

ORDINANCE O-4518

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SURFACE WATER DISCHARGE STANDARDS AND THE ENFORCEMENT OF SURFACE WATER REGULATIONS.

1 The City Council of the City of Kirkland do ordain as follows:
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3 Section 1. Kirkland Municipal Code Section 15.52.090 is
4 amended as follows:
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6 **15.52.090 Illicit discharges and connections.**

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

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

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

- 51 (1) Diverted stream flows.
- 52 (2) Rising ground waters.
- 53 (3) Uncontaminated ground water infiltration – as defined in 40 CFR
54 35.2005(b)(20).
- 55 (4) Uncontaminated pumped ground water.
- 56 (5) Foundation drains.
- 57 (6) Air conditioning condensation.
- 58 (7) Irrigation water from agricultural sources that is commingled with
59 urban storm water.
- 60 (8) Springs.
- 61 (9) ~~Uncontaminated~~ water from crawl space pumps.
- 62 (10) Footing drains.
- 63 (11) Flows from riparian habitats and wetlands.
- 64 (12) Discharges from emergency fire fighting activities in accordance
65 with S2 Authorized Discharges.
- 66 (13) Non-stormwater discharges authorized by another NPDES or state
67 waste discharge permit.

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

- 73 (1) Potable water, including water from water line flushing,
74 hyperchlorinated water line flushing, fire hydrant system flushing, and
75 pipeline hydrostatic test water. Planned discharges shall be
76 dechlorinated to a total residual chlorine concentration of 0.1 ppm or
77 less, pH-adjusted, if necessary and in volumes and velocities controlled
78 to prevent resuspension of sediments in the storm water system.
- 79 (2) Lawn watering and other irrigation runoff are permitted but shall
80 be minimized.
- 81 (3) Dechlorinated swimming pool, spa and hot tub discharges. These
82 discharges shall be dechlorinated to a total residual chlorine
83 concentration of 0.1 ppm or less, pH-adjusted, and reoxygenized if
84 necessary and in volumes and velocities controlled to prevent
85 resuspension of sediments in the storm water system. Discharges shall
86 be thermally controlled to prevent an increase in temperature of the
87 receiving water. Swimming pool cleaning wastewater and filter
88 backwash shall not be discharged to the Municipal Separate Storm
89 Sewer System ("MS4"), as defined in the most recent version of the
90 Western Washington Phase II Municipal Stormwater Permit.
- 91 (4) Street and sidewalk wash water, water used to control dust, and
92 routine external building wash down that does not use detergents are
93 permitted if the amount of street wash and dust control water used is
94 minimized. At active construction sites, street sweeping must be
95 performed prior to washing the street.
- 96 (5) Non-storm water discharges covered by another NPDES permit;
97 provided, that the discharger is in full compliance with all requirements
98 of the permit, waiver, or order and other applicable laws and

99 regulations; and provided, that written approval has been granted for
100 any discharge to the storm drain system.

101 (d) Failure to Remove Pollutants from Private System. It shall be a
102 violation of this chapter for any person who commits an illicit or
103 conditional discharge in violation of the section to fail to remove the
104 pollutants from a private system that enters the municipal storm system
105 and/or surface and ground waters. In addition, it shall be a violation of
106 this chapter for any property owner on whose property an illicit or
107 conditional discharge occurs to fail to remove the pollutants from a
108 private system that enters the municipal storm system.

109 ~~(d)~~ (e) Prohibition of Illicit Connections.

110 (1) The construction, use, maintenance, or continued existence of
111 illicit connections to the storm drain system are prohibited and
112 constitute a violation of this chapter.

113 (2) This prohibition expressly includes, without limitation, illicit
114 connections made in the past, regardless of whether the connection was
115 permissible under law or practices applicable or prevailing at the time
116 of connection.

117 (3) A person is considered to be in violation of this section if the
118 person connects a line conveying sewage to the MS4, or allows such a
119 connection to continue.

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

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126 Section 2. A new Kirkland Municipal Code Section 1.12.200 is
127 added to read as follows:
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129 **1.12.200 Special provisions relating to enforcement of KMC**
130 **Chapter 15.52 (Surface Water Utility).**

131 (a) General Requirements. This section applies to violations of KMC
132 Chapter 15.52, including illicit discharges and connections that
133 discharge into the municipal storm drain system and/or surface and
134 ground waters. Enforcement shall be conducted in accordance with
135 procedures set forth in this chapter. Special enforcement provisions
136 related to illicit discharges and connections are set forth in this section.

137 (b) Authority. It shall be the duty of the Public Works Director or
138 designee to administer the provisions of this section.

139 (c) Fines for illicit discharges and connections and other violations of
140 KMC Chapter 15.52.

141 (1) Each action or omission taken in violation of KMC Chapter 15.52 shall
142 constitute a separate violation.

143 (2) Any person who aids or abets the violation shall be considered to
144 have committed a violation for purpose of assessment of fines.

145 (3) Fines for a violation shall be determined using the Enforcement
146 Penalty Matrix (Table 1) and administered per violation.

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Table 1. Enforcement Penalty Matrix

| Enforcement Criterion | Evaluation | No (0 points) | Possibly (1 point) | Definitely (2 points) |
|--|-------------------|----------------------|---------------------------|------------------------------|
| 1) Perceived Public Health Risk? | | | | |
| 2) Environmental Damage or Adversely Impacting Infrastructure? | | | | |
| 3) Willful or Knowing Violation? | | | | |
| 4) Unresponsive in Correcting Action? | | | | |
| 5) Improper Operation or Inadequate Maintenance? | | | | |
| 6) Failure to Obtain Necessary Permits and Approval? | | | | |
| 7) Economic Benefit to Non-Compliance? | | | | |
| 8) Repeat Violation? | | | | |

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The Enforcement Penalty Matrix (Table 1) is comprised of a set of criteria formulated as questions for the Director to evaluate and answer. The Director uses the guidelines below to determine the total points to be assessed according to the violation. The civil penalty is determined by the total score of the matrix.

