

ORDINANCE NO. 4200

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STORM AND SURFACE WATER MANAGEMENT AND WATER QUALITY.

WHEREAS, the Washington State Department of Ecology (DOE) issued the Western Washington Phase II Municipal Stormwater Permit (Phase II NPDES Permit) on February 16, 2007, under authority delegated to it by the US Environmental Protection Agency, pursuant to the Federal Clean Water Act (33 U.S.C. §1251 et seq.) (CWA); and

WHEREAS, the intent of the Phase II NPDES Permit is to compel jurisdictions of certain density and population, which includes the City of Kirkland (the City), to take steps to reduce the discharge of pollutants in stormwater; and

WHEREAS, the City must therefore seek coverage under the Phase II NPDES Permit or face third-party lawsuits, fines, or other penalties under the CWA; and

WHEREAS, the Phase II NPDES Permit requires that jurisdictions seeking coverage comply with the conditions of the permit by taking and documenting actions to reduce the discharge of pollutants in stormwater in the following six areas:

- 1) Public Education and Outreach,
- 2) Public Involvement and Participation,
- 3) Illicit Discharge Detection and Elimination,
- 4) Controlling Runoff from New Development,
- 5) Redevelopment and Construction Sites, and
- 6) Pollution Prevention and Operation and Maintenance for Municipal Operations; and

WHEREAS, the Phase II NPDES Permit requires that jurisdictions adopt certain alterations to surface and stormwater portions of their ordinances and associated requirements located elsewhere relating to item 3) above by August 16, 2009, in order to maintain compliance; and

WHEREAS, in addition, the proposed Kirkland Municipal Code (the KMC) changes bear a substantial relationship to, and are necessary for, the public health, safety and general welfare of the City and its residents; and will provide increased protection to the City's wetlands, streams and lakes; and

WHEREAS, an amount for monetary penalties to be imposed for violations of the surface water regulations was not established in the KMC; and

WHEREAS, RCW 35.67.020(3) requires municipalities to reduce storm and surface water charges by a minimum of 10% for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system.

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Section 15.04.010 of the Kirkland Municipal Code is hereby amended to read as follows:

15.04.010 Generally Definitions.

The definitions contained in this chapter and in Article III of Volume I of the 2005 Stormwater Management Manual for Western Washington, herein incorporated by reference, apply throughout this title, unless from context another meaning is clearly intended. In the event of conflict, the definitions in the Manual will control. The city engineer shall at all times keep on file with the city clerk, for reference by the general public, not less than three copies of the Manual as herein adopted by reference.

Section 2. Section 15.04.034 of the Kirkland Municipal Code is hereby deleted.

Section 3. Section 15.04.040 of the Kirkland Municipal Code is hereby deleted.

Section 4. Section 15.04.065 of the Kirkland Municipal Code is hereby deleted.

Section 5. Section 15.04.083 of the Kirkland Municipal Code is hereby deleted.

Section 6. Section 15.04.084 of the Kirkland Municipal Code is hereby deleted.

Section 7. Section 15.04.100 of the Kirkland Municipal Code is hereby deleted.

Section 8. Section 15.04.105 of the Kirkland Municipal Code is hereby deleted.

Section 9. Section 15.04.145 of the Kirkland Municipal Code is hereby deleted.

Section 10. Section 15.04.146 of the Kirkland Municipal Code is hereby deleted.

Section 11. Section 15.04.175 of the Kirkland Municipal Code is hereby deleted.

Section 12. Section 15.04.220 of the Kirkland Municipal Code is hereby deleted.

Section 13. Section 15.04.225 of the Kirkland Municipal Code is hereby deleted.

Section 14. Section 15.04.235 of the Kirkland Municipal Code is hereby deleted.

Section 15. Section 15.04.320 of the Kirkland Municipal Code is hereby deleted.

Section 16. Section 15.04.335 of the Kirkland Municipal Code is hereby deleted.

