No. 312135

(Kittitas County Superior Court
No. 082002490)

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

GARY WIVAG and SHERRY TRUMBALL,
d/b/a/ S&G LAND LTD.,

Appellants,

vs.

CITY OF CLE ELUM,

Respondent.

BRIEF OF APPELLANTS

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Attorneys for Appellants

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INTRODUCTION

Gary Wivag and Sherry Trumball, d/b/a/ S&G Land LTD, (collectively referred to hereafter as "Wivag") own and operate a business that engages in retail and consignment sales called the Trading Post in the City of Cle Elum. *See* CP 14. Wivag operates this business on his property ("Property"). However, this business essentially ended when the City of Cle Elum (City) forcefully entered Wivag's Property and removed and destroyed thousands of dollars' worth of inventory.

The City removed and destroyed Wivag's Trading Post inventory under the guise of executing a stipulated judgment entered in a case brought by Wivag against the City in January 2012. However, this was illegal as the City failed to comply with controlling statute statutes and local city ordinances which pertain to proper execution of judgments. Altogether, the City zealously destroyed Wivag's inventory without bothering to go through the proper legal procedures to do so. I then had the trial court command Wivag to reimburse the City for the costs it unnecessarily incurred in gutting his business.

Given these facts and the City's blatant disregard of controlling laws, the trial court's granting of the City's Motion for Supplemental Costs should be reversed and ultimately denied.

ASSIGNMENTS OF ERROR AND ISSUES RELATING TO ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The Trial Court Erred in Granting the City's Motion for Supplemental Judgment.

Issues:

1. Did the City violate RCW 6.17.070 by engaging in self-help in removing inventory from Wivag's property without a court order?

2. Did the City fail to comply with its own preconditions to enforcement of nuisance abatement?

STATEMENT OF THE CASE

On January 17, 2012, a Stipulated Judgment and Injunction in favor of the City ("Judgment") was entered in Kittitas Superior Court. CP 2. This Judgment stemmed from an action for nuisance abatement brought by the City against Wivag. *Id.* The City alleged that Wivag violated the Cle Elum Municipal Code (CEMC) by, *inter alia*, storing what it determined "junk" on his industrial-zoned property, thus transforming it into a "junkyard." CP 51. However, the hearing examiner disagreed, requiring that Wivag only install a site-obscuring fence in order to remove any potential visual nuisances from the property. CP 65. Wivag subsequently appealed the hearing examiner's decision to superior Court. This appeal ultimately culminated in the City and Wivag stipulating to a judgment regarding the alleged violations of the

CEMC still in dispute. CP 2. From this Judgment, Wivag was to do the following:

1. Pay the City $10,000.00 within three calendar days from entry of the Judgment;

2. File a complete application for a Conditional Use Permit pursuant to the Cle Elum Municipal Code by February 29, 2012; and,

3. Install a site obscuring fence along the entire frontage of the Property by March 31, 2012.

Id.

Immediately after the Judgment was entered, Wivag paid the required $10,000 to the City within the specified time period. CP 120. This satisfied the first of the actions required by the Judgment. On February 23, 2012, Wivag filed a Conditional Use Permit Application ("Application") with the City using its form. *Id.* This Application contained a description of Wivag's use and operation of the Property, two hand drawn maps depicting the location of Wivag's property as well as the buildings upon it, and a two-page narrative detailing Wivag's various businesses conducted on the Property. *Id.* At the time he submitted his Application, Wivag thought that it was complete and contained all the required documentation. *Id.* Two weeks after Wivag submitted his application, he spoke with City Administrator Matthew Morton who informed him that he believed Wivag's

application was missing certain elements. *Id.* By March 16th, Wivag sent in additional documentation. *Id.*

In spite of sending in the additional documentation, Wivag received a letter from the City informing him that his Application was incomplete. *Id.* This letter is undated, but is stamped "March 20, 2012" as if the City stamped it prior to sending. Wivag believes he received it the following day (March 21). This letter identified three areas determined to be incomplete within the Application. *Id.* However the letter provided no time period within which Wivag had to submit additional materials. The failure to specify a time period violates Cle Elum Municipal Code (CEMC) 17.100.060(A).[1] Nevertheless, Wivag had already provided this information to the City on March 16th. CP 120.

