

## **FINDINGS AND DECISION OF THE HEARING EXAMINER FOR THE CITY OF KIRKLAND**

In the Matter of the Appeal of

**JOEL VAN ORNUM**

from a decision on an application for  
a refuse disposal permit issued by the  
Director of the Public Works Department

### **Introduction**

The Public Works Director issued a decision denying an application for a refuse disposal permit and the applicant appealed the decision, as provided in Chapter 16.08 Kirkland Municipal Code.

The appeal hearing was held on December 6, 2011 before the Hearing Examiner (Examiner). The Appellant, Joel Van Ornum, represented himself, and the Department of Public Works (Department) was represented by John MacGillivray, Solid Waste Programs Lead.

After considering the evidence in the record, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

### **Findings of Fact**

1. The Appellant's property in the Finn Hill area was recently annexed to the City of Kirkland. He and his spouse also own a condominium in Kenmore, and he owns a business in Bothell. Both of them travel extensively in their work. They reside in the Finn Hill house most weekday evenings, but spend most weekends at the Kenmore condominium.
2. The Appellant pays for curbside refuse pickup for the Kenmore condominium and the business in Bothell. Prior to the annexation, he had not had garbage service at the Finn Hill residence for several years.
3. On September 14, 2011, the Appellant contacted the Department concerning garbage service at the Finn Hill residence. He agreed that he and his spouse did produce garbage at the residence but asked for an exemption to required curbside service because the amount of garbage was small and could be disposed of at his Bothell office or Kenmore condominium. He was informed that the only possible exemption would be through application for an "owner's permit" under KMC 16.08.120.

4. The Appellant applied for an owner's permit, exhibit 1, which was investigated by the Department. The route manager for the garbage contractor surveyed the Finn Hill property and determined that it was easily accessible for garbage service. Exhibit 2. The Department therefore denied the Appellant's application, exhibit 2, and this appeal followed. Exhibit 3.

5. The average water usage for a residential use in Kirkland over a two-month period is 11 CCF. If a residential water customer uses less than an average of 2 CCF of water during a two month period, the Department will consider the residence effectively "vacant" and allow the customer to suspend garbage service during the "vacant" period. This is known as a "vacation hold".

6. Utility records show that the Appellant's Finn Hill residence uses an average of more than 2 CCF of water over a two-month period.

7. Chapter 16.08 provides the City's scheme for garbage disposal. Curbside service to residences is required, and KMC 16.08.030 provides that it is "unlawful for anyone to haul garbage through the streets of the city" except certain garbage contractors and those who have secured an "owner's permit". This Code section also includes a proviso stating that "nothing in this section shall be construed to prohibit a residential occupant from transporting, on a nonregular or occasional basis, surplus accumulations of rubbish or garbage from his residence to an approved disposal site." Emphasis added.

8. KMC 16.08.120 addresses "owner's permits," and reads as follows:

the city council finds that there may exist certain special circumstances relating to location or nature of garbage or refuse which justify permitting the owner or occupant of property where such garbage or refuse accumulates to transport such garbage or refuse to an approved disposal site, rather than that have it collected by the city contractor. In such a situation an "owner's permit" may be issued by the city ....

Emphasis added.

9. The Department interprets KMC 16.08.120 to require that the applicant for an owner's permit demonstrate that his or her residence does not produce garbage (i.e., that it is effectively "vacant"), that the location of the garbage is inaccessible to the garbage collector, or that the garbage is toxic or of a type that would be a danger for the collector to haul.

### **Conclusions**

1. The Hearing Examiner has jurisdiction over this matter pursuant to KMC 16.08.123, which provides that the appeal is, to the extent appropriate to follow the procedures for appeal of Process I decisions found in KZC 145.60, 145.70, 145.95 and 145.105. Under

KCC 145.95, the burden is on the appellant to convince the Examiner that the Department made an incorrect decision.

2. The Appellant does not contest the average two-month water usage for his Finn Hill residence or contend that the residence is effectively vacant. Nor does he argue that there is anything "relating to the location or nature of the garbage or refuse [that would] justify permitting" him to transport the garbage that accumulates at the residence to an approved disposal site. Thus, the Appellant does not really contend that he qualifies for an owner's permit under the language of KMC 16.08.120.

3. The Appellant argues, instead, that because he has garbage service available at two locations in other cities, common sense dictates that he does not require garbage service at the Finn Hill residence. He argues that KMC 16.08.030(4) allows him to transport the garbage that accumulates at that residence to an approved disposal site, i.e., his Bothell worksite or Kenmore condominium, on approximately a weekly basis. However, this reading of the Code is contrary to accepted rules for construing statutes.

4. Under a general rule of statutory construction, also applicable to City ordinances, effect is given "to all statutory language, considering the statutory provisions in relation to each other and harmonizing them to ensure proper construction ... We avoid construing a statute in a manner that results in unlikely, absurd, or strained consequences." *Hill v. Department of Labor and Industries*, 161 Wn. App. 286, 293, 253 P.3d 430 (2011). Likewise, our courts have held that a legislative body "does not engage in useless or meaningless acts, and we presume some significant purpose or objective in every legislative enactment." *John H. Sellen Construction Co. v. Department of Revenue*, 87 Wn. 2d 878, 883, 558 P.2d 1342 (1976) (citations omitted).

5. KMC 16.08.030 states an overall prohibition on hauling garbage through the streets of Kirkland. Thus, garbage service is mandatory, and other Code sections provide the requirements for containers, weight, placement, etc. KMC 16.08.030(1) through (3) provide three exceptions to the overall prohibition. And KMC 16.08.030(4) allows residential occupants to occasionally transport only "surplus accumulations" of garbage to an approved disposal site. The Merriam Webster Dictionary defines "surplus" as "a quantity or amount over and above what is needed; something left over; excess". Thus, when all parts of KMC 16.08.030 are read together and harmonized, it is clear that a "surplus accumulation of rubbish or garbage" means any rubbish or garbage that exceeds the amount that is regularly picked up through curbside service.

6. The Appellant's proposed construction of KMC 16.08.030(4) would allow any residence to opt out of garbage service and haul all of its own garbage through city streets to an approved disposal site despite the general prohibition on doing so stated at the outset of the same code section. This construction would lead to "unlikely, absurd or strained consequences," and would also require the Examiner to conclude that the City Council engaged in a meaningless act in adopting the comprehensive City regulations on garbage disposal contained in Chapter 16.08 KMC.

7. The Appellant has not convinced the Examiner that the Department's decision is incorrect, and it should therefore be affirmed.

### **Decision**

The Department's decision denying Joel Van Ornum's refuse disposal permit application is affirmed.

Entered this 12<sup>th</sup> day of December, 2011.

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Sue A. Tanner  
Hearing Examiner

### **Exhibits**

The following exhibits were entered into the record:

Exhibit 1	Van Ornum Application for Refuse Disposal Permit
Exhibit 2	Letter dated September 28, 2011 from Ray Steiger to Joel Van Ornum with attached copies of fully completed Application for Refuse Disposal Permit
Exhibit 3	Letter of Appeal dated October 2, 2011 from Joel Van Ornum to Ray Steiger.

### **PARTIES OF RECORD:**

Appellant: Joel Van Ornum, 12969 74<sup>th</sup> Place NE, Kirkland, WA 98033  
Department of Public Works

### **Concerning Further Review**

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner is the final administrative decision for the City of Kirkland. Any request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fourteen (14) calendar days of the date of this decision.