Section 17. Section 15.04.345 of the Kirkland Municipal Code is hereby deleted.

Section 18. Section 15.04.350 of the Kirkland Municipal Code is hereby deleted.

Section 19. Kirkland Municipal Code Section 15.52.090 is hereby amended to read as follows:

15.52.090 Illicit discharges and connections.

~~(a) All illicit discharges, as set forth in the standard plans, made either directly or indirectly to a public drainage control system, are prohibited and constitute a violation of this chapter.~~

~~(b) Certain discharges may be made directly or indirectly to a public drainage control system, or are exempt from subsection (a) of this section, as set forth in the standard plans.~~

~~(c) Any connection, identified by the director, that could convey anything not composed entirely of surface and storm water, directly to surface, storm, or ground waters is considered an illicit connection and is prohibited with the following exceptions: connections conveying allowable discharges, connections conveying discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) permit as issued by the state (other than an NPDES storm water permit) or a state waste discharge permit, and connections conveying effluent from on-site sewage disposal systems to subsurface soils. Presence of prohibited connections as defined herein constitutes a violation of this chapter.~~

(a) Prohibition of illicit discharges. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than storm water. Illicit discharges are prohibited and constitute a violation of this chapter. Examples of prohibited contaminants include, but are not limited to, the following:

1. Trash or debris.
2. Construction materials.
3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil and heating oil.
4. Antifreeze and other automotive products.
5. Metals in either particulate or dissolved form.
6. Flammable or explosive materials.
7. Radioactive material.
8. Batteries.
9. Acids, alkalis, or bases.
10. Paints, stains, resins, lacquers, or varnishes.
11. Degreasers and/or solvents.
12. Drain cleaners.
13. Pesticides, herbicides, or fertilizers.
14. Steam cleaning wastes.
15. Soaps, detergents, or ammonia.
16. Swimming pool or spa filter backwash.
17. Chlorine, bromine, or other disinfectants.
18. Heated water.
19. Domestic animal wastes.
20. Sewage.
21. Recreational vehicle waste.
22. Animal carcasses.
23. Food wastes.
24. Bark and other fibrous materials.
25. Lawn clippings, leaves, or branches.
26. Silt, sediment, concrete, cement or gravel.
27. Dyes.
28. Chemicals not normally found in uncontaminated water.
29. Any other process-associated discharge except as otherwise allowed in this section.
30. Any hazardous material or waste not listed above.

(b) Allowable discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

1. Diverted stream flows.
2. Rising ground waters.
3. Uncontaminated ground water infiltration – as defined in 40 CFR 35.2005(20)

4. Uncontaminated pumped ground water.
5. Foundation drains.
6. Air conditioning condensation.
7. Irrigation water from agricultural sources that is comingled with urban stormwater.
8. Springs.
9. Water from crawl space pumps.
10. Footing drains.
11. Flows from riparian habitats and wetlands.
12. Discharges from emergency fire fighting activities.

(c) Conditional discharges. The following types of discharges shall not be considered illicit discharges for the purpose of this chapter if they meet the stated conditions, or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system.
2. Lawn watering and other irrigation runoff are permitted but shall be minimized.
3. De-chlorinated swimming pool discharges. These discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system.
4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street.
5. Non-storm water discharges covered by another NPDES permit, provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system.

(d) Prohibition of Illicit Connections

1. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system are prohibited and constitute a violation of this chapter.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(e) Implementation of structural BMPs shall be required if operational BMPs are not effective at reducing or eliminating an illicit discharge. Guidance for design of structural BMPs is provided in Volume IV of the 2005 Stormwater Management Manual for Western Washington, herein incorporated by reference.

Section 20. Kirkland Municipal Code Section 15.52.100 is hereby amended to read as follows:

15.52.100 Source control best management practices.

Any person causing or allowing discharge to a public drainage facility, natural drainage system, surface and storm water, or ground water shall control contamination in the discharge by implementing appropriate source control BMPs, as described in Volume IV of the 2005 Stormwater Management Manual for Western Washington. Failure to implement such practices shall constitute a violation of this chapter. Guidance on designing and implementing BMPs is provided in the standard plans.

