

ORDINANCE O-4666

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING SURFACE WATER REGULATIONS.

1 WHEREAS, the Environmental Chapter of the Comprehensive
2 Plan sets forth policies for environmental protection, including
3 protection of surface water; and
4

5 WHEREAS, since May of 2016, the City has enforced its surface
6 water code, Kirkland Municipal Code ("KMC") Chapter 15.52, through a
7 special chapter in its code enforcement regulations, KMC 1.12.200, to
8 recover clean-up costs from violators and to levy fines in appropriate
9 cases, such as when a violation has been committed and the violation
10 cannot be corrected (for instance, where a stream has been polluted
11 with toxins that either cannot be removed at all or cannot be completely
12 removed); and
13

14 WHEREAS, based upon the City's experience with these code
15 enforcement regulations over the past several years, including the
16 effectiveness of the regulations to prevent environmental damage
17 and/or correct environmental damage, and to reimburse the City for
18 reasonable costs incurred in having to respond to environmental
19 damages, staff recommends certain revisions to the City's Code
20 Enforcement Regulations in Chapter 1.12 KMC.
21

22 NOW, THEREFORE, the City Council of the City of Kirkland do
23 ordain as follows:
24

25 Section 1. Kirkland Municipal Code Section 1.12.020 is amended
26 to read as follows:
27

28 **1.12.020 Definitions.**
29

30 As used in this chapter, unless a different meaning is plainly required:
31

32 (a) "Abate" means to repair, replace, remove, destroy or otherwise
33 remedy a condition which constitutes a civil violation by such means, in
34 such a manner and to such an extent as the applicable department
35 director determines is necessary in the interest of the general health,
36 safety and welfare of the community.
37

38 (b) "Act" means doing or performing something.
39

40 (c) "Applicable department director" means the director of the
41 department or his or her designee.
42

43 (d) "Civil violation" means a violation for which a monetary penalty
44 may be imposed as specified in this chapter. Each day or portion of a
45 day during which a violation occurs or exists is a separate violation.

46 Traffic infractions issued pursuant to Title 12 are specifically excluded
47 from the application of this chapter.

48
49 (e) "Development" means the erection, alteration, enlargement,
50 demolition, maintenance or use of any structure or the alteration or use
51 of any land above, at or below ground or water level, and all acts
52 governed by a city regulation.

53
54 (f) "Emergency" means a situation which in the opinion of the
55 applicable department director requires immediate action to prevent or
56 eliminate an immediate threat to the health or safety of persons or
57 property.

58
59 (g) "Hearing examiner" means the Kirkland hearing examiner and the
60 office thereof established pursuant to Chapter 3.34.

61
62 (h) "Omission" means a failure to act.

63
64 (i) "Person" means any individual, firm, association, partnership,
65 corporation or any entity, public or private.

66
67 (j) "Person responsible for the violation" means any person who is
68 required by the applicable regulation to comply therewith, or who
69 commits any act or omission which is a civil violation or causes or
70 permits a civil violation to occur or remain upon property in the city, and
71 includes but is not limited to owner(s), lessor(s), tenant(s), vendor(s),
72 contractor(s), or other person(s) entitled to control, use and/or occupy
73 property where a civil violation occurs. For violations of the city sign
74 regulations, this definition includes, but is not limited to, sign
75 installers/posters, sign owners, and any other persons who cause or
76 participate in the placement of a sign in a manner that constitutes a civil
77 violation. For violations of city tree regulations, this definition includes
78 any person who caused or participated in the removal of a tree in a
79 manner that constitutes a civil violation.