Also during the month of March, Wivag began preparations for the installation of a site-obscuring fence along the perimeter of his property. *Id.*

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[1] CEMC 17.100.060(A) states:

> Within twenty-eight days of receiving an application the city shall provide a determination of whether the application is complete for processing. If a determination is not made within the required twenty-eight days, the application shall be automatically deemed complete. If a determination is made that the application is incomplete the city shall clearly identify the necessary materials and **set a reasonable time period in which the applicant has to submit the additional items.** Following the submittal of additional items, the city shall notify the applicant within fourteen days whether the application is complete. If the submitted materials do not address the incompleteness the city may either request the additional information in the same manner as the first attempt or deny the application pursuant to subsection D. (emphasis added)

His preparations primarily included removal of the wire fence that was, at that time, surrounding the Property. *Id.* Unfortunately, Wivag was operating under the mistaken belief that he had until May to complete the construction of his fence. *Id.* He had this belief due to his reliance on a draft of the Judgment given to him during negotiations on stipulating to a judgment. The draft listed May 15th as the specified deadline for the construction of the fence. *Id., see also* CP 123.[2] Thus, by relying on the draft, Wivag mistakenly did not finish installing the fence by March 31st.

Around the last week in April 2012, Wivag received a letter from the City advising him that it would begin "abatement activity on Tuesday May 1" at his Property, citing authorization from the January 9th Judgment. CP 120, 127. The City attempted to justify this notice of abatement stating "[i]t is unfortunate that you chose not to comply with the terms of the Stipulated Judgment and Injunction." CP 127. The letter, however, contained no specific information as to what terms of the Judgment Wivag violated or any opportunity to remedy the situation before the abatement began. *See id.*

Until Wivag received the notice of abatement from the City, he believed that he was completely complying with the Judgment. CP 120. He received no previous notices or communications pertaining to the fact that he

[2] Please note that the Declaration of Gary Wivag (CP 119) mistakenly mislabeled the attached exhibits. Specifically, where Wivag refers to Exhibit B in his declaration, it should be Exhibit A. And where Wivag refers to Exhibit C, it should be Exhibit B.

had not yet started construction of his fence. *Id.* Indeed, he still believed up to the point he received the City's notice that he had until May 15th to complete his fence. *Id.* Nevertheless, after receiving this notice, Wivag immediately called his fencing company and had them completely install the site-obscuring fence within the following days. *Id.*

On May 1st, ***after the fence was installed***, the City showed up to Wivag's Property with a fleet of vehicles. CP 121. In spite of the presence of the newly constructed site-obscuring fence, the City proceeded to remove Wivag's inventory. *Id.* When Wivag asked to see a warrant, none was provided. *Id.* By the end of the day, the City removed Wivag's entire inventory—worth tens of thousands of dollars—completely gutting his business. *Id.* The City also removed and destroyed business records, including copies of tax returns, as well as personal documents such as vehicle titles and loan information. Shortly thereafter, Wivag was forced to close his business operations. *Id.*

To add insult to injury, the City subsequently brought a motion for supplemental judgment, seeking $13,519.49 in costs for the forceful removal of Wivag's inventory. CP 32. In spite of Wivag's opposition that the City improperly executed the judgment, the trial court granted the City's motion for supplemental judgment on September 24, 2012. CP 129. This appeal follows.

ARGUMENT

I.

STANDARD OF REVIEW

This Court conducts a *de novo* review of "a trial court's legal conclusions, including its statutory interpretation(s)." *Vance v. XXXL Dev., LLC*, 150 Wn. App. 39, 41 (2009) (citing *Am. Legion Post No. 32 v. City of Walla Walla,* 116 Wn.2d 1, 5 (1991)). Additionally, this Court reviews an "agency's factual findings under the substantial evidence standard." *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176 (2000). "Under the substantial evidence standard, there must be a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true." *Id.* (citations omitted).

