

ORDINANCE O-4556

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SERVICE OF NOTICE.

1 WHEREAS, as part of a legal review of the Kirkland Municipal
2 Code ("KMC") by Code Publishing Company it has been recommended
3 that various sections of the KMC related to the service of notice be
4 amended to provide that such notice is deemed served three days after
5 it has been deposited in the U.S. mail in order to provide certainty and
6 to conform to a generally accepted service of process rule; and
7

8 WHEREAS, as part of such review it has also been recommended
9 that various sections of the KMC related to notice response times be
10 amended to provide for a period of 10 calendar days in which to respond
11 in order to provide a uniform and reasonable response time and also to
12 address potential due process requirements.
13

14 NOW, THEREFORE, the City Council of the City of Kirkland do
15 ordain as follows:
16

17 Section 1. Kirkland Municipal Code Section 1.12.040 is amended
18 to read as follows:
19

20 **1.12.040 Notice of civil violation.**

21 (a) Issuance.

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

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

30 (A) When an emergency exists;

31 (B) When a repeat violation occurs;

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

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

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

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

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

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

44 (4) The required corrective action and a date and time by which the
45 correction must be completed, after which the city may abate the

46 unlawful condition in accordance with Section 1.12.060 and the hearing
47 examiner's order; and

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

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

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

62 (c) Service of Notice. The applicable department director shall serve
63 the notice of civil violation upon the person to whom it is directed, either
64 personally or by mailing a copy of the notice of civil violation to such
65 person at their last known address; provided, however, that service by
66 mail shall be deemed served three days after it has been deposited in
67 regular U.S. mail. If the person to whom it is directed cannot after due
68 diligence be personally served within King County and if an address for
69 mailed service cannot after due diligence be ascertained, notice shall be
70 served by posting a copy of the notice of civil violation conspicuously on
71 the affected property or structure. Proof of service shall be made by a
72 written declaration under penalty of perjury executed by the person
73 effecting the service, declaring the time and date of service, the manner
74 by which the service was made, and if by posting the facts showing that
75 due diligence was used in attempting to serve the person personally or
76 by mail.

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

80 (e) Monetary Penalty Schedule.

81 (1) Amount.

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

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

88 (2) Limit. The total monetary penalties for each violation shall not
89 exceed ten thousand dollars per violation, except as provided for in
90 Sections 1.12.050(d)(3) and (4).

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

94 (g) Collection of Monetary Penalty.

95 (1) The monetary penalty constitutes a personal obligation of the
96 person to whom the notice of civil violation is directed. Any monetary
97 penalty assessed must be paid to the city as stated in the notice from
98 the city that penalties are due as established in the hearing examiner's
99 decision.

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

103
 104 Section 2. Kirkland Municipal Code Section 7.06.150 is amended
 105 to read as follows:

106
 107 **7.06.150 Appeals.**

108 An affected employer may request an appeal of penalties.

109 (a) An affected employer to whom a notice of violation and
 110 imposition of monetary penalties is directed may appeal the notice
 111 including the determination that a violation exists or may appeal the
 112 amount of any monetary penalty imposed to the city hearing examiner.

113 (b) An affected employer may appeal a notice of violation by filing
 114 a written notice of appeal with the department of public works within
 115 ~~ten~~seven calendar days from the date of service of the notice of violation
 116 and imposition of monetary penalties.

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

122 (d) The hearing before the hearing examiner shall be conducted
 123 as follows:

124 (1) The office of the hearing examiner shall give notice of the
 125 hearing before the hearing examiner to the appellant at least seventeen
 126 calendar days before such hearing.

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

133 (e) The hearing examiner shall determine whether the city has
 134 proved by a preponderance of the evidence that a violation has occurred
 135 and shall affirm, vacate, suspend or modify the amount of any monetary
 136 penalty imposed by the notice of civil violation with or without written
 137 conditions.

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

140 (1) Whether the intent of the appeal was to delay compliance; or

141 (2) Whether the appeal is frivolous; or

142 (3) Whether the appellant exercised reasonable and timely effort
 143 to comply with applicable requirements; or

144 (4) Any other relevant factors.

145 (g) The hearing examiner shall mail a copy of his decision to the
 146 appellant by certified mail, postage prepaid, return receipt requested.

147 (h) The decision of the hearing examiner may be reviewed for
 148 illegal, corrupt or arbitrary or capricious action in King County superior
 149 court. The petition for review must be filed within thirty calendar days
 150 of the final decision of the hearing examiner.

151 (i) The collection of the monetary penalty shall be as follows:

152 (1) The monetary penalty constitutes a personal obligation of the
 153 person to whom the civil infraction is directed. Any monetary penalty

154 assessed must be paid to the city clerk within ~~tenseven~~ calendar days
155 from the date of service of notice of violation and imposition of monetary
156 penalties or, if an appeal was filed pursuant to this chapter, within
157 ~~tenseven~~ calendar days of the hearing examiner's decision.