80
81 (k) "Regulation" means and includes the following, as they now exist
82 or are hereafter amended:

- 83
84 (1) Title 23 (Kirkland Zoning Code);
85
86 (2) Title 21, Buildings and Construction (including codes adopted by
87 reference);
88
89 (3) Chapter 15.52 (Surface Water Management);
90
91 (4) Title 29 (Land Surface Modification);
92
93 (5) Chapter 19.04 (Obstructing Streets or Sidewalks);
94
95 (6) Chapter 11.76 (Junk Vehicles);
96
97 (7) Chapter 11.24 (Nuisances);

- 98 (8) The terms and conditions of any permit or approval issued by the
 99 city, or any concomitant agreement with the city;
 100
 101 (9) Chapter 7.74 (Fair Housing Regulations);
 102
 103 (10) Chapter 16.05 (Retail Carryout Bags, including definitions set
 104 forth in Chapter 16.04);
 105
 106 (11) Chapter 16.08 (Garbage Disposal); and
 107
 108 (12) Chapter 7.02 (Business Licenses and Regulations).
 109
 110 (l) "Repeat violation" means a violation of the same regulation in any
 111 location in the city by the same person or responsible party for which
 112 ~~voluntary~~ compliance previously has been sought ~~within two years~~ or a
 113 notice of civil violation has been issued ~~within two years~~.
 114
 115 (m) "Responsible Party" means any person who is required by the
 116 applicable regulation to comply therewith, or who commits any act or
 117 omission which is a civil violation or causes or permits a civil violation to
 118 occur or remain upon property in the city, and includes but is not limited
 119 to owner(s), lessor(s), tenant(s), vendor(s), contractor(s), or other
 120 person(s) entitled to control, use and/or occupy property where a civil
 121 violation occurs.
 122 (nn) "Violation" means an act or omission contrary to a city
 123 development regulation including an act or omission at the same or
 124 different location by the same person and including a condition resulting
 125 from such act or omission.
 126
 127 Section 2. Kirkland Municipal Code Section 1.12.200 is amended
 128 to read as follows:
 129
 130 **1.12.200 Special provisions relating to enforcement of Chapter**
 131 **15.52 (Surface Water Management).**
 132
 133 (a) General Requirements. This section applies to violations of
 134 Chapter 15.52, including illicit discharges and connections that
 135 discharge into the municipal storm drain system and/or surface and
 136 ground waters. Enforcement shall be conducted in accordance with
 137 procedures set forth in this chapter. Special enforcement provisions
 138 related to illicit discharges and connections are set forth in this section.
 139
 140 (b) Authority. It shall be the duty of the public works director or
 141 designee to administer the provisions of this section.
 142
 143 (c) Determining Fines for Illicit Discharges and Connections and Other
 144 Violations of Chapter 15.52.
 145
 146 (1) Each action or omission taken in violation of Chapter 15.52 shall
 147 constitute a separate violation.

- 148 (2) Any person who aids or abets the violation shall be considered to
 149 have committed a violation for purpose of assessment of fines.
 150
 151 (3) Fines for a violation shall be determined using the enforcement
 152 penalty surface water enforcement matrix (Table 1) and administered
 153 per violation.

Table 1. Enforcement Penalty Surface Water Enforcement Matrix

Enforcement Evaluation Criterion Criteria	No (0 points)	Possibly (1 point)	Definitely (2 points)
1) Perceived Public Health Risk?			
2) Environmental Damage or Adversely Impacting Infrastructure?			
3) <u>Impacting Municipal Storm Drain System?</u>			
34) Willful or Knowing Violation?			
45) Unresponsive in Correcting Action?			
56) Improper Operation or Inadequate Maintenance?			
6) Failure to Obtain Necessary Permits and Approval?			
7) Economic Benefit to Noncompliance?			
8) Repeat Violation?			

154 The enforcement penalty surface water enforcement matrix (Table 1) is
 155 comprised of a set of criteria formulated as questions for the director to
 156 evaluate and answer. The director uses the guidelines below to
 157 determine the total points to be assessed according to the violation. The
 158 civil penalty is surface water fine(s) are determined by the total score of
 159 the matrix.

- 160
 161 1. Did the violation result in a public health risk?
 162
 163 a. Answer "no" if there is no evidence to support a claim of public
 164 health risk or adverse health effects.
 165
 166 b. Answer "possibly" if evidence supports a claim of public health risk
 167 and there is a plausible connection between this violation and health
 168 effect.
 169
 170 c. Answer "definitely" if there is direct evidence linking public health
 171 risk or adverse effects with the violation.
 172
 173 2. Did the violation result in environmental (e.g., physical, chemical,
 174 or biological) damage ~~or adversely impact infrastructure?~~
 175
 176 a. Answer "no" if there is no evidence to support a claim of
 177 environmental ~~or infrastructure~~ damage.

