

1 July 12, 1976

Introduced by: Bernice Stern

76-432

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7 ORDINANCE NO. 2795

8 AN ORDINANCE relating to the administration of the
9 King County Shoreline Management Master Program;
10 providing for implementation of the Shoreline Manage-
11 ment Master Program, for additional public notice
12 requirements and repealing certain provisions which
13 duplicate statute; amending Ordinance 1402, Sections
14 2, 3, 5, 6, 7, 8, 9, 11 and 14, and KCC 20.40.020,
15 20.40.030, 20.40.050, 20.40.060, 20.40.070, 20.40.080,
16 20.40.090, 20.40.110 and 20.40.140; repealing Ordinance
17 1402, Sections 4, 12 and 13 and KCC 20.40.040, 20.40.120,
18 20.40.130; and adding new sections thereto.

19 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

20 SECTION 1. Ordinance 1402, Section 2 and KCC 20.40.020 are amended
21 to read as follows: DEFINITIONS. As used in this chapter, unless the context
22 otherwise requires, the following definitions (~~and concepts~~) apply:

23 (1) "Development" means a use consisting of the construction of ex-
24 terior alteration of structures; dredging; drilling; dumping; filling; removal
25 of any sand, gravel or minerals; bulkheading; driving of piling; placing of
26 obstructions; or any project of a permanent or temporary nature which inter-
27 feres with the normal public use of the waters overlying lands subject to this
28 ordinance at any state of water level.

29 (2) "Director" means the director of the department of planning and
30 community development for King County or his duly authorized designee.

31 (3) "Master program" shall mean the comprehensive shoreline use plan
for King County, and the use regulations together with maps, diagrams, charts,
or other descriptive material and text, a statement of desired goals and stan-
dards developed in accordance with the policies (~~enunciated~~) in Section 2 of the
Shoreline Management Act of 1971.

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1 (4) "Ordinary high water mark" on all lakes, streams, and tidal water
 2 is that mark that will be found by examining the bed banks and ascertaining
 3 where the presence and action of waters are so common and usual, and so long
 4 continued in all ordinary years, as to mark upon the soil a character distinct
 5 from that of the abutting upland, in respect to vegetation as that condition
 6 exists on June 1, 1971, or as it may naturally change thereafter: provided,
 7 that in any area where the ordinary high water mark cannot be found, the
 8 ordinary high water mark adjoining saltwater shall be the line of mean higher
 9 high tide and the ordinary high water mark adjoining fresh water shall be the
 10 line of mean high water.

11 (5) "Person" means an individual, partnership, corporation, association,
 12 organization, cooperative, public or municipal corporation, or agency of the
 13 state or any local governmental unit however designated.

14 (6) "Shorelines" means all of the water areas within the unincorporated
 15 portion of King County, including reservoirs, and their associated wetlands
 16 together with the lands underlying them; except (a) shorelines of statewide
 17 significance; (b) shorelines on segments of streams upstream of a point where
 18 the mean annual flow is twenty cubic feet per second or less and the wetlands
 19 associated with such upstream segments; and (c) shorelines on lakes less than
 20 twenty acres in size and wetlands associated with such lakes.

21 (7) "Shorelines of statewide significance" means those shorelines de-
 22 scribed in Section 3(2) (e) of the Shoreline Management Act of 1971 which are
 23 within the unincorporated portion of King County.

24 (8) "Shorelines of the ~~(county)~~ state" are total of all "shorelines" and
 25 the "shorelines of statewide significance" within the county.

26 (9) "Substantial development" means any development ~~(of which the~~
 27 ~~total cost or fair market value exceeds one thousand dollars; or any development~~
 28 ~~which materially interferes with the normal public use of the water or shore-~~
 29 ~~lines of the county; except that the following shall not be considered substantial~~
 30 ~~developments for the purpose of this chapter:~~

31 (a) Normal maintenance or repair of existing structures or develop-

1 ments, including damage by accident, fire or elements;

2 (b) Construction of the normal protective bulkhead common to single
3 family residences;

4 (c) Emergency construction necessary to protect property from
5 damage by the elements;

6 (d) Construction of a barn or similar agricultural structure on
7 wetlands;

8 (e) Construction or modification of navigational aids such as
9 channel markers and anchor buoys;

10 (f) Construction on wetlands by an owner, lessee or contract
11 purchaser of a single family residence for his own use or for the use of his
12 family, which residence does not exceed a height of thirty-five feet above
13 average grade level and which meets all requirements of the county other than
14 requirements imposed pursuant to this chapter.) which requires a shoreline
15 management substantial development permit, as defined by RCW 90.58.030(3)(e) as
16 now or hereafter amended.

