

ORDINANCE O-4525

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CODE ENFORCEMENT AND AMENDING CERTAIN SECTIONS OF CHAPTER 1.12 OF THE KIRKLAND MUNICIPAL CODE RELATING TO TREE AND SURFACE WATER CODE VIOLATIONS

1           The City Council of the City of Kirkland ordains as follows:

2           Section 1. Kirkland Municipal Code ("KMC") Section 1.12.100 is  
3 hereby amended to read as follows:

4           **1.12.100 Special provisions relating to enforcement of tree**  
5 **regulations in Kirkland Zoning Code Chapter 95.**  
6

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

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

14           (c) Fines for Tree Removal.

15           (1) Each unlawfully removed or damaged tree shall constitute a  
16 separate violation.

17           (2) Any person who aids or abets in the violation shall be considered  
18 to have committed a violation for purposes of fines.

19           (3) Fines shall be assessed in accordance with Table 1.12.100. Fines  
20 are due according to the corrective action described in the notice of tree  
21 fines and restoration due. The applicable department director may elect  
22 not to seek fines if he or she determines that the circumstances do not  
23 warrant imposition of 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

24 (d) Tree Restoration.

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

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

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

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

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

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

68 (e) Hearing on Violation, Failure to Restore or Failure to Pay Fines.  
 69 The city may issue a notice of civil violation to the person(s) who violates  
 70 Kirkland Zoning Code Chapter 95 or a permit issued thereunder and fails  
 71 to restore or pay fines according to the procedures set forth in this  
 72 chapter. The hearing on the notice of civil violation shall be held in  
 73 accordance with KMC 1.12.050 and shall determine whether the  
 74 person(s) violated applicable tree regulations or permit conditions and  
 75 impose any appropriate fine(s) for such violation(s), as well as whether  
 76 the person(s) failed to restore or pay fines according to the procedures  
 77 set forth in this chapter.

78 Section 2. KMC Section 1.12.200 is hereby amended to read as  
 79 follows:

80 **1.12.200 Special provisions relating to enforcement of Chapter**  
 81 **15.52 (Surface Water Management).**

82 (a) General Requirements. This section applies to violations of  
 83 Chapter 15.52, including illicit discharges and connections that  
 84 discharge into the municipal storm drain system and/or surface and  
 85 ground waters. Enforcement shall be conducted in accordance with

86 procedures set forth in this chapter. Special enforcement provisions  
 87 related to illicit discharges and connections are set forth in this section.

88 (b) Authority. It shall be the duty of the public works director or  
 89 designee to administer the provisions of this section.

90 (c) Fines for illicit discharges and connections and other violations  
 91 of Chapter 15.52.

92 (1) Each action or omission taken in violation of Chapter 15.52  
 93 shall constitute a separate violation.

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

96 (3) Fines for a violation shall be determined using the enforcement  
 97 penalty matrix (Table 1) and administered per violation.

Table 1. Enforcement Penalty Matrix			
Enforcement Evaluation Criterion	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 Noncompliance?			
8) Repeat Violation?			

98 The enforcement penalty matrix (Table 1) is comprised of a set of  
 99 criteria formulated as questions for the director to evaluate and answer.  
 100 The director uses the guidelines below to determine the total points to  
 101 be assessed according to the violation. The civil penalty is determined  
 102 by the total score of the matrix.