178 b. Answer "possibly" if environmental ~~or infrastructure~~ damage can
179 be reasonably-inferred from evidence or knowledge of the effects of the
180 violation.

181
182 c. Answer "definitely" if there is direct evidence linking environmental
183 ~~or infrastructure~~ damage with the violation.

184
185 3. Did the violation impact the municipal storm drain system?

186
187 a. Answer "no" if there is no evidence to support a claim of impact to
188 municipal storm drain system.

189
190 b. Answer "possibly" if impact to municipal storm drain system can be
191 reasonably-inferred from evidence or knowledge of the effects of the
192 violation.

193
194 c. Answer "definitely" if there is direct evidence linking municipal
195 storm drain system impacts to the violation.

196
197 34. Was the action a willful and knowing violation?

198
199 a. Answer "no" if the violator obviously did not know that the action
200 or inaction constituted a violation.

201
202 b. Answer "possibly" if the violator should have known.

203
204 c. Answer "definitely" if the violator clearly knew or was previously
205 informed of the violation by the city's inspectors or permit conditions.

206
207 4-5. Was the responsible party unresponsive in correcting the
208 violation?

209
210 a. Answer "no" if the violation was corrected as soon as the
211 responsible party learned of it.

212
213 b. Answer "possibly" if the violation was corrected in a less timely and
214 cooperative fashion.

215
216 c. Answer "definitely" if the responsible party made no attempt to
217 correct the violation.

218
219 56. Was the violation a result of improper operation or inadequate
220 maintenance?

221
222 a. Answer "no" if the violation was not the result of improper
223 operation or inadequate maintenance.

224
225 b. Answer "possibly" if operation and/or maintenance was completed
226 but a violation still occurred.

227
228 c. Answer "definitely" if the violation was a result of improper
229 operation or inadequate maintenance.

230 ~~6. Did the responsible party fail to obtain and comply with the~~
 231 ~~necessary permits, certifications and approvals from the agency with~~
 232 ~~jurisdiction to operate at the time of the violation?~~

233
 234 ~~a. Answer "no" if the paperwork was complete and appropriate for the~~
 235 ~~job or task that caused the violation.~~

236
 237 ~~b. Answer "possibly" if the responsible party obtained and received~~
 238 ~~approval for some but not all of the required permit(s).~~

239
 240 ~~c. Answer "definitely" if the responsible party either did not obtain the~~
 241 ~~necessary permits or did obtain permits but did not comply with their~~
 242 ~~conditions.~~

243
 244 7. Did anyone benefit economically from noncompliance?

245
 246 a. Answer "no" if it is clear that no one gained an economic benefit.

247
 248 b. Answer "possibly" if someone might have benefited.

249
 250 c. Answer "definitely" if the economic benefit is quantifiable.

251
 252 8. Is this violation a repeat violation?

253
 254 a. Answer "no" to indicate that there have been no prior violations.

255
 256 b. Answer "possibly" to indicate that there has been one prior
 257 violation.

258
 259 c. Answer "definitely" to indicate that there have been three or more
 260 prior violations.

261
 262 Once the total amount of penalty points is determined, a rating and a
 263 corresponding penalty surface water fine amount is established (Table
 264 2).

Table 2. Penalty Points Rating and Corresponding Penalty Surface Water Fine Amount

Rating	1-2	3-4	5-6	7-8	9-10	10
Penalty Fine	\$250 <u>500</u>	\$1 <u>500</u>	\$1,000 <u>2,500</u>	\$1,500 <u>4,000</u>	\$2,000 <u>6,000</u>	\$2,500

Rating	11-12	12	13-14	14	15+
Penalty Fine	\$3,000 <u>8,000</u>	\$3,500	\$4,000 <u>10,000</u>	\$4,500	\$5,000

265 (d). Self-reported Violations. The director or designee may reduce or
 266 waive the surface water fine for persons who immediately self-report
 267 violations to the city at 425-587-3900.