The issues on appeal here should are entirely legal in nature and should be reviewed *de novo* by this Court as they involve the interpretation of and the conformance with state statutes and local city ordinances. *See Sleasman v. City of Lacey*, 159 Wn.2d 639, 642 (2007).

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II.

THE CITY IMPROPERLY EXECUTED THE JUDGMENT AGAINST WIVAG, IN VIOLATION OF RCW 6.17.070

RCW 6.17.060 identifies three ways to accomplish execution upon a judgment:

> (1) First, against the property of the judgment debtor;
>
> (2) Second, for the delivery of the possession of real or personal property or such delivery with damages for withholding the same; and
>
> (3) Third, **commanding the enforcement of or obedience to any other order of the court**.

(numbering, spacing and emphasis added); *see also* Appendix A. The first provision of RCW 6.17.060 originally applied to Wivag because he was a judgment-debtor for $10,000. CP 41. However, after he paid this amount, his judgment-debtor status ceased. CP 120.

The second provision does not apply to Wivag as the Judgment did not involve the delivery of real or personal property. *See* CP 41. Pertaining to the third option, this "kind of execution permits service of a certified copy of the judgment on the person against whom the judgment was entered or to whom it was directed, together with a writ of execution commanding obedience to or enforcement of the judgment...." Marjorie D. Rombauer, 28 WASHINGTON PRACTICE: Creditors' Remedies – Debtors'

Relief § 7.41, Kinds of Execution (2012). This third option directly applies to Wivag and the enforcement of the Judgment.

After a writ of execution is served, if the person against whom the judgment was entered disobeys or otherwise does not comply with the judgment, said person is subject to RCW 6.17.070 which states:

> When a judgment of a court of record requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given or the person or officer who is required by the judgment or by law to obey the same, and **a writ may be issued** commanding the person or officer to obey or enforce the judgment. **Refusal to do so may be punished by the court as for contempt.**

Id. (emphasis added); *see also* Appendix A.

RCW 6.17.070 specifically identifies the issuance of a writ and then "contempt" as being the remedial course of action for the disobedience of a court order and gives no authorization for self-help execution. *See id.* Indeed, the court's civil contempt power is the primary vehicle for ensuring compliance with a court order: "The primary purpose of the civil contempt power is to coerce a party to comply with an order or **judgment**." *Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 105 (2002) (citation omitted) (emphasis added); *see also King v. Dep't of Soc. & Health Services*, 110 Wn.2d 793, 800 (1988) ("the purpose of a civil

contempt sanction is to coerce future behavior that complies with a court order.").

To bring an action for contempt, the aggrieved party must file a motion to the court. RCW 7.21.030(1); Appendix A. When the action or inaction triggering the motion for contempt occurs outside of the court room, the contemnor must be afforded notice and hearing before the court may enforce an order of contempt. *Id.* At this hearing, the court may conduct review hearings to determine whether the contemnor has complied with requirements imposed at previous hearings. *See State ex rel. Shafer v. Bloomer*, 94 Wn. App. 246 (1999).

During this review, the party seeking a finding of contempt has the burden of proving the contemptuous conduct by a preponderance of the evidence. *In re Marriage of James*, 79 Wn. App. 436 (1995). Even if a person is found in contempt, he/she must be afforded the opportunity to "purge" the contempt charge by complying with the original order within a reasonable time. *See State ex rel. Shafer v. Bloomer*, 94 Wn. App. 246, 253 (1999) (An order of remedial civil contempt must contain a purge clause under which a contemnor has the ability to avoid a finding of contempt and/or incarceration for non-compliance).

