

ORDINANCE O-4451

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CODE ENFORCEMENT AND AMENDING CERTAIN SECTIONS OF CHAPTER 1.12 OF THE KIRKLAND MUNICIPAL CODE, FILE NO. CAM14-00868.

WHEREAS, the City of Kirkland ("City") adopted Ordinance No. 4280 in 2011 consolidating various code enforcement processes into a single enforcement chapter in Chapter 1.12 of the Kirkland Municipal Code ("KMC"); and

WHEREAS, the City has used the process for three years and seeks to clarify how monetary penalties and tree fines are assessed, add an upper limit on monetary penalties, and add incentives to come into compliance with the City codes;

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

Section 1. KMC Section 1.12.020 is amended to read as follows:

1.12.020 Definitions.

As used in this chapter, unless a different meaning is plainly required:

(a) "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.

(b) "Act" means doing or performing something.

(c) "Applicable department director" means the director of the department or his or her designee.

(d) "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions issued pursuant to Title 11 are specifically excluded from the application of this chapter.

(e) "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts governed by a city regulation.

(f) "Emergency" means a situation which in the opinion of the applicable department director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.

(g) "Hearing examiner" means the Kirkland hearing examiner and the office thereof established pursuant to Chapter 3.34.

(h) "Omission" means a failure to act.

(i) "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

(j) "Person responsible for the violation" means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the city, and includes but is not limited to owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs. For violations of the city sign regulations, this definition includes, but is not limited to, sign installers/posters, sign owners, and any other persons who cause or participate in the placement of a sign in a manner that constitutes a civil violation. For violations of city tree regulations, this definition includes any person who caused or participated in the removal of a tree in a manner that constitutes a civil violation.

(k) "Regulation" means and includes the following, as they now exist or are hereafter amended:

- (1) Title 23 (Kirkland Zoning Code);
- (2) Title 21, Buildings and Construction (including codes adopted by reference);
- (3) Chapter 15.52 (Surface Water Management);
- (4) Title 29 (Land Surface Modification);
- (5) Chapter 19.04 (Obstructing Streets or Sidewalks);
- (6) Chapter 11.76 (Junk Vehicles);
- (7) Chapter 11.24 (Nuisances);
- (8) The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city;
- (9) Chapter 7.74 (Fair Housing Regulations);
- (10) Chapter 16.08 (Garbage Disposal).

(l) "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.

(m) "Violation" means an act or omission contrary to a city development regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

Section 2. KMC Section 1.12.040 is amended to read as follows:

1.12.040 Notice of civil violation

(a) Issuance.

(1) When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction pursuant to Section 1.12.030, the applicable department director may issue a notice of civil violation to the person responsible for the violation.

(2) The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in Section 1.12.030 under the following circumstances:

(A) When an emergency exists;

(B) When a repeat violation occurs;

(C) When the violation creates a situation or condition which cannot be corrected;

(D) When the person knows or reasonably should have known that the action is in violation of a city regulation.

(b) Content. The notice of civil violation shall include the following:

(1) The name and address of the person responsible for that violation; and

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

(3) A description of the violation and a reference to the provision(s) of the city regulation which has been violated; and

(4) The required corrective action and a date and time by which the correction must be completed, after which the city may abate the unlawful condition in accordance with Section 1.12.060 and the hearing examiner's order; and

(5) The date, time and location of a hearing before the hearing examiner, which will be at least ten days from the date the notice of civil violation is issued; and

(6) A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed, required corrective action at least forty-eight hours prior to the hearing, except that this statement need not be included where the violation constitutes a repeat violation or the violation creates a situation or condition which cannot be corrected; and

(7) A statement that the costs and expenses of abatement incurred by the city pursuant to Section 1.12.060 and a monetary penalty in an amount per day for each violation as specified in subsection (e) of this section may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearing examiner.

(c) Service of Notice. The applicable department director shall serve the notice of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within King County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the 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.

(d) Extension. No extension of the time specified in the notice of civil violation for correction of the violation may be granted, except by order of the hearing examiner.

(e) Monetary Penalty Schedule. ~~The amount of the monetary penalty per day or portion thereof for each violation is as follows:~~

(1) Amount

(A) The penalty for first-time violations is one hundred dollars per day for each violation;

~~(1) First violation: one hundred dollars;~~

(B) The per-day penalty for repeat violations shall be double the previous per-day penalty amount. For example, the per-day penalty for second-time violations is two hundred dollars, and the per-day penalty for third-time violations is four hundred dollars.