17 (10) "Wetlands" "associated wetlands" or "wetland areas" means those lands
18 extending landward for two hundred feet in all directions as measured on a
19 horizontal plane from the ordinary high water mark; and all marshes, bogs,
20 swamps, floodways, river deltas, and the entire one-hundred year flood plains
21 associated with the streams, lakes and tidal waters which are subject to the
22 provisions of this chapter; the same to be designated as to location by the
23 Washington State Department of Ecology. Flood plains shall not include those
24 areas which are effectively protected from the one-hundred year flood by
25 authorized flood control devices or other legal improvements.

26 (11) "Shoreline Management Conditional Use" or "Shoreline Conditional Use"
27 means a use specifically designated as a Shoreline Conditional Use in the
28 Shoreline Management Master Program, pursuant to WAC 173-14-140 or the alter-
29 ation of a non-conforming use or development.

30 (12) "Shoreline Management Variance" means an adjustment in the application
31 of the regulations of the Shoreline Management Master Program, pursuant to
32 WAC 173-14-150.

1 (13) "Environment" or "master program environment" or "shoreline en-
2 vironment" means the categories of shorelines of the state established by the
3 King County Shoreline Management Master Program to differentiate between
4 areas whose geographical features imply differing objectives regarding their
5 use and future development.

6 (14) "Non-conforming uses or development" means those uses and struc-
7 tures that have been lawfully established or erected prior to the date of adoption
8 and state approval of the master program, which no longer conform to the appli-
9 cable policies and regulation of the master program.

10 SECTION 2. Ordinance 1402 Section 3 and KCC 20.40.030 are amended to
11 read as follows: SUBSTANTIAL DEVELOPMENT - COMPLIANCE WITH LAWS -
12 PERMIT REQUIRED - EXEMPTION.

13 (a) No development shall be undertaken by any person on the shore-
14 lines of the ((county)) state unless such development is consistent with the policy
15 of Section 2 of the Shoreline Management Act of 1971 and, after adoption and
16 approval, the guidelines and regulations of the Washington State Department
17 of Ecology ((or)) and the master program.

18 (b) No substantial development shall be undertaken by any person on
19 the shorelines of the ((county)) state without first obtaining a substantial develop-
20 ment permit from the director; provided, that such a permit shall not be required
21 for the development excepted from the definition of substantial development
22 in Section 20.40.020(9) and for ((the following development:

23 (1) Any project with a certification from the governor pursuant to
24 RCW 80-50;

25 (2) Any development on shorelines of the county included within a
26 preliminary or final plat approved by the county prior to April 1, 1971, if:

27 (i) The final plat was approved after April 13, 1961, or the preliminary
28 plat was approved after April 30, 1969, or

29 (ii) Sales of lots to purchasers with reference to the plat, or substantial
30 development incident to platting or required by the plat, occurred prior to
31 April 1, 1971, and

1 ~~(iii) The development to be made without a permit meets all require-~~
 2 ~~ments of the county, other than requirements imposed pursuant to this~~
 3 ~~chapter, and~~

4 ~~(iv) The development does not involve construction of buildings, or~~
 5 ~~involves construction on wetlands of buildings to serve only as community,~~
 6 ~~social, or recreational facilities for the use of owners of platted lots and the~~
 7 ~~buildings do not exceed a height of thirty five feet above average grade level,~~
 8 ~~and~~

9 ~~(v) The development is completed by June 1, 1973.)~~ developments
 10 as enumerated in RCW 90.58.140(8) and (9).

11 (c) Any person claiming exemption from the permit requirements of
 12 this chapter as a result of the exemptions described in subsection (b) herein
 13 may make an application to the director for such an exemption ~~((on forms and))~~
 14 in the manner prescribed by the director. Development within the shore-
 15 lines of the state which does not require a permit shall conform to the master
 16 program. Conditions requiring such conformance may be imposed prior
 17 to granting exemption from the permit requirement.