Applying these clear rules to this case, the City failed to both serve a writ of execution and failed to bring an action of contempt against

Wivag for his alleged violations of the Judgment, as is required. Rather, the City engaged in self-help, forcefully removing inventory and other items from Wivag's Property under the guise of executing the Judgment, and incurred completely avoidable and unnecessary costs.

In fact, the City willfully ignored that, at the time it arrived at Wivag's Property on May 1, 2012, the site-obscuring fence had been fully constructed—fulfilling the last remaining command of the Judgment. CP 120-121. The presence of this fence, in tandem with Wivag's pending conditional use permit,[3] and the payment of $10,000,[4] removed any need for enforcement. And yet, in spite of this fact, the City proceeded anyway. The City admits claims it "fundamentally…wanted [Wivag's] property cleaned up," regardless of whether or not he was in compliance with the judgment. *See* Verbatim Report of Proceedings, at p. 3. However, the record suggests a more retributive motive. *See* CP 121.

While Wivag readily admits that he misunderstood the date by which he had to construct the site-obscuring fence,[5] failure to comply by this date did not authorize the City to proceed in the manner that it did. In fact, had the City gone through the proper channels of serving a writ—which would have alerted Wivag to the new timeline for a fence—Wivag

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[3] CP 120
[4] *Id.*
[5] CP 120-121

would have constructed the fence even sooner, thereby removing any visible nuisance.[6]

Instead, Wivag explained: "the City ignored everything I did to comply with the judgment and seemed more concerned with putting me out of business than actually enforcing city codes." CP 121. Such a statement is bolstered in two ways: first by the fact that the City did not inform Wivag of his noncompliance or violation of the Judgment until approximately five days prior to its notice of abatement on May 1st; and second, because the City was only concerned with a site-obscuring fence to hide what it unilaterally designated as "junk" from public view. Verbatim Report of Proceedings, p. 3. If the City were truly concerned with abating the visual nuisance, it would not have expended thousands of dollars to remove materials that were already obscured from public view.

Simply put, Wivag endeavored to comply as best as he could with the Judgment. He paid the $10,000 fine, applied for a conditional use permit, and installed a site-obscuring fence. The fact that the fence was not installed by a certain date does not erase Wivag's substantial compliance with the Judgment in good faith. That being said, at the moment the City realized or discovered Wivag's noncompliance with the

[6] This is evidenced by the fact that, as soon as Wivag discovered he was out of compliance with the Order, he "contacted a fencing company and had a complete site-obscuring fence installed within two days" after receiving said notice. CP 121.

Judgment, its ***only*** avenue of redress was to issue a writ and then bring a motion for contempt if necessary—not engage in self-help. RCW 6.17.070; Appendix A. That avenue clearly would have avoided the more than $13,000 cost to the City and the taking and disposal of tens of thousands of dollars in inventory and personal and business records from Wivag.

At oral argument in front of the trial court below, the City only fleetingly addressed these rules above, only to ultimately state that it was "an injunction [it] was enforcing, not a judgment" and thus it did not need to comply with state statutes pertaining to execution of judgments—*i.e.* RCW 6.17.070. Verbatim Report of Proceedings, p. 4. However, this statement is completely contrary to both the City's own Motion for Supplemental Judgment and the Stipulated Judgment as well.

Specifically, in its Motion for Entry of Supplemental Judgment, the City states that it was seeking to recoup the total costs and fees "incurred by the City for conducting the **abatement action**" and in no place mentions that it was merely enforcing an injunction. CP 33. Furthermore, the Stipulated Judgment and Injunction itself states that, in the event that Wivag failed to complete all the required actions within the order, the City was authorized to abate the public nuisances "consistent with the Cle Elum Municipal Code and state law." CP 6. Ultimately, the

City's contention at oral argument that it was somehow merely enforcing an *injunction* is belied by the clear language of both its own motion and its underlying order.

Nevertheless, even if the Court accepts that the City was merely enforcing an injunction, the City still failed to go through legal steps to enforce the injunction. Specifically, RCW 7.40.150 provides:

> Whenever it shall appear to any court granting a restraining order or an **order of injunction**, or by affidavit, that any person **has willfully disobeyed the order** after notice thereof, such court shall award an attachment for **contempt** against the party charged, or an order to show cause why it should not issue. The attachment or order shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by him or her.

