

**CITY OF KIRKLAND  
HEARING EXAMINER FINDINGS,  
CONCLUSIONS AND DECISION AND ORDER**

In the Matter of the Notice of Civil  
Violation Issued To

File Number:  
**ENF11-109**

**GLENNA HART**

By the City of Kirkland, Department of  
Planning and Community Development

**Introduction**

The Department of Planning and Community Development issued a Notice of Civil Violation to Glenna Hart for an unsafe building.

The matter was heard by the undersigned Hearing Examiner (Examiner) on July 21, 2011, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. No one appeared on behalf of Ms. Hart. The Department of Planning and Community Development (Department) was represented by Craig Salzman, Code Enforcement Officer. The Department's Memorandum and three attachments, including the June 21, 2011 Notice of Civil Violation and photographs, was entered into the record as Exhibit A. The Examiner visited the site prior to the hearing.

For purposes of this decision, all section numbers refer to the Kirkland Municipal Code (KMC or Code) unless otherwise indicated. Having considered the evidence in the record and visited the site, the Examiner enters the following findings of fact, conclusions and decision on the Notice of Civil Violation.

**Findings of Fact**

1. The subject property is addressed as 11608 Northeast 145th Street in Kirkland and was annexed into the City on June 1, 2011. The property is improved with a detached single-family residence. King County records show that the property is owned by Glenna Hart.
2. When the property was annexed to the City, the Department received a complaint that had been filed with King County concerning the condition of the property. A Code Enforcement Officer inspected the property on June 9, 2011. He found that the wooden entry walkway to the residence had large holes in it, a window next to the front door was broken, a second-floor deck had separated from the residence, the outside of the garage was marked with graffiti and the backyard was completely overgrown. He also found a vehicle in the driveway that had not been licensed since 1997.

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3. Neighbors reported that the property owner moved out over a year ago, the glass in a sliding door at the rear of the residence is broken, and people have been seen entering the property.

4. The Code Enforcement Officer issued a Notice of Civil Violation for the subject property on June 19, 2011. This was replaced with a Notice of Civil Violation issued on June 21, 2011 which included clarifications. The Notice states that the property is in violation of the Kirkland Property Maintenance Code, Chapter 21.41 KMC, which is a part of the Building and Construction Code, and cites violations of the following specific code sections: KMC 21.41.108.1.5, "Dangerous structures or premises" (now codified as 21.41.108(a)(5)); KMC 21.41.108.2, "Closing of Vacant Structures" (now codified as 21.41.108(b)); KMC 21.41.109.1, "Imminent danger" (now codified as 21.41.109(a); KMC 21.41.301.3, "Vacant Structures and Land" (now codified as 21.41.301(a); and KMC 21.41.304.1.1(5), "Exterior structure" (now codified as 21.41.304(a)(1)(E)). The Notice also states that it is for a "First Violation," and sets a hearing date of July 21, 2011 on the violation.

5. The Notice of Civil Violation was posted on the property on the \_\_\_\_\_ date it was issued. It was also sent to the property owner by certified mail and regular mail. The Notice sent by certified mail was returned unclaimed. The Notice sent by regular mail was returned with a stamp indicating that it could not be forwarded.

6. The Department requests as corrective action that Ms. Hart be ordered to secure the property from trespass immediately, provide ongoing maintenance on the site, and either remove the vehicle from the property or move it into the garage. The Department also requests monetary penalties of \$100 per day from the date of compliance set by the Examiner until the violation is certified as corrected.

7. KMC 1.12.010 states that the purpose of Chapter 1.12, the Code Enforcement chapter, is to "establish an efficient system to enforce the regulations of the city". "Regulation" is defined to include Title 21 KMC, the Building and Construction Code.

8. Article III of the Chapter 21.41 KMC, is entitled "General Requirements" and includes KMC 21.41.301(c), which was cited in the Notice. That subsection requires that "[a]ll vacant structures ... shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety."

9. The Notice also cited KMC 21.41.304(a)(1)(E). KMC 21.41.304(a), "General," requires that the "exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare." KMC 21.41.304(a)(1), "Unsafe Conditions," states that the "following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing

buildings: ... (E) Structural members that have evidence of deterioration or that are not capable of safely supporting all nominal loads and load effects".