18 SECTION 3. Ordinance 1402, Section 5 and KCC 20.40.050 are amended
 19 to read as follows: PERMITS - APPLICATION - FEE - NOTICE - REVIEW - BURDEN
 20 OF PROOF OF COMPLIANCE.

21 (a) Applications for substantial development permits ~~((and timber~~
 22 ~~cutting permits))~~, on forms prescribed by the director, shall be made with the
 23 director by the property owner, lessee, contract purchaser, other person
 24 entitled to possession of the property, or by an authorized agent.

25 (b) A fee in the amount of fifty dollars shall be paid to the director at the
 26 time an application is submitted, or a request for an extension of a permit is
 27 submitted, for proposed development with an estimated total cost of less than
 28 one hundred thousand dollars. A fee in the amount of one hundred seventy-five
 29 dollars shall be paid for proposed development with an estimated total cost of
 30 one hundred thousand dollars or more. Provided, no fee shall be required
 31 for King County sponsored projects.

1 (c) Upon receipt of a proper application, the director shall instruct
2 the applicant to publish notices of the application at least once a week
3 on the same day of the week for two consecutive weeks in a newspaper of
4 general circulation within the county. The director may also require publica-
5 tion through other appropriate newspapers and information media. Within
6 thirty days of the last publication of such notice (as used hereinafter, this
7 term shall mean the last publication of such notice in the newspaper of general
8 circulation within the county), any interested person may submit his views
9 on the application in writing or may notify the director of his desire to be
10 notified of the action taken by the director. Within fifteen days of the last
11 publication of such notice, any interested person may also request that a
12 public hearing be held pursuant to the provisions of Section 20.40.070. All
13 published notices of applications shall be in a form satisfactory to the director.
14 Notices of application shall not be published prior to the actual submission
15 of the application to the director. Affidavits of publication shall be transmitted
16 to the director within seven days of their final publication. In addition,
17 notice of the application for a shoreline development management substantial
18 development permit shall be given as follows:

19 (1) For permit applications requiring public hearings, the department
20 shall notify owners of property within three hundred (300) feet of the project
21 site.

22 (2) For permit applications not requiring a public hearing, the de-
23 partment shall notify owners of property adjacent to the project site.

24 (3) For utility lines, linear recreation facilities such as trails and other
25 developments of unusual size or configuration, the department may substitute
26 other appropriate notification for the methods set forth in paragraphs (c) (1)
27 and (c) (2).

28 (d) The director shall review an application for a permit based on the
29 following: the application; the environmental impact statement, if one has been
30 prepared; written comments from interested persons; information and comment
31 from other county departments affected and from the Prosecuting Attorney;

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1 independent study of the department (~~of Planning~~) staff; and evidence pre-
 2 sented at the public hearing, if any, held pursuant to provisions of Section
 3 20.40.070. The director may require that an applicant furnish information in
 4 addition to the information required in the application forms prescribed. Unless
 5 an adequate environmental impact statement has previously been prepared for
 6 the proposed development by another agency, the director shall cause to be
 7 prepared such a statement, prior to granting a permit, when the State Environ-
 8 mental Policy Act of 1971 requires such a statement.

9 (e) The burden of proving that the proposed development is consistent
 10 with the criteria set forth in Section 20.40.060 shall be on the applicant.

11 SECTION 4. NEW SECTION. There is added to Ordinance 1402 and
 12 to Chapter 20.40 KCC a new section to read as follows:

13 (a) The Director is authorized to grant a variance from the use
 14 regulations of this master program only under the following circumstances:

15 (1) Because of special circumstances applicable to the property in
 16 question, including size, shape, topography, location or surroundings, the
 17 strict application of the use regulations of this master program will deny the
 18 property owner all reasonable uses of his property.

19 (2) The hardship results from the application of the use regulations
 20 and not from the applicant's own actions.

21 (3) The variance, if granted, will be in harmony with the general
 22 intent of the Shoreline Management Act and King County's Shoreline Management
 23 Master Program.

24 (4) Public welfare and interest will be preserved.

25 (b) Variances to county zoning code requirements shall not be con-
 26 structed to mean variances to shoreline master program use regulations and
 27 vice versa.