Section 21. Kirkland Municipal Code Section 15.52.140 is hereby amended to read as follows:

15.52.140 Enforcement, violations and penalties.

(a) The provisions set forth in this section shall apply to all violations of this chapter or the standard plans. In addition to the listed enforcement options, the city may also pursue any other lawful civil, criminal or equitable remedy or relief. At the director of public works' discretion, the choice of enforcement option taken and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the persons subject to the enforcement action. Enforcement options are cumulative and shall not be deemed exclusive.

(1) Nuisance. Any structure, condition, act or failure to act which violates any provision of this chapter shall be, and the same is declared to be, unlawful and a public nuisance, and may be abated using the procedures of Chapter 11.24 of this code as currently written or hereafter amended or as otherwise allowed by law.

(2) Order To Cease Activity. The director or designee shall have the authority to order immediate cessation of any activity that is in violation of this chapter whether occurring on public or private property.

(A) Posting and Notice. The director or designee shall prominently post this order at the subject location and shall make reasonable attempts to send this order on to the property owner, the person in

charge of the property, or the person causing the activity to be conducted or the improvement erected or altered.

(B) Effect. When an order to cease activity has been posted on the subject location, it is a violation for any person with actual or constructive knowledge of the order to conduct the activity or do the work covered by the order until such time as the director or designee has removed or authorized removal of the order. If an order to cease activity is violated, the director or designee may issue a notice of civil infraction under Section 15.52.140(a)(4).

(c) Appeal. An order to cease activity may be appealed in like manner as a notice of civil infraction under Section 15.52.140(a)(4). If a notice of civil infraction has also been issued and appealed, the appeals shall be consolidated for hearing.

(3) Notice of Violation. If the public works director or assignee determines that any structure, condition, act or failure to act exists that is in violation of this chapter, he/she may issue a notice of violation. This notice will specifically indicate:

(A) The name and address of the property owner or other person to whom the notice of violation is directed;

(B) The street address or description sufficient for identification of the location where the violation has occurred or is occurring;

(C) A description of the violation and a reference to the provision or provisions of this chapter being violated; and

(D) A statement of the action required to be taken to correct the violation as determined by the public works director and a date or time by which correction is to be completed.

(E) A statement that a monetary penalty in an amount per day for each violation as specified by Section 15.52.140(c) shall be assessed against the person to whom the notice of violation is directed for each and every day, or portion of a day, on which the violation continues following the date set for correction.

(F) Notice to Property Owner and Responsible Party. The public works director or designee shall:

(i) Leave a copy of this notice with the occupant or responsible party or post it in a conspicuous place on the subject property; and

(ii) Send a copy of the notice by certified mail to the owner of the subject property; and

(iii) Extension. Upon written request received prior to the correction date or time, the public works director or designee may extend the date set for correction for good cause. The public works director or designee may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.

(4) Notice of Civil Infraction.

(A) General. The public works director or designee may cause a notice of civil infraction to be issued in either of the following circumstances:

(i) There is a violation of a posted order to cease activity; or

(ii) If, after the time specified in a notice of violation, the corrections specified in the notice of violation have not been completed, and a violation persists.

(B) Issuance. The notice of civil infraction will be issued to the owner of the property and to the responsible party, if the violation exists on private property, or to the party responsible for the activity or condition if the violation exists on public property.

(i) Notwithstanding the provisions of Sections 15.52.140(a)(2) and 15.52.140(a)(3), the public works director or designee may issue a notice of civil infraction without having issued an order to cease activity when a repeated violation occurs within a six-month period of time or otherwise at the director's or designee's discretion.

(ii) A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this chapter.

(C) Content. The following shall be included in the notice of civil infraction.