268
 269 (e) Assessment of Fines.

- 270 (1) Fines. The director or designee shall assess the ~~penalty amount~~surface
 271 water fine against the ~~any~~ responsible party in a written notice that sets
 272 forth the nature of the violation and the determination of the ~~penalty~~
 273 amount of the fine due. The director or designee may elect not to seek
 274 surface water fines if he or she finds that ~~special~~ rare and unique
 275 circumstances do not warrant imposition of fines.
- 276 (2) Repeat violations. Where the city finds a repeat violation of Chapter
 277 15.52 has occurred pursuant to KMC 1.12.020(l), the fine for the repeat
 278 violation shall be determined by multiplying the surface water fine
 279 amount in Table 2, above, by the number of violations. For example,
 280 the fine for second time violators is multiplied by two, and the fine for
 281 third time violators is multiplied by three, and so on.
- 282
- 283 (f) Corrective Action and Summary abatement. In addition to
 284 ~~penalties~~surface water fines, the city may require the responsible party
 285 to take corrective action to cease violating Chapter 15.52, including, but
 286 not limited to, requiring the responsible party to fully remove pollutants
 287 from private storm system(s) which enters into the municipal storm
 288 system. In the event the responsible party fails to take necessary
 289 corrective action do so in a timely fashion, the city may take summary
 290 abatement action in accordance with Section 1.12.060(b)
- 291
- 292 (g) Cost Recovery. The director or designee shall assess costs
 293 associated with cleaning or restoring the municipal storm drain system
 294 against any responsible party in a written notice that sets forth the
 295 nature of the violation and the determination of the amount. The
 296 director or designee may elect not to seek costs if he or she finds that
 297 unique circumstances do not warrant such collection.
- 298
- 299 (h) Real property Owner Liability. Where a violation of Chapter 15.52
 300 has occurred at least in part on private property, and when more than
 301 one person is responsible for fines and/or costs under subsection (d),
 302 (e) and/or (f) above, the director or designee may determine that the
 303 owner of the real property where the violation occurred shall be jointly
 304 and severally liable for all of the fines and/or costs assessed again each
 305 person.
- 306
- 307 (di) Notice of Civil Violation and Hearing on Violation. ~~Failure to~~
 308 ~~Remove Pollutant or Failure to Pay Fines.~~ The city may issue a notice of
 309 civil violation to the ~~any~~ responsible party who violates Chapter 15.52
 310 and who fails to pay surface water fines and/or costs of recovery, and/or
 311 costs of abatement, and/or fails to take other necessary corrective
 312 action. or to remove pollutants from a private storm system that enters
 313 into the municipal storm system according to the procedures set forth
 314 in this chapter. The hearing on the notice of civil violation shall be held
 315 in accordance with Section 1.12.050, and shall determine whether the
 316 responsible party violated Chapter 15.52 and impose any appropriate
 317 fine(s) for such violation(s), as well as whether the responsible party
 318 failed to pay fines or remove pollutants from a private system that
 319 enters into the municipal storm system according to the procedures set
 320 forth in this chapter.

321 Section 3. Kirkland Municipal Code Section 15.52.090(c) is
322 amended to read as follows:
323

324 **15.52.090(c) Illicit discharges and connections. Conditional**
325 **Discharges.**
326

327 (c) Conditional Discharges. The following types of discharges shall not
328 be considered illicit discharges for the purpose of this chapter if they
329 meet the stated conditions, or unless the public works director or
330 designee determines that the type of discharge, whether singly or in
331 combination with others, is causing or is likely to cause pollution of
332 surface water or ground water:
333

334 (1) Potable water, including water from water line flushing,
335 hyperchlorinated water line flushing, fire hydrant system flushing, and
336 pipeline hydrostatic test water. Planned discharges shall be
337 dechlorinated to a total residual chlorine concentration of 0.1 ppm or
338 less, pH-adjusted, if necessary, and in volumes and velocities controlled
339 to prevent resuspension of sediments in the storm water system.
340