28 (c) The burden of proving that a proposed variance meets these conditions
 29 shall be on the applicant; absence of such proof shall be grounds for denial of
 30 the application.

1 SECTION 5. NEW SECTION. There is added to Ordinance 1402 and
2 to Chapter 20.40 KCC, a new section to read as follows:

3 (a) The director is authorized to issue shoreline conditional use permits
4 only under the following circumstances:

5 (1) The use or development to be established or expanded must meet
6 performance standards that assure compatibility with uses which are permitted
7 within the master program environment in which the use or development is
8 proposed.

9 (2) The use will cause no unreasonable adverse effects on the shoreline
10 or surrounding properties and uses.

11 (3) The use will not interfere with public use of surface waters.

12 (4) The development of the site will not be contrary to the policies of the
13 master program.

14 (b) Conditional uses as enumerated in the county zoning code shall not
15 be construed to mean shoreline conditional uses as authorized by this section.

16 (c) The burden of proving that a proposed shoreline conditional use
17 meets the criteria enumerated in paragraph (a) of this section shall be on the
18 applicant. Absence of such proof shall be grounds for denial of the application;
19 PROVIDED, however, that the director is authorized to determine and impose,
20 on a case-by-case basis those conditions and standards which may be required
21 to enable any proposed shoreline conditional use to satisfy the criteria estab-
22 lished in paragraph (a) of this section.

23 SECTION 6. Section 4 Ordinance 1402 and KCC 24.40.040 are each
24 repealed.

25 SECTION 7. Section 6, Ordinance 1402 and KCC 20.40.060 are amended
26 to read as follows: PERMITS - CRITERIA FOR GRANTING - ((COMMERCIAL
27 TIMBER-CUTTING)) - SURFACE DRILLING FOR OIL AND GAS.

28 ((~~(a) From June 1, 1971, until such time as the master program has~~
29 ~~been adopted by the King County council and approved by the Washington~~
30 ~~State Department of Ecology a)~~) A permit shall be granted only when the
31 proposed development is consistent with:

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1 (1) The policy of Section 2 of the Shoreline Management Act of 1971;
 2 and
 3 ~~((2) After their adoption, the guidelines and regulations of the Washing-~~
 4 ~~ton State Department of Ecology; and))~~

5 ~~((3))~~ (2) ~~((So far as can be ascertained))~~ The master program ~~((being~~
 6 ~~developed))~~ for King County including the guidelines and regulations of the Wash-
 7 ington State Department of Ecology.

8 ~~((b) After adoption and approval of the master program by the~~
 9 ~~Washington State Department of Ecology, a permit shall be granted only when~~
 10 ~~the proposed development is consistent with:~~

- 11 ~~(1) The master program; and~~
- 12 ~~(2) The policy of Section 2 of the Shoreline Management Act of 1971.~~

13 ~~(c) With respect to timber situated within two hundred feet abutting~~
 14 ~~landward of the ordinary high water mark within shorelines of statewide~~
 15 ~~significance, a permit shall be granted only for selective commercial timber~~
 16 ~~cutting, so that no more than thirty percent of the merchantable trees may~~
 17 ~~be harvested in any ten year period of time; provided that other timber~~
 18 ~~harvesting methods may be permitted in those limited instances where the~~
 19 ~~topography, soil conditions or silviculture practices necessary for regeneration~~
 20 ~~render selective logging ecologically detrimental; provided further, that~~
 21 ~~clear cutting of timber which is solely incidental to the preparation of land for~~
 22 ~~other uses authorized by this chapter may be permitted:))~~

23 ~~((d))~~ (b) Surface drilling for oil and gas is prohibited in the water
 24 of Puget Sound within King County and on all lands within one thousand feet
 25 landward from the ordinary high water mark.

26 ~~((e) No permit shall be issued for any new or expended building or~~
 27 ~~structure of more than thirty five feet above average grade level on shorelines~~
 28 ~~of the county that will obstruct the view of a substantial number of residences~~
 29 ~~in adjoining areas unless there exists a master program which permits the~~
 30 ~~same and then such permits shall be granted only when overriding consid-~~
 31 ~~erations of the public interest will be served:))~~

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1 SECTION 8. Section 7, Ordinance 1402 and KCC 20.40.070 are amended to
2 read as follows: PERMITS - PUBLIC HEARING - NOTICE - DIRECTOR'S DECISION.