(i) The name and address of the property owner or other persons to whom the notice of civil infraction is directed;

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

(iii) A description of the violation and a reference to that provision or provisions of this chapter which has been violated;

(iv) A statement that the monetary penalty in the amount per day for each violation as specified in Section 15.52.140(c) is assessed against the person to whom the notice of civil infraction is directed for each and every day, or portion thereof, during which the violation continues beyond the date or time established for correction in the notice of violation; and

(v) A statement that the person to whom the notice of civil infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the city clerk or may appeal the notice of civil infraction as provided in Section 15.52.140(a)(4)(E).

(D) Service of Notice. The public works director or designee shall serve the notice of civil infraction upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil infraction by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting the notice of civil infraction conspicuously on the affected property or structure. The person who effected personal service shall make proof of service at the time of service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made.

(E) Appeal to Hearing Examiner.

(i) A person to whom a notice of civil infraction is directed may appeal the notice of civil infraction, including the determination that a

violation exists, or may appeal the amount of any monetary penalty imposed to the hearing examiner.

(ii) A person may appeal the notice of a civil infraction by filing a written notice of appeal with the department of public works within seven calendar days from the date of service of the notice of civil infraction.

(iii) The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the hearing examiner may impose a daily monetary penalty from the date of service of the notice of civil infraction if he finds that the appeal is frivolous or intended solely to delay compliance.

(iv) The hearing before the hearing examiner shall be conducted as follows:

i. The office of the hearing examiner shall give notice of the hearing before the hearing examiner to the appellant seventeen calendar days before such hearing.

ii. The hearing examiner shall conduct a hearing on the appeal pursuant to the rules of procedure as provided by the Administrative Procedure Act, Chapter 34.05 RCW. The city and the appellant may participate as parties in the hearing and each may call witnesses. The city shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

(F) Action of Hearing Examiner.

(i) The hearing examiner shall determine whether the city has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the notice of civil infraction with or without written conditions.

(ii) The hearing examiner shall consider the following in making his/her determination:

i. Whether the intent of the appeal was to delay compliance; or

ii. Whether the appeal is frivolous; or

iii. Whether there was a written contract or agreement with another party which specified the securing by the other party of the applicable permit or approval from the city; or

iv. Whether the appellant exercised reasonable and timely effort to comply with applicable development regulations; or

v. Any other relevant factors.

(G) Notice of Decision. The hearing examiner shall mail a copy of his or her decision to the appellant by certified mail, postage prepaid, return receipt requested.

(H) Judicial Review. The decision of the hearing examiner may be reviewed pursuant to the standards set forth in Chapter 36.70C RCW in King County superior court. The land use petition must be filed within twenty-one calendar days of the issuance of the final land use decision by the hearing examiner. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW.

(I) **Criminal Penalty.** Any willful violation of an order issued pursuant to this section for which a criminal penalty is not prescribed by state law is a misdemeanor.

(5) **Criminal.** Any willful violation of the provisions of this chapter is deemed a misdemeanor unless a more exacting charge is allowed by law.

(b) **Damages.** Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation. If the city repairs or replaces the damaged property, the actual cost to the city for such repair or replacement shall be assessed against the responsible party and shall be due and payable within ten days of the date of written notice of the same. Delinquent bills may be collected by a civil action in the Kirkland municipal court or as otherwise allowed by law. If the city obtains judgment, it shall also be entitled to reimbursement for court costs and reasonable attorney's fees expended in the litigation.

(c) **Monetary Penalty.** The amount of the monetary penalty per day or portion thereof for each violation of this chapter is as follows:

(1) The monetary penalty constitutes a personal obligation of the person to whom the notice of civil infraction is directed. Any monetary penalty assessed must be paid to the city clerk within seven calendar days from the date of service of notice of civil infraction or, if an appeal was filed pursuant to Section 15.52.140(a)(3)(E), within seven calendar days of the hearing examiner's decision. Payment of a monetary penalty does not relieve a violator of the duty to correct the violation.