341 (2) Lawn watering and other irrigation runoff are permitted but shall
342 be minimized.
343

344 (3) Dechlorinated swimming pool, spa and hot tub discharges. These
345 discharges shall be dechlorinated to a total residual chlorine
346 concentration of 0.1 ppm or less, pH-adjusted, and reoxygenized if
347 necessary and in volumes and velocities controlled to prevent
348 resuspension of sediments in the storm water system. Discharges shall
349 be thermally controlled to prevent an increase in temperature of the
350 receiving water. Swimming pool cleaning wastewater and filter
351 backwash shall not be discharged to the municipal separate storm sewer
352 system ("MS4"), as defined in the most recent version of the Western
353 Washington Phase II Municipal Stormwater Permit.
354

355 (4) Street and sidewalk wash water, water used to control dust, and
356 routine external building wash down that does not use detergents are
357 permitted if the amount of street wash and dust control water used is
358 minimized. At active construction sites, street sweeping must be
359 performed prior to washing the street.
360

361 (5) Non-storm water discharges covered by another NPDES permit;
362 provided, that the discharger is in full compliance with all requirements
363 of the permit, waiver, or order and other applicable laws and
364 regulations; and provided, that written approval has been granted for
365 any discharge to the storm drain system.

366 Section 4. Kirkland Municipal Code Section 15.52.100 is
367 amended to read as follows:
368

369 **15.52.100 Source control best management practices.**
370

371 BMPs shall be applied to any business or residential activity that
372 might ~~Any person causing or allowing discharge~~ contaminants to a

373 public drainage facility, natural drainage system, surface and storm
374 water, or ground water. ~~Contaminants shall be controlled contamination~~
375 ~~in the discharge~~ by implementing appropriate source control BMPs, as
376 described in the 2016 King County Stormwater Pollution Prevention
377 Manual. ~~Discharges associated with activities not addressed in the 2016~~
378 ~~King County Stormwater Pollution Prevention Manual shall be controlled~~
379 ~~using BMPs reviewed and accepted by the City.~~ Failure to implement
380 such practices shall constitute a violation of this chapter. Design
381 requirements for BMPs are provided in the pre-approved plans.
382

383
384 Section 5. If any provision of this ordinance or its application to
385 any person or circumstance is held invalid, the remainder of the
386 ordinance or the application of the provision to other persons or
387 circumstances is not affected.
388

389 Section 6. This ordinance shall be in force and effect five days
390 from and after its passage by the Kirkland City Council and publication
391 pursuant to Section 1.08.017, Kirkland Municipal code in the summary
392 from attached to the original of this ordinance and by this reference
393 approved by the City Council.
394

395 Passed by majority vote of the Kirkland City Council in open
396 meeting this 20th day of November, 2018.
397

398 Signed in authentication thereof this 20th day of November,
399 2018.



Jay Arnold, Deputy Mayor

Attest:

Publication Date: November 26, 2018


Kathi Anderson, City Clerk

Approved as to Form:


Kevin Raymond, City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. O-4666

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING SURFACE WATER REGULATIONS.

SECTION 1. Amends Kirkland Municipal Code Section 1.12.020 related to definitions for code enforcement regulations.

SECTION 2. Amends Kirkland Municipal Code Section 1.12.200 updating special provisions relating to enforcement of Kirkland Municipal Code Chapter 15.52 related to surface water management.

SECTION 3. Amends Kirkland Municipal Code Subsection 15.52.090(c) updating the types of conditional discharges.

SECTION 4. Amends Kirkland Municipal Code Section 15.52.100 related to best management practices related to storm water pollution prevention.

SECTION 5. Provides a severability clause for the ordinance.

SECTION 6. 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 20th day of November, 2018.

I certify that the foregoing is a summary of Ordinance O-4666 approved by the Kirkland City Council for summary publication.



Kathi Anderson, City Clerk

Publication Date: November 26, 2018