3 (a) In the following cases, decisions on applications for substantial develop-
4 ment permits (~~and timber cutting permits~~) shall not be made until at least one
5 public hearing has been held:

6 (1) One or more interested persons has submitted to the director, within
7 fifteen days of the final publication of notice of the application, a written request
8 for such a hearing together with a statement of reasons for the request; or

9 ~~((2) The estimated total cost of the proposed development exceeds one
10 million dollars; or))~~

11 ~~((3))~~ (2) The director determines that the proposed development is one
12 of broad public significance.

13 (b) The public hearing required under subsection (a) herein shall be
14 conducted by the director.

15 (c) If a public hearing is required under subsection (a) (1) of this
16 section, fifteen days written notice of the time and place of the public hearing
17 shall be mailed or delivered to the applicant and to any person who has sub-
18 mitted in writing an expression of interest in the application, or a request for
19 a public hearing, or a request for notice of such a hearing. If a hearing is re-
20 quired under subsection (a) (2) (~~or (3))~~) of this section, notice of such hear-
21 ing shall be included in that public notice required in Section 20.40.050(c).

22 (d) If, for any reason, testimony on any matter set for public hearing,
23 or being heard, cannot be completed on the date set for such hearing, the
24 director may before adjournment or recess of such matters under consideration,
25 publicly announce the time and place of the continued hearing and no further
26 notice is required.

27 (e) When the director renders a decision, he shall make and enter
28 written findings from the record and conclusions thereof which support his
29 decision and the findings and conclusions shall set forth the manner in which
30 the decisions is consistent with the criteria set forth in Section 20.40.060.

31 (f) The director shall have the power to prescribe rules and regulations

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1 for the conduct of hearings before him; and also to issue summons for and
 2 compel the appearance of witnesses, to administer oaths, and to preserve
 3 order. The privilege of cross-examination of witnesses shall be accorded all
 4 interested persons or their counsel in accordance with the rules of the
 5 director.

6 (g) The decision of the director shall be the final decision of the
 7 county on all applications and the director shall render a written decision
 8 and transmit copies of his decision to the persons who are required to receive
 9 copies of the decision pursuant to Section 20.40.080.

10 SECTION 9. Section 8, Ordinance 1402 and KCC 20.40.080 are amended
 11 to read as follows: PERMITS - APPROVAL OR DISAPPROVAL - NOTIFICATION -
 12 WORK COMMENCEMENT - ADDITIONAL CONDITIONS - LIMITATION.

13 (a) The director shall notify the following persons in writing of his
 14 final approval, disapproval or conditional approval of a substantial develop-
 15 ment permit ((or timber-cutting permit)) application within five days of his
 16 final decision:

17 (1) The applicant;

18 (2) The Washington State Department of Ecology;

19 (3) The Washington State Attorney General;

20 (((4) The King County building department;))

21 (((5))) (4) Any person who has submitted to the director written comments
 22 on the application;

23 (((6))) (5) Any person requesting notification prior to permit action.

24 (((b) Development pursuant to a substantial development permit shall
 25 not being and shall not be authorized until forty-five days from the date the
 26 director files the approved substantial development permit with the Washington
 27 State Department of Ecology and Attorney General or until all review pro-
 28 ceedings initiated within forty-five days of the date of such filing have been
 29 terminated.

30 (c) Construction or substantial progress toward construction of a
 31 project for which a permit has been granted pursuant to this chapter must be

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1 undertaken within two years after permit approval or the permit shall ter-
 2 minate. If such progress has not been made a new permit application will
 3 be required. If a project for which a permit has been granted has not been
 4 completed within five years after permit approval, the director shall, at the
 5 expiration of the five year period, review the permit and, upon a showing of
 6 good cause, either extend the permit for one year, or terminate the permit.
 7 provided, that no permit shall be extended unless the applicant has requested
 8 such review and extension prior to the permit expiration date.)

9 ((d)) (b) In granting or extending a permit, the director may attach
 10 thereto such conditions, modifications and restrictions regarding the locations,
 11 character and other features of the proposed development and related development
 12 and activity outside of the shoreline as he finds necessary to make the permit com-
 13 patible with the criteria set forth in Section 20.40.060. Such conditions may in-
 14 clude requirement to post a performance bond assuring compliance with ((other))
 15 permit requirements terms and conditions.