10. KMC 1.12.040.C provides that when a Notice of Civil Violation is issued, it is to be served upon the person to whom it is directed either personally or by mailing a copy to that person's last known address. This subsection also sets forth the circumstances under which service can be accomplished by posting on the property. It then states that "[p]roof of service *shall be made* by a written declaration under penalty of perjury executed by the person effecting service, declaring the time and date of service, the manner by which the service was made, and if by posting[,] the facts showing that due diligence was used in attempting to serve the person personally or by mail." (Emphasis added.)

11. KMC 1.12.050.C states that the Department has the burden of proving "by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable." The Examiner is required to accord substantial weight to the Department's determination concerning the need for corrective action. *Id.*

12. KMC 1.12.050.E states that if "the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order finding that the violation [occurred] and assessing the appropriate monetary penalty. The city will carry out the hearing examiner's order and recover all related expenses plus the cost of the hearing and any monetary penalty from that person."

13. KMC 1.12.040.E provides that the monetary penalty for a first violation is \$100 per day, and that the Examiner may double the monetary penalty if the violation is a repeat violation.

### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Kirkland Municipal Code 1.12.050.

2. Although the record does not include the written declaration of service required by KMC 1.12.040.C, the Code Enforcement Officer provided sworn testimony concerning the time, date and manner of service and efforts to determine Ms. Hart's whereabouts. In this instance the Examiner will accept that testimony as substantial compliance with the Code. However, because the written declaration was not provided, the Examiner has not entered the summary order that is anticipated by KMC 1.12.050.E when a person fails to appear at a scheduled hearing on a notice of civil violation.

3. The preponderance of the evidence clearly shows that conditions on the subject property are unsafe, in violation of KMC 21.41.304(a)(1)(E), and that because the property is not being kept in a safe, secure condition, and therefore adversely affects the public health and safety, it also violates KMC 21.41.301(c).

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4. The other Code sections cited in the Notice of Civil Violation are included in regulations that govern condemnation of structures by the code official (KMC 21.41.108) and emergency measures to be taken by the code official when a building or structure presents an imminent danger (KMC 21.41.109). When the code official condemns a structure pursuant to the procedures set forth in KMC 21.41.108, or takes emergency measures pursuant to the procedures set forth in KMC 21.41.108, a person affected by the actions may appeal to the Examiner pursuant to Chapter 1.12 KMC. *See* KMC 21.41.108(c); KMC 21.41.107; and KMC 21.41.109(f). However, in this case, the code official chose to follow the Notice of Civil Violation process, rather than condemning the structure or taking emergency measures to demolish or remove it. Therefore, the Examiner has not considered KMC 21.41.108(a)(5), KMC 21.41.108(b), or KMC 21.41.109(a).

5. The Examiner does not address the matter of the vehicle on the subject property because notice of it was not included in the Notice of Civil Violation.

6. The Department's request for corrective action, with the exception of the request that the vehicle be moved to the garage or off the property, is reasonable.

**Decision and Order**

The Notice of Civil Violation issued to Glenna Hart on June 21, 2011 is affirmed.

In accordance with KMC 1.12.050.D.2, it is ordered that:

1. No later than 5:00 p.m. on August 15, 2011, Glenna Hart shall secure the premises from trespass and provide for ongoing maintenance of the site in accordance with KMC 21.41.301(c), and shall contact the Department for certification that the violation has been corrected.
2. If the violation is not corrected by the required date and time, the Department may abate the violation and recover the costs and incidental expenses for the abatement from Glenna Hart, in accordance with KMC 1.12.060.
3. Glenna Hart shall also incur a penalty of \$100 per day for each day after August 15, 2011 that the violation remains uncorrected until correction is certified by the Department or the Department abates the violation.
4. The Department shall post a copy of this Decision and Order in a conspicuous place on the subject property within 24 hours of receiving it from the Hearing Examiner.

Entered this 25<sup>th</sup> day of July, 2011.

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Sue A. Tanner, Hearing Examiner

**Concerning Further Review**

KMC 1.12.050.F provides that “An appeal of the decision the hearing examiner must be filed with superior court within 21 calendar days from the date the hearing examiner’s decision was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred.”