Id. (emphasis added). RCW 7.40.150 plainly requires contempt proceedings to enforce an injunction just as RCW 6.17.070 plainly requires contempt proceedings to enforce a judgment. Failure to comply with an injunction does not allow the other party to take matters in its own hands without judicial oversight. In the end, state law requires that the court be involved to ensure that the parties are not enforcing court orders improperly.

In the end, the City's failure to bring a motion for contempt to enforce the Judgment and engaging in self-help, violated the controlling statutes and violated Wivag's rights. Indeed, failing to bring a motion for

contempt led to the unneeded expenditure of more than $13,000 which the City is now, unabashedly, seeking to recover from Wivag. In a word, Wivag should not be punished due to the City's oversight by being forced to compensate the City for violating his rights. Therefore, the trial court's ruling, granting the City's motion for supplemental costs, should be reversed and ultimately denied.

III.

IN THE ALTERNATIVE, THE CITY FAILED TO COMPLY WITH ITS OWN PRECONDITIONS TO ENFORCEMENT OF NUISANCE ABATEMENT

If this Court finds that the City did not violate RCW 6.17.070 by failing to serve a write of execution and move for contempt after Wivag allegedly violated the Judgment, the City nevertheless failed to comply with the required preconditions to abate a nuisance. Failure to follow these enforcement preconditions ultimately resulted in improperly taking and destroying Wivag's inventory and business records.

RCW 7.48.250 provides that anyone convicted of erecting, causing or contriving a public or common nuisance, "shall be punished by a fine not exceeding one thousand dollars, and the court with or without such fine, may order such nuisance to be abated, and issue a warrant...." *Id.*; *see also* Appendix A. Specifically pertaining to the warrant for

abatement, RCW 7.48.260 outlines the process by which such a warrant is issued:

> When, upon indictment or information, complaint or action, any person is adjudged guilty of a nuisance, if it be in superior court the court may in addition to the fine imposed, if any, or to the judgment for damages or costs, for which a separate execution may issue, order that such nuisance be abated, or removed at the expense of the defendant, and **after inquiry into and estimating, as nearly as may be, the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor**...

RCW 7.48.260 (emphasis added); *see also* Appendix A. Stated another way, if a party is found guilty of nuisance, the court may issue a warrant to abate the nuisance, but only *after* inquiry into estimating the cost to defray the expenses of the abatement. *See id.* However, the court may allow the defendant to stay the warrant, provided that he or she enters into a bond conditioned upon the defendant's cure of the nuisance within no longer than six months' time. RCW 7.48.270; Appendix A.

The City has codified similar code provisions within its municipal code, mirroring their RCW counterparts. CEMC 8.12.070 requires the issuance of a warrant before the nuisance can be abated. *See* Appendix B. CEMC 8.12.080 also requires that there be an inquiry into, and the estimation of, the sum necessary to defray the expense of the abatement before the warrant can be issued. *See* Appendix B. Finally, CEMC

8.12.090 allows the defendant to post a bond in lieu of execution of the warrant for abatement. *See* Appendix B.

Altogether, both the applicable RCWs and CEMCs provide a clear set of preconditions to the enforcement of nuisance abatement. These provisions ensure that both the public's and defendant's rights are considered and protected while addressing a public nuisance.

Unfortunately, for the City's own reasons,[7] the City chose to ignore these clear procedures, instead opting to unilaterally engage in abatement activities on Wivag's property. At the time of the abatement, Wivag was never given a copy of the warrant, nor was he afforded the opportunity to stay the warrant of abatement as allowed under both RCW 7.48.270 and CEMC 8.12.090. *See* CP 121. This is because ***no warrant existed*** authorizing the City to engage in abatement activities. *Id.* Absent a warrant issued from the Court, the City was not authorized to remove Wivag's inventory from his Property. As such, this key fact both fatally undermines the City's pending Motion for Supplemental Judgment and opens up a slew of potential constitutional violations made by the City.