~~(2) Second violation: two hundred dollars; (3) Third violation: three hundred dollars; (4) Additional violation in excess of three: five hundred dollars.~~

(2) Limit: The total monetary penalties for each violation shall not exceed \$10,000 per violation, except as provided for in 1.12.050(d)(3) and (4).

~~(2) The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the hearing examiner shall consider the factors set forth in Section 1.12.050(d) (4).~~

(f) Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

(g) Collection of Monetary Penalty.

(1) The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city ~~within ten calendar days from the date of mailing of the hearing examiner's decision or~~ as stated in the a notice from the city that penalties are due as established in the hearing examiner's decision.

(2) The city attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty. The city may contract with a collection agency for this purpose.

Section 3. KMC Section 1.12.050 is amended to read as follows:

1.12.050 Hearing before the hearing examiner.

(a) Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten calendar days after the notice of civil violation is issued.

(b) Prior Correction of Violation or Payment of Monetary Penalty. Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least forty-eight hours prior to the scheduled hearing.

(c) Procedure. The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the applicable department director as to the need for the required corrective action

shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

(d) Decision of the Hearing Examiner.

(1) The hearing examiner shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the city's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

(2) The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:

(A) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(B) The required corrective action;

(C) The date and time by which the correction must be completed;

(D) The monetary penalties assessed based on the criteria in subsection (d)(3) of this section;

(E) The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

(3) Assessment of Monetary Penalty. ~~Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in Section 1.12.040.~~ The hearing examiner shall have the following options in assessing monetary penalties:

(A) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

(B) Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; ~~or~~

~~(C) Assess no monetary penalties.~~

(4) Determining Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in Section 1.12.040, provided that the hearing examiner may assess no monetary penalties or may assess up to double the monetary penalty schedule. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:

(A) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;

- (B) Whether the person ~~failed to appear~~appeared at the hearing;
- (C) Whether the violation was a repeat violation;
- (D) Whether the person showed due diligence and/or substantial progress in correcting the violation;
- (E) Whether a genuine code interpretation issue exists; and
- (F) Any other relevant factors.

~~(5) Effect of Repeat Violations. The hearing examiner shall assess a monetary penalty for each repeat violation as set forth in Section 1.12.040.~~

(65) Notice of Decision. The hearing examiner shall mail a copy of the decision to the person responsible for the violation and to the applicable department director within ten working days of the hearing.

(e) Failure to Appear. 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 assess 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.

(f) Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with superior court within twenty-one 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.

Section 4. A new KMC Section 1.12.055 is adopted to read as follows:

1.12.055 Reduction of monetary penalties.

(a) The applicable department director may reduce monetary penalties assessed in KMC 1.12.050 if the violation is corrected and the correction is verified by the department.

(b) For reduction of monetary penalties, the person responsible for the violation shall have the burden of proof that the violation has been corrected. The person must inform the department of the date of correction and request verification by the department.

(c) The applicable department director may base the decision to reduce a monetary penalty on an evaluation of individual circumstances, including but not limited to, the severity of the violation, the impact to neighbors, the duration of the violation, the cost to the City, the public interest being protected, and the cooperation of the person responsible

for the violation. The person responsible for the violation must submit a written request for reduction of monetary penalties that includes an explanation of the circumstances surrounding the commission of the violation and acts taken to correct the violation.

(d) Nothing in this section shall obligate the director to reduce any monetary penalties.

Section 5. A new KMC Section 1.12.057 is adopted to read as follows:

1.12.057 Certificate of noncompliance.

(a) If a property remains out of compliance after a Hearing Examiner decision verifying the violation, the applicable department director may record a certificate of noncompliance.

(b) The certificate of noncompliance is a notice recorded on the title of real property. The purpose of the certificate is to give notice to interested parties of outstanding code violations.

(c) The certificate of noncompliance must include a statement of how it can be removed from the title of the property when the violation(s) have been corrected.