- 103 1. Did the violation result in a public health risk?  
104 a. Answer "no" if there is no evidence to support a claim of public  
105 health risk or adverse health effects.  
106 b. Answer "possibly" if evidence supports a claim of public health  
107 risk and there is a plausible connection between this violation and health  
108 effect.  
109 c. Answer "definitely" if there is direct evidence linking public  
110 health risk or adverse effects with the violation.
- 111 2. Did the violation result in environmental damage or adversely  
112 impact infrastructure?  
113 a. Answer "no" if there is no evidence to support a claim of  
114 environmental or infrastructure damage.  
115 b. Answer "possibly" if environmental or infrastructure damage  
116 can be inferred from evidence or knowledge of the effects of the  
117 violation.  
118 c. Answer "definitely" if there is direct evidence linking  
119 environmental or infrastructure damage with the violation.
- 120 3. Was the action a willful and knowing violation?  
121 a. Answer "no" if the violator obviously did not know that the  
122 action or inaction constituted a violation.  
123 b. Answer "possibly" if the violator should have known.  
124 c. Answer "definitely" if the violator clearly knew or was previously  
125 informed of the violation by the city's inspectors.
- 126 4. Was the responsible party unresponsive in correcting the  
127 violation?  
128 a. Answer "no" if the violation was corrected as soon as the  
129 responsible party learned of it.  
130 b. Answer "possibly" if the violation was corrected in a less timely  
131 and cooperative fashion.  
132 c. Answer "definitely" if the responsible party made no attempt to  
133 correct the violation.
- 134 5. Was the violation a result of improper operation or inadequate  
135 maintenance?  
136 a. Answer "no" if the violation was not the result of improper  
137 operation or inadequate maintenance.  
138 b. Answer "possibly" if operation and/or maintenance was  
139 completed but a violation still occurred.  
140 c. Answer "definitely" if the violation was a result of improper  
141 operation or inadequate maintenance.
- 142 6. Did the responsible party fail to obtain and comply with the  
143 necessary permits, certifications and approvals from the agency with  
144 jurisdiction to operate at the time of the violation?  
145 a. Answer "no" if the paperwork was complete and appropriate for  
146 the job or task that caused the violation.  
147 b. Answer "possibly" if the responsible party obtained and received  
148 approval for some but not all of the required permit(s).

149 c. Answer "definitely" if the responsible party either did not obtain  
 150 the necessary permits or did obtain permits but did not comply with  
 151 their conditions.

152 7. Did anyone benefit economically from noncompliance?

153 a. Answer "no" if it is clear that no one gained an economic  
 154 benefit.

155 b. Answer "possibly" if someone might have benefited.

156 c. Answer "definitely" if the economic benefit is quantifiable.

157 8. Is this violation a repeat violation?

158 a. Answer "no" to indicate that there have been no prior violations.

159 b. Answer "possibly" to indicate that there has been one prior  
 160 violation.

161 c. Answer "definitely" to indicate that there have been three or  
 162 more prior violations.

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

Table 2. Penalty Points Rating and Corresponding Penalty Amount						
Rating	1-2	3-4	5-6	7-8	9	10
Penalty	\$250	\$500	\$1,000	\$1,500	\$2,000	\$2,500
Rating	11	12	13	14	15+	
Penalty	\$3,000	\$3,500	\$4,000	\$4,500	\$5,000	

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

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

175 (d) Hearing on Violation, Failure to Remove Pollutant or Failure to  
 176 Pay Fines. The city may issue a notice of civil violation to the responsible  
 177 party who violates KMC Chapter 15.52 and who fails to pay fines or to  
 178 remove pollutants from a private storm system which that enters into  
 179 the municipal storm system according to the procedures set forth in this  
 180 chapter. The hearing on the notice of civil violation shall be held in  
 181 accordance with KMC 1.12.050 and shall determine whether the  
 182 responsible party violated KMC Chapter 15.52 and impose any  
 183 appropriate fine(s) for such violation(s), as well as whether the  
 184 responsible party failed to pay fines or remove pollutants from a private

185 system that enters into the municipal storm system according to the  
186 procedures set forth in this chapter.

187 Section 3. If any section, subsection, sentence, clause, phrase,  
188 part or portion of this ordinance, including those parts adopted by  
189 reference, is for any reason held to be invalid or unconstitutional by any  
190 court of competent jurisdiction, such decision shall not affect the validity  
191 of the remaining portions of this ordinance.

192 Section 4. This ordinance shall be in force and effect five days  
193 from and after its passage by the Kirkland City Council and publication  
194 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary  
195 form attached to the original of this ordinance and by this reference  
196 approved by the City Council.

197 Passed by majority vote of the Kirkland City Council in open  
198 meeting this 19th day of July, 2016.

199  
200 Signed in authentication thereof this 19th day of July, 2016.

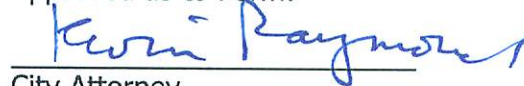
  
Mayor

Attest:

  
City Clerk

Publication Date: July 25, 2016

Approved as to Form:

  
City Attorney