In light of its clear violations of state statutes and city codes, the City may attempt to point to the original Judgment, asserting that it alone provided it with the authorization to proceed with abatement activities on

[7] *See* CP 121.

Wivag's property. However, this argument is flawed as the Judgment contained no inquiry into and estimation of, the sum necessary to defray the expenses of abatement as required under both RCW 7.48.260 and CEMC 8.12.080. Indeed, the Judgment also provides no way for Wivag to post a bond in lieu of execution of a warrant for abatement as prescribed under RCW 7.48.270 and CEMC 8.12.090. As such, the Judgment could not provide the warrant-like authorization required to abate the Property.

The City was required to serve a writ before it sought to execute the judgment. The City also violated the applicable RCW's and CEMC's requiring it to adhere to the preconditions to enforcement for abatement proceedings. Ultimately, for these reasons the City's expenditure of over $13,000 was improper as it was not authorized to conduct abatement proceedings in the first place.

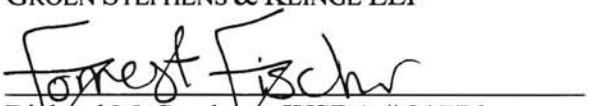
CONCLUSION

The Stipulated Judgment and Injunction signed by Wivag and the City stated that if Wivag did not comply with the stipulated corrective actions, the City was authorized to abate the public nuisance "***consistent with Cle Elum Municipal Code and state law***." CP 6 (emphasis added). As demonstrated above, the City ignored the controlling CEMC's and RCW's when it engaged in abatement activities on Wivag's property. The trial court erred in granting the City's motion for supplemental judgment in spite of

these glaring issues. Accordingly, the trial court should be reversed and the City's Motion for Supplemental Judgment should be denied.

RESPECTFULLY submitted this 5th day of April, 2013.

GROEN STEPHENS & KLINGE LLP

By: 

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APPENDIX A

MATERIAL PORTIONS OF CITED RCW'S

RCW 6.17.060: Kinds of execution.

There shall be three kinds of executions: First, against the property of the judgment debtor; second, for the delivery of the possession of real or personal property or such delivery with damages for withholding the same; and third, commanding the enforcement of or obedience to any other order of the court. In all cases there shall be an order to collect the costs.

[1987 c 442 § 406; 1929 c 25 § 3; RRS § 511. Prior: Code 1881 § 327; 1877 p 68 § 331; 1854 p 176 § 244. Formerly RCW 6.04.020.]

RCW 6.17.070: Execution in particular cases.

When any judgment of a court of this state requires the payment of money or the delivery of real or personal property, it may be enforced by execution. When a judgment of a court of record requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given or the person or officer who is required by the judgment or by law to obey the same, and a writ may be issued commanding the person or officer to obey or enforce the judgment. Refusal to do so may be punished by the court as for contempt.

[1987 c 442 § 407; 1957 c 8 § 1; 1929 c 25 § 1; RRS § 512. Prior: Code 1881 § 326; 1877 p 68 § 330; 1854 p 176 § 244. Formerly RCW 6.04.030.]

RCW 7.21.030: Remedial sanctions — Payment for losses.

(1) The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

[2001 c 260 § 6; 1998 c 296 § 36; 1989 c 373 § 3.]

RCW 7.48.250: Penalty — Abatement.

Whoever is convicted of erecting, causing or contriving a public or common nuisance as described in this chapter, or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be punished by a fine not exceeding one thousand dollars, and the court with or without such fine, may order such nuisance to be abated, and issue a warrant as hereinafter provided: PROVIDED, That orders and warrants of abatement shall not be issued by district judges.

[1987 c 202 § 136; 1957 c 45 § 1; Code 1881 § 1248; 1875 p 81 § 14; RRS § 9925.]