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

162 (3) In the event of failure to appear at a hearing provided herein,
163 the hearing examiner shall assess the monetary penalty prescribed and
164 a penalty of twenty-five dollars.

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

167 (j) A person who willfully fails to pay a monetary penalty as
168 required by provisions of this chapter may be found in civil contempt of
169 court after notice and hearing.

171 Section 3. Kirkland Municipal Code Section 21.41.107 is
172 amended to read as follows:

173
174 **21.41.107 Notices and orders (condemnation and demolition).**

175 (a) Notice to Person Responsible. Whenever the code official is
176 required to provide notice per Section 21.41.108(c) or Section
177 21.41.110(b), notice shall be given in the manner prescribed in
178 subsections (b) and (c) of this section to the person responsible for the
179 violation as specified in this code.

180 (b) Form. Such notice prescribed in subsection (a) of this section
181 shall be in accordance with all of the following:

- 182 (1) Be in writing.
- 183 (2) Include a description of the real estate sufficient for
184 identification.
- 185 (3) Include a statement of the violation or violations and why the
186 notice is being issued.
- 187 (4) Include a correction order allowing a reasonable time to make
188 the repairs and improvements required to bring the dwelling unit or
189 structure into compliance with the provisions of this code.

190 (5) Inform the property owner or owner's authorized agent of the
191 right to appeal.

192 (6) Include a statement of the right to file a lien in accordance
193 with Chapter 1.12.

194 (c) Method of Service. Such notice shall be deemed to be properly
195 served if a copy thereof is:

- 196 (1) Delivered personally;
- 197 (2) Sent by certified or first-class mail addressed to the last known
198 address, provided in either instance that such notice shall be deemed
199 served three days after it has been sent or deposited; or

200 (3) If the notice is returned showing that the letter was not
201 delivered, a copy thereof shall be posted in a conspicuous place in or
202 about the structure affected by such notice.

203 (d) Unauthorized Tampering. Signs, tags or seals posted or affixed
204 by the code official shall not be mutilated, destroyed or tampered with,
205 or removed without authorization from the code official.

206 (e) Penalties. Penalties for noncompliance with orders and notices
207 shall be as set forth in Chapter 1.12.

208 (f) Transfer of Ownership. It shall be unlawful for the owner of
209 any dwelling unit or structure who has received a compliance order or
210 upon whom a notice of violation has been served to sell, transfer,
211 mortgage, lease or otherwise dispose of such dwelling unit or structure
212 to another until the provisions of the compliance order or notice of
213 violation have been complied with, or until such owner or owner's
214 authorized agent shall first furnish the grantee, transferee, mortgagee
215 or lessee a true copy of any compliance order or notice of violation
216 issued by the code official and shall furnish to the code official a signed
217 and notarized statement from the grantee, transferee, mortgagee or
218 lessee, acknowledging the receipt of such compliance order or notice of
219 violation and fully accepting the responsibility without condition for
220 making the corrections or repairs required by such compliance order or
221 notice of violation.

222 (g) Means of Appeal. Any person directly affected by a decision of
223 the code official or a notice or order issued under this section shall have
224 the right to appeal as set forth in Chapter 1.12.
225

226 Section 4. If any provision of this ordinance or its application to
227 any person or circumstance is held invalid, the remainder of the
228 ordinance or the application of the provision to other persons or
229 circumstances is not affected.
230

231 Section 5. This ordinance shall be in force and effect five days
232 from and after its passage by the Kirkland City Council and publication
233 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary
234 form attached to the original of this ordinance and by this reference
235 approved by the City Council.
236

237 Passed by majority vote of the Kirkland City Council in open
238 meeting this 21st day of February, 2017.
239

240 Signed in authentication thereof this 21st day of February, 2017.



MAYOR

Attest:


City Clerk

Publication Date: February 27, 2017

Approved as to Form:


City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4556

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SERVICE OF NOTICE.

SECTION 1. Amends Kirkland Municipal Code Section 1.12.040 related to notice of civil violation, setting the hearing before the hearing examiner and the service of notice.

SECTION 2. Amends Kirkland Municipal Code Section 1.12.040 related to appeals and setting when monetary penalties must be paid.

SECTION 3. Amends Kirkland Municipal Code Section 21.41.107 related to notices and orders for condemnation and demolition.

SECTION 4. Provides a severability clause for the ordinance.

SECTION 5. 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 February, 2017.

I certify that the foregoing is a summary of Ordinance O-4556 approved by the Kirkland City Council for summary publication.



City Clerk