permitted; provided, that a conditional use shall be a more restrictive category than a permitted use in the same category.
2. That the proposed use will not more adversely affect the character of the zone in which it is proposed to be located than the existing or preexisting use.
3. That the change of use will not result in the enlargement of the space occupied by a nonconforming use. Except that, a nonconforming use of a building may be extended throughout those parts of a building which were designed or arranged to such use prior to the date when such use of the building became nonconforming, provided that no structural alteration, except those required by the law, are made.

The decision of the director may be appealed to the hearing examiner.

B. Unless specifically stated elsewhere in this title, if a nonconforming use not involving a structure has been changed to a conforming use, or if the nonconforming use ceases for a period of six months or more, said use shall be considered abandoned, and said premises shall thereafter be used only for uses permitted under the provisions in the zone in which it is located.

C. A nonconforming use not involving a structure, or one involving a structure (other than a sign) having an assessed value of less than two hundred dollars, shall be discontinued within two years from the date of passage of this title.

D. A use which is nonconforming with respect to provisions for screening shall provide screening within five years from the date of passage of this title.

E. If an existing nonconforming use or portion thereof, not housed or enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the area of such use may not be expanded, nor shall the use or any part thereof, be moved to any other portion of the property not theretofore regularly and actually occupied for such use; provided, that this shall not apply where such increase in area is for the purpose of increasing an off-street parking or loading facility to the area specified in this title for the activity carried on in the property; and provided further that this shall not be construed as permitting unenclosed commercial activities where otherwise prohibited by this title.

(Ord. 281 (2002) § 12, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.460.030 Nonconforming structures.

A. A structure nonconforming to the dimensional standards of this title may not be altered or enlarged in any manner unless such alteration or enlargement would bring the structure into conformity with the requirements of the zone in which it is located; provided structural change may be permitted when required to make the structure safe for occupancy or use, provided structural enlargements may be allowed in conformity with the setback requirements of the zone in which it is located, and provided structural enlargements may be allowed if they would not further violate setback requirements, and provided further, that a nonconforming mobile home may be replaced notwithstanding the setback and density provisions of this title, so long as the structure does not further encroach upon any required yard.

B. A nonconforming structure may be maintained with ordinary care.

C. A mobile home and/or single-family residence located on a legal nonconforming lot, may be replaced if destroyed.

(Ord. 216 (1998) § 4 (part), 1998)

17.460.040 Nonconforming uses of structures.

A. Continuation of Nonconforming Use. Any nonconforming use of a structure which was lawfully established and which has been lawfully, actively and continually maintained, may be continued subject to the limitations of this section. In all proceedings other than criminal, the owner, occupant or user shall have the burden to show that the use or structure was lawfully established.

B. Change of Nonconforming Use. A nonconforming use may be changed to another non-conforming use so long as no structural alterations are needed to the structure in which the use is located; provided, any such change of use shall be to a use of equal or greater conformity to those permitted in the zone.

C. No Expansion of Nonconforming Use. A nonconforming use shall not be enlarged or expanded; provided, the structure containing the nonconforming use may be structurally altered to adapt to new technologies or equipment.

D. Expansion of Nonconforming Structures. A structure which is nonconforming by reason of substandard lot dimensions, setback requirements, lot area or a building height in excess of that which is permitted by this title but which does not contain non-conforming uses, may be enlarged or expanded so long as the enlargement or expansion conforms to the requirements of this title; provided, a structure may be expanded to the building line but it may never be expanded to encroach upon a street or be within five feet of a property line other than a street property line.

E. Destruction of Nonconforming Use or Structure. If any nonconforming use or structure is destroyed by any cause, it shall be allowed to be reconstructed or reinstated as a non-conforming use in a similar size and appearance within a period of one year from the date the use or structure was destroyed.

F. Discontinuance of Nonconforming Use or Structures. Any nonconforming use or structure for which the use or occupancy is discontinued for a period of one year shall not thereafter be allowed as a nonconforming use or structure.