RCW 7.48.260: Warrant of abatement.

When, upon indictment or information, complaint or action, any person is adjudged guilty of a nuisance, if it be in superior court the court may in addition to the fine imposed, if any, or to the judgment for damages or costs, for which a separate execution may issue, order that such nuisance be abated, or removed at the expense of the defendant, and after inquiry into and estimating, as nearly as may be, the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor: PROVIDED, That if the conviction was had in a district court, the district judge shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein.

[1987 c 202 § 137; 1957 c 45 § 2; Code 1881 § 1249; 1875 p 81 § 15; RRS § 9926, part. FORMER PARTS OF SECTION: Code 1881 § 1250; 1875 p 81 § 16.]

RCW 7.48.270: Stay of warrant.

Instead of issuing such warrant, the court may order the same to be stayed upon motion of the defendant, and upon his or her entering into a bond in such sum and with such surety as the court may direct to the state, conditioned either that the defendant will discontinue said nuisance, or that within a time limited by the court, and not exceeding six months, he or she will cause the same to be abated and removed, as either is directed by the court, and upon his or her default to perform the condition of his or her bond, the same shall be forfeited, and the court, upon being satisfied of such default, may order such warrant forthwith to issue, and an order to show cause why judgment should not be entered against the sureties of said bond.

[2011 c 336 § 220; 1957 c 45 § 3; Code 1881 § 1251; 1875 p 81 § 17; RRS § 9927.]

APPENDIX B

MATERIAL PORTIONS OF CITED CEMC'S

CEMC 8.12.070 Violation--Penalty.

Whoever is convicted of erecting, causing, maintaining, contriving or carrying on a nuisance in the city, as described in this chapter, or of aiding or abetting the same, shall be punished by a fine not exceeding three hundred dollars or imprisoned for not more than ninety days, or both fined and imprisoned; and the city police judge, with or without such fine or imprisonment, may order the nuisance to be abated, and issue a warrant as provided in this chapter.

(Ord. 517 § 7, 1956)

CEMC 8.12.080 Violation--Abatement.

When any person is adjudged guilty of erecting, causing, maintaining, contriving or carrying on a nuisance, the city police judge may, in addition to the fine or imprisonment, if any is imposed, order that the nuisance be abated or removed, at the expense of the defendant, and after inquiry into and estimating, as nearly as may be, the sum necessary to defray the expense of the abatement, the police judge may issue a warrant therefor.

(Ord. 517 § 8, 1956)

CEMC 8.12.090 Violation--Bond.

Instead of issuing such warrant, the city police judge may order the issuance thereof stayed upon motion of the defendant, and upon the defendant's entering into a bond to the city in such sum and with such surety as the police judge may direct, conditioned either that the defendant will discontinue the nuisance, or that within a time limited by the police judge, and not exceeding six months, he will cause it to be abated or removed, as either is directed by the judge, and upon his default to perform the condition of his bond, it shall be forfeited, and the police judge, upon being satisfied of the default, may order the warrant forthwith to issue, and issue a rule to show cause why judgment should not be entered against the sureties on the bond. The expense of abating a nuisance by virtue of a warrant shall be collected in accordance with procedure similar to that prescribed in Section 7.48.280 of the Revised Code of Washington.

(Ord. 517 § 9, 1956)

DECLARATION OF SERVICE

I, Linda Hall, declare:

I am a citizen of the United States, a resident of the State of Washington, and an employee of Groen Stephens & Klinge LLP. I am over twenty-one years of age, not a party to this action, and am competent to be a witness herein.

On April 8, 2013, I caused a true and correct copy of the foregoing document to be served on the following person via the following means:

Michael R. Kenyon KENYON DISEND PLLC 11 Front Street South Issaquah, WA 98027-3820	☐ Legal Messenger ☒ First Class U.S. Mail ☐ Federal Express Overnight ☒ E-Mail: Mike@KenyonDisend.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 8th day of April, 2013 at Bellevue, Washington.

Linda Hall