(2) The city attorney, on behalf of the city, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.

(3) In the event of failure to appear at a hearing provided in Section 15.52.140(a)(3)(E), the hearing examiner shall assess the monetary penalty prescribed and a penalty of twenty-five dollars.

(4) In the event of a conflict between this chapter and any other provision of this code of city ordinances providing for a civil penalty, this chapter shall control.

Payment of a monetary penalty pursuant to this chapter does not relieve a person of the duty to correct the violation as ordered by the director of public works.

(5) The following monetary penalties apply for each violation, for each and every day or portion of a day on which the violation continues following the date and time set for correction:

(A) First violation is \$100.00

(B) Second violation is \$200.00

(C) Third violation is \$300.00

(D) Additional violation in excess of three is \$500.00

(d) **No Personal Liability for Acts or Omissions.** Each person responsible for the enforcement or administration of this chapter and each member of a committee, board, commission or council responsible for making any decision or recommendation under this chapter is relieved from any personal liability whatsoever from any injury to person or property as a result of his/her act or omission in the good faith discharge of his/her responsibilities. If the person or member is sued for acts or omissions occurring in the good faith discharge of his/her responsibilities, the city shall defend and provide legal representation to the person or member until final disposition of the proceedings. The city shall reimburse the person or member for any costs incurred in defending against alleged liability for the acts or omissions of the person or members in the good faith discharge of his/her duties.

Section 22. Kirkland Municipal Code Section 15.56.010 is hereby amended to read as follows:

15.56.010 Service rates established.

The monthly service rates to be paid to the city by the owners of developed land within the city of Kirkland are established as set forth in this chapter. The rate for storm water services shall be charged whether the premises are occupied or vacant; provided the site contains impervious surface. An undeveloped parcel not containing impervious surface area will not be charged for storm water services.

Section 23. Chapter 15.56 of the Kirkland Municipal Code is hereby amended by the addition of a new Section 15.56.060 to read as follows:

15.56.060 Qualified rainwater harvesting discount.

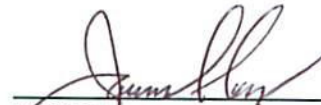
The City of Kirkland shall provide a 10% reduction in the monthly service rate for parcels containing new or remodeled commercial buildings that utilizes a permissive rainwater harvesting system. The system must be designed to collect and use at least 95% of the average annual runoff volume from the impervious surface. A system that involves indoor uses of rainwater must also be permitted by Seattle-King County Department of Health to qualify for the rate reduction. Qualifying for the monthly service rate reduction does not relieve the property owner from the obligation to comply with applicable stormwater and drainage code requirements for the buildings and site.

Section 24. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 25. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 21st day of July, 2009.

Signed in authentication thereof this 21st day of July, 2009.



MAYOR

Attest:



City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4200

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STORM AND SURFACE WATER MANAGEMENT AND WATER QUALITY.

SECTION 1. Amends Section 15.04.010 of the KMC related to definitions and incorporates definitions found in Article III of Volume 1 of the 2005 Stormwater Management Manual for Western Washington.

SECTIONS 2 - 18. Deletes various sections of Chapter 15.04 of the KMC that provided definitions potentially in conflict with the Manual.

SECTION 19. Amends KMC Section 15.52.090 relating to illicit discharges and connections.

SECTION 20. Amends KMC Section 15.52.100 relating to source control best management practices.

SECTION 21. Amends KMC Section 15.52.140 relating to enforcement, violations and penalties.

SECTION 22. Amends KMC Section 15.56.010 relating to service rates.

SECTION 23. Adds a new KMC Section 15.56.060 relating to qualified rainwater harvesting discount.

SECTION 24. Provides a severability clause for the ordinance.

SECTION 25. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 21st day of July, 2009.

I certify that the foregoing is a summary of Ordinance 4200 approved by the Kirkland City Council for summary publication.



City Clerk