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1. Did the violation result in a public health risk?
 - a. Answer "no" if there is no evidence to support a claim of public health risk or adverse health effects.
 - b. Answer "possibly" if evidence supports a claim of public health risk and there is a plausible connection between this violation and health effect.
 - c. Answer "definitely" if there is direct evidence linking public health risk or adverse effects with the violation.
2. Did the violation result in environmental damage or adversely impact infrastructure?
 - a. Answer "no" if there is no evidence to support a claim of environmental or infrastructure damage.
 - b. Answer "possibly" if environmental or infrastructure damage can be inferred from evidence or knowledge of the effects of the violation.
 - c. Answer "definitely" if there is direct evidence linking environmental or infrastructure damage with the violation.
3. Was the action a willful and knowing violation?
 - a. Answer "no" if the violator obviously did not know that the action or inaction constituted a violation.

- 174 b. Answer "possibly" if the violator should have known.
175 c. Answer "definitely" if the violator clearly knew or was
176 previously informed of the violation by the City's
177 inspectors.
- 178 4. Was the responsible party unresponsive in correcting the
179 violation?
180 a. Answer "no" if the violation was corrected as soon as the
181 responsible party learned of it.
182 b. Answer "possibly" if the violation was corrected in a less
183 timely and cooperative fashion.
184 c. Answer "definitely" if the responsible party made no
185 attempt to correct the violation.
- 186 5. Was the violation a result of improper operation or inadequate
187 maintenance? ,
188 a. Answer "no" if the violation was not the result of
189 improper operation or inadequate maintenance.
190 b. Answer "possibly" if operation and/or maintenance was
191 completed but a violation still occurred.
192 c. Answer "definitely" if the violation was a result of
193 improper operation or inadequate maintenance.
- 194 6. Did the responsible party fail to obtain and comply with the
195 necessary permits, certifications and approvals from the agency
196 with jurisdiction to operate at the time of the violation?
197 a. Answer "no" if the paperwork was complete and
198 appropriate for the job or task that caused the violation.
199 b. Answer "possibly" if the responsible party obtained and
200 received approval for some but not all of the required
201 permit(s).
202 c. Answer "definitely" if the responsible party either did not
203 obtain the necessary permits or did obtain permits but
204 did not comply with their conditions.
- 205 7. Did anyone benefit economically from non-compliance?
206 a. Answer "no" if it is clear that no one gained an economic
207 benefit.
208 b. Answer "possibly" if someone might have benefited.
209 c. Answer "definitely" if the economic benefit is
210 quantifiable.
- 211 8. Is this violation a repeat violation 5?
212 a. Answer "no" to indicate that there have been no prior
213 violations.
214 b. Answer "possibly" to indicate that there has been one
215 prior violation.
216 c. Answer "definitely" to indicate that there have been three
217 or more prior violations.

218 Once the total amount of penalty points is determined, a rating and a
219 corresponding penalty amount is established (Table 2).

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Table 2. Penalty Points Rating and Corresponding Penalty Amount

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|----------------|-------|-------|---------|---------|---------|---------|
| Rating | 1-2 | 3-4 | 5-6 | 7-8 | 9 | 10 |
| Penalty | \$250 | \$500 | \$1,000 | \$1,500 | \$2,000 | \$2,500 |

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|----------------|---------|---------|---------|---------|---------|
| Rating | 11 | 12 | 13 | 14 | 15+ |
| Penalty | \$3,000 | \$3,500 | \$4,000 | \$4,500 | \$5,000 |

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The Director or designee shall assess the penalty amount against the responsible party in a written notice that sets forth the nature of the violation and the determination of the penalty amount due. The Director or designee may elect not to seek fines if he or she finds that special circumstances do not warrant imposition of fines.

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In addition to penalties, the City may require the responsible party to fully remove pollutants from private storm system which enters into the municipal storm system. In the event the responsible party fails to do so in timely fashion, the City may take summary abatement action in accordance with KMC Section 1.12.060(b).

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(d) Failure to Remove Pollutant or Pay Fines. The City may issue a notice of civil violation to the responsible party who fails to pay fines or to remove pollutants from private storm system which enters into the municipal storm system according to the procedures set forth in this chapter.


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Section 3. 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.

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Passed by majority vote of the Kirkland City Council in open meeting this 17th day of May, 2016.

Signed in authentication thereof this 17th day of May, 2016.


MAYOR

Attest:


City Clerk

Publication Date: May 23, 2016

Approved as to Form:


City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4518

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SURFACE WATER DISCHARGE STANDARDS AND THE ENFORCEMENT OF SURFACE WATER REGULATIONS.

SECTION 1. Amends Kirkland Municipal Code ("KMC") Section 15.52.090 related to illicit discharges and connections.

SECTION 2. Adds a new KMC Section 1.12.200 setting forth Special provisions relating to enforcement of KMC Chapter 15.52 Surface Water Utility.

SECTION 3. 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 17th day of May, 2016.

I certify that the foregoing is a summary of Ordinance O-4518 approved by the Kirkland City Council for summary publication.



City Clerk