16 ((e)) (c) Issuance of a substantial development permit ((or timber
 17 cutting permit)) does not obviate requirements for other federal, state, and
 18 county permits, procedures and regulations.

19 SECTION 10. Section 9, Ordinance 1402 and KCC 20.40.090 are amended
 20 to read as follows: PERMITS - GRANTING, DENIAL OR RESCISSION - REVIEW
 21 BY SHORELINES HEARINGS BOARD. Any person aggrieved by the granting,
 22 denying or rescission of a substantial development permit ((or timber cutting
 23 permit)) may seek review from the Washington State Shorelines Hearings Board
 24 by filing a request for the same ((with the board within thirty days of receipt
 25 of the director's final order. Concurrently, with the filing of any request for
 26 review with the board, the person seeking review shall file a copy of his
 27 request with the Washington State Department of Ecology, the Attorney
 28 General, and the director.)) in accordance with the provisions of RCW 90.58.180.

29 SECTION 11. Ordinance 1402 Section 11 and KCC 20.40.150 are amended
 30 to read as follows: PERMITS - RESCISSION OR MODIFICATION - NOTICE - HEARING

31 (a) Any permit granted pursuant to this chapter may be rescinded or

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1 modified upon a finding by the director that the permittee has not complied with
 2 the conditions of his permit or has falsified information on his application for ap-
 3 proval of development in the shorelines of the state.

4 (b) The director may initiate rescision and modification proceedings by
 5 serving written notice of noncompliance on the permittee.

6 (c) Before a permit can be rescinded or modified, a public hearing shall
 7 be held by the director no sooner than thirty days following the service of
 8 notice upon the permittee. The director shall have the power to prescribe
 9 rules and regulations for the conduct of such hearings.

10 SECTION 12. Section 12 and 13, Ordinance 1402 and KCC 20.40.120
 11 and 20.40.130 are each repealed.

12 SECTION 13. Section 14, Ordinance 1402 and KCC 20.40.140 are
 13 amended to read as follows: PERMITS - PREREQUISITE TO OTHER PERMITS -
 14 INSPECTIONS - NOTICE OF VIOLATIONS.

15 (a) In the case of development subject to the permit requirements of
 16 this chapter, the ~~((director))~~ manager of the King County ~~((department))~~
 17 division of building and land development shall not issue any other permit for
 18 such development until such time as ~~((a-permit))~~ approval has been granted pur-
 19 suant to this chapter. Any ~~((permit))~~ development subsequently ~~((issued))~~
 20 authorized by ~~((the-department-of-building))~~ King County ~~((for-such-develop-~~
 21 ment)) shall be subject to the same terms and conditions which apply to the per-
 22 mit granted pursuant to this chapter.

23 (b) The ~~((director))~~ manager of the ~~((king-county-department))~~ division
 24 of building and land development or his authorized representative may inspect
 25 properties as necessary to determine whether permittees have complied with
 26 conditions of their respective permits and, whenever there is reasonable cause
 27 to believe that development has occurred upon any premises in violation of the
 28 Shoreline Management Act of 1971 and this chapter, enter upon such premises
 29 at all reasonable times to inspect the same. The ~~((director))~~ manager or his
 30 representative shall present proper credentials before demanding entry. If
 31 such premises are unoccupied, a reasonable effort shall be made to locate the

owner or tenant and demand entry. The ((director)) manager ((of the de-
partment of building shall seek review and comment from the department of
planning on the violations discovered and)) shall then issue a notice and
order to the owner or tenant of the premises advising such person(s) of any
violations and requiring him to take whatever action is necessary to comply
with the Act and this chapter. Subsequently, he shall also seek appropriate
legal sanctions by the King County prosecuting attorney as provided in
Section 20.40.150.

INTRODUCED AND READ for the first time this 1st day

of June, 1976.

PASSED at a regular meeting of the King County Council this 19th day

of July, 1976.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

W. A. M. M. M.
Chairman

ATTEST

John Hammond
Acting Clerk of the Council

APPROVED this 26th day of

July, 1976
John D. Sellman
King County Executive

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