(Ord. 216 (1998) § 4 (part), 1998)

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**Chapter 17.530
ENFORCEMENT**

Sections:

- 17.530.010 Authorization.
- 17.530.020 Penalties.
- 17.530.030 Nuisance.
- 17.530.040 Permit or license in violation.
- 17.530.050 Written assurance of discontinuance.

17.530.010 Authorization.

The director is authorized to enforce this title, and to designate county employees as authorized representatives of the department to investigate suspected violations of this title, and to issue orders to correct violations and notices of infraction.

(Ord. 216 (1998) § 4 (part), 1998)

17.530.020 Penalties.

The violation of any provision of this title shall constitute a Class I civil infraction. Each violation shall constitute a separate infraction for each and every day or portion thereof during which the violation is committed, continued or permitted. Infractions shall be processed in accordance with the provisions of the adopted Kitsap County Civil Enforcement Ordinance (Chapter 2.116 of this code).

(Ord. 216 (1998) § 4 (part), 1998)

17.530.030 Nuisance.

Any use, building or structure in violation of this title is unlawful, and a public nuisance. Notwithstanding any other remedy or means of enforcement of the provisions of this title, including but not limited to Kitsap County Code Chapter 9.56 pertaining to the abatement of public nuisances, the prosecuting attorney, any person residing on property abutting the property with the proscribed condition, and the owner or owners of land abutting the land with the proscribed condition may each bring an action for a mandatory injunction to abate the nuisance in accordance with the law. The costs of such a suit shall be taxed against the person found to have violated this title.

(Ord. 292 (2002) § 11, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.530.040 Permit or license in violation.

Any permit or license issued by the county which was not in conformity with provisions of the Zoning Ordinance then in effect is null and void.

(Ord. 216 (1998) § 4 (part), 1998)

17.530.050 Written assurance of discontinuance.

The director may accept a written assurance of discontinuance of any act in violation of this title from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this title.

(Ord. 216 (1998) § 4 (part), 1998)

The Kitsap County Code is current through Ordinance 501 (2013), passed January 14, 2013.

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(<mailto:openline@co.kitsap.wa.us>)

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DECLARATION OF SERVICE

I hereby certify that I served the foregoing **APPELLANT'S MOTION FOR LEAVE TO FILE AMENDED OPENING BRIEF** and **AMENDED BRIEF OF APPELLANT** on the following:

Neil R. Wachter
Kitsap County Prosecutor's Office
Civil Division
614 Division Street, MS-35A
Port Orchard, WA 98366

David S. Mann
Gendler & Mann, LLP
1424 Fourth Avenue, Suite 715
Seattle, WA 98101-2217

(Of Attorneys for Respondent Kitsap County)

(Of Attorneys for *Amicus Curiae* CK Safe & Quiet, LLC)

by the following method or methods:

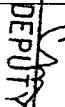
- by **mailing** a full, true and correct copy thereof in a sealed, first-class, postage pre-paid envelope, addressed to the last-known address of the party(ies) as shown above, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- by causing a full, true and correct copy thereof to be **hand-delivered** to the party(ies) at the last-known address listed above on the date set forth below.
- by sending a full, true and correct copy thereof via **overnight courier** in a sealed, prepaid envelope, addressed to the last-known address of the party(ies) as shown above, on the date set forth below.
- by **faxing** a full, true and correct copy thereof to the party(ies) at the fax number shown above, which is the last-known fax number of the party(ies), on the date set forth below. The receiving fax machine was operating at the time of service and the transmission was properly completed.
- by **emailing** a full, true and correct copy thereof to the party(ies) at the email addresses shown above, which are the last-known email addresses of the party(ies), on the date set forth below.

DATED: March 8, 2013

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE ABOVE IS TRUE AND CORRECT.

CHENOWETH LAW GROUP, PC


Angie Alcorn, Legal Assistant
Chenoweth Law Group, P.C.
510 SW Fifth Ave., Fifth Floor
Portland, OR 97204
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BY  DEPUTY

STATE OF WASHINGTON

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