Section 6. KMC Section 1.12.070 is amended to read as follows:

1.12.070 Stop work orders and orders to cease and desist.

(a) Issuance of Order. Whenever the applicable department director finds any activity is being conducted or work being performed without a permit or in a manner contrary either to the provisions of the Kirkland Zoning Code or Kirkland Municipal Code, including any of the technical codes adopted by reference in Title 21, the applicable department director is authorized to issue a stop work order or order to cease and desist. The order shall be in writing and shall be given to the owner or occupant of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order or order to cease and desist, the cited work or activity shall immediately cease. The order shall state the reason for the order, and the conditions under which the cited work or activity will be permitted to resume.

(b) Fees and Penalties. The applicable department director is authorized to assess a special investigation fee for the issuance of a stop work order or order to cease and desist based on the costs to the city of investigation and enforcement of the order. Any person who shall continue any work or activity on the property after having been served with a stop work order or order to cease and desist (except such work as that person is directed to perform to remove a violation or unsafe condition) shall be subject to penalties as provided under this chapter

and as otherwise prescribed by law. ~~A stop work order or order to cease activity may be appealed in the same manner and pursuant to the same provisions as a notice of civil violation under this chapter.~~

Section 7. KMC Section 1.12.100 is amended to read as follows:

1.12.100 Special provisions relating to enforcement of tree regulations.

(a) General Requirements. This section applies to all trees in the city, including private property trees, public property trees and street trees. Enforcement shall be conducted in accordance with procedures set forth in this chapter. Special enforcement provisions related to tree conservation are set forth in this section.

(b) Authority. It shall be the duty of the applicable department director to administer the provisions of this section.

~~(c) Cease and Desist. The applicable department director may issue a notice to cease and desist using the procedure set forth in this chapter if he or she finds that a violation of this code has occurred. Continued illegal tree activity following issuance of a cease and desist from the city for the tree activity shall result in fines of one thousand dollars per day of continued activity.~~

~~(d) Stop Work Order. If a violation of Chapter 95 of the Kirkland Zoning Code or an approved tree retention plan occurs on property on which work is taking place pursuant to a city of Kirkland development or building permit, the building official may suspend some or all of the work as appropriate through issuance of a stop work order. The building official shall remove the stop work order when the city determines that the violation has been corrected or when the city has reached an agreement with the violator regarding rectification of the violation. Any stop work order issued under this section may be appealed using the procedures set forth in this chapter.~~

~~(e) Civil Penalty for Violations of the Tree Code~~ Fines for tree removal

~~(1) A person who fails to comply with the requirements of Kirkland Zoning Code Chapter 95 or the terms of a permit issued thereunder, who undertakes an activity regulated by this chapter without obtaining a permit, or who fails to comply with a cease and desist or stop work order issued under this chapter shall also be subject to a civil penalty as set forth in the following table. Each unlawfully removed or damaged tree shall constitute a separate violation.~~

(2) Any person who aids or abets in the violation shall be considered to have committed a violation for purposes of finesthe civil penalty.

(3) ~~The amount of the penalty~~ Fines shall be assessed in accordance with Table 1.12.100. Fines are due according to the Corrective Action described in the Notice of Tree Fines and Restoration Due. The applicable department director may elect not to seek ~~penalties-fines~~ if he or she determines that the circumstances do not warrant imposition of ~~civil penalties~~ fines in addition to restoration.

Table 1.12.100

Types of Violations	Allowable Fines per Violation
1. Removal of tree(s) approved to be removed, but prior to final tree plan approval or issuance of a city tree removal permit	\$100.00 per tree
2. Removal or damage of tree(s) that are or would be shown to be retained on an approved tree plan or any other violation of approved tree protection plan	\$1,000 per tree
3. Removal of tree(s) without applying for or obtaining a required city permit	\$1,000 per tree

(fd) Tree Restoration.

(1) Violators of Kirkland Zoning Code Chapter 95 or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas in conformance with a restoration plan approved by the applicable department director. The restoration plan shall provide for repair of any environmental and property damage and restoration of the site. The goal of the restoration plan shall be a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation. In cases where the violator intentionally or knowingly violated this chapter or has committed previous violations of this chapter, restoration costs may be based on the city-appraised tree value of the subject trees in which the violation occurred, utilizing the industry standard trunk formula method in the current edition of the "Guide for Plant Appraisal." If diameter of removed tree is unknown, determination of the diameter size shall be made by the applicable department director by comparing size of stump and species to similar

trees in similar growing conditions. The amount of costs above the approved restoration plan will be paid into the city forestry account.

(2) Restoration Plan Standards. The restoration plan shall be in accordance to the following standards:

(A) The number of trees required to be planted is equal to the number of tree credits of illegally removed trees according to Kirkland Zoning Code Table 95.33.1.

(B) The minimum size for a tree planted for restoration is twelve-foot-tall conifer and three-inch caliper deciduous or broadleaf evergreen tree. The city may approve smaller restoration tree sizes at a higher restoration ratio, provided the site has capacity for the additional trees and the results of restoration at a higher restoration ratio are as good or better than at the normal ratio. The smallest allowable alternatives to the normal restoration requirements shall be two eight-foot conifers for one twelve-foot conifer or two two-inch caliper deciduous for one three-inch caliper deciduous tree.

(C) In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall make payment to the city forestry account. Unless otherwise determined to base the restoration costs on appraised value, the amount paid will be the city's unit cost for a restoration tree multiplied by the number of outstanding tree credits. The city's unit cost is based on the current market cost of purchase, installation and three-year maintenance for a minimum-sized tree for restoration.

(D) The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a three-year period unless the violation was on a site with an approved tree plan, in which case the maintenance period is five years.

ge) Failure to Restore or Pay Fines.

The city may issue a Notice of Civil Violation to the person(s) who fail to restore or pay fines according to the procedures set forth in this chapter.

~~(1) Prohibition of Further Approvals. The city shall not approve any application for a subdivision or any other development permit or approval or issue a certificate of occupancy for property on which a violation of this chapter has occurred until the violation is cured by restoration or other means accepted by the applicable department director and by payment of any penalty imposed for the violation.~~

~~(2) Fines. A property owner or occupant who fails to restore or otherwise cure property on which a violation of this chapter has occurred shall be assessed a fine of one hundred dollars per day for each day that~~

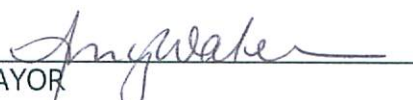
~~restoration is incomplete. Prior to assessing fines under this subsection, the city shall issue a written notice to the property owner or occupant that restoration has not been completed. The notice shall include the following information: (A) a description of the nature of the violation; (B) a description of what actions are required to bring the property into compliance; and (C) a date by which compliance shall be required (the "compliance date"). The compliance date shall be no less than thirty days from the date the notice is served on the property owner or occupant. If the property owner or occupant does not, in the determination of the city, bring the property into compliance by the compliance date, then the city may issue an order imposing one hundred dollar per day fines at any time after the compliance date.~~

Section 8. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 9. This ordinance shall be in full force and effect five days from and after its passage by the Kirkland City Council and publication, pursuant to Kirkland Municipal Code 1.08.017, in summary form attach to the original of this ordinance and by this reference approved by the City Council as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 2nd day of September, 2014.

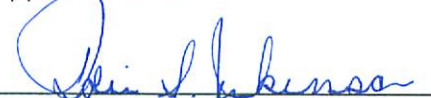
Signed in authentication thereof this 2nd day of September, 2014.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney

Publication Date: September 13, 2014

PUBLICATION SUMMARY
OF ORDINANCE O-4451

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CODE ENFORCEMENT AND AMENDING CERTAIN SECTIONS OF CHAPTER 1.12 OF THE KIRKLAND MUNICIPAL CODE, FILE NO. CAM14-00868 .

SECTION 1. Amends KMC Section 1.12.020 relating to definitions.

SECTION 2. Amends KMC Section 1.12.040 relating to notices of violation.

SECTION 3. Amends KMC Section 1.12.050 relating to hearings before the hearing examiner.

SECTION 4. Adds a new KMC Section 1.12.055 relating to reduction of monetary penalties.

SECTION 5. Adds a new KMC Section 1.12.057 relating to certificates of noncompliance.

SECTION 6. Amends KMC Section 1.12.070 relating to stop work orders and orders to cease and desist.

SECTION 7. Amends KMC Section 1.12.100 relating to enforcement of tree regulations.

SECTION 8. Provides a severability clause for the ordinance.

SECTION 9. 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 2nd day of September, 2014.

I certify that the foregoing is a summary of Ordinance O-4451 approved by the Kirkland City Council for summary publication.



City Clerk