

ORDINANCE O-4718

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PARKING, PROHIBITED CONDUCT, TRESPASS WARNINGS AND THE PETER KIRK MUNICIPAL GARAGE.

1 WHEREAS, the Peter Kirk Municipal Garage ("Municipal
2 Garage" or "garage") is owned and operated by the City of
3 Kirkland ("City") and is located at the southwest corner of Peter
4 Kirk Park on the corner of Third Street and Kirkland Avenue in
5 downtown Kirkland; and
6

7 WHEREAS, the top, above-ground floor of the Municipal
8 Garage is used by the Kirkland Branch of the King County Library
9 System; the middle floor of the garage is available to downtown
10 shoppers, library employees and patrons, and park and pool users
11 with a four-hour parking limit; and the lower level is used by
12 permitted downtown employees until five p.m. Monday through
13 Friday and is available for public use with a five-hour parking limit
14 at all other times; and
15

16 WHEREAS, pursuant to an Interlocal Agreement ("ILA")
17 between the City and the King County Rural Library District dated
18 March 13, 1990, as amended, the City provides the Kirkland
19 Library with Municipal Garage parking spaces located on the
20 surface level and the ramp to the level below for the use of library
21 patrons and also parking on the lower parking levels for library
22 personnel and patrons in addition to the general public; and
23

24 WHEREAS, the City is responsible pursuant to such ILA to
25 enforce time restrictions governing the use of the garage in
26 accordance with a parking management program for the garage;
27 and
28

29 WHEREAS, the Municipal Garage is in "Zone B" of the public
30 works department's "Parking Guidelines for Downtown Kirkland";
31 and
32

33 WHEREAS, "Zone B" is intended to serve a balanced mix of
34 long-term and short-term parking needs with the upper level of
35 the Municipal Garage, which is intended to serve patron demand
36 for stays of less than four hours; and the lower level of the garage
37 is intended to serve library and downtown employee parking
38 during the main workday (i.e., five a.m. to five p.m.); and
39

40 WHEREAS, over time an increasing number of regulatory
41 concerns related to the public health, welfare and safety have
42 arisen at the Municipal Garage, including criminal acts such as
43 assault and vandalism; the unlawful use of drugs and alcohol;
44 overnight camping; loitering and other non-garage uses (e.g.
45 spray painting a car), the intimidation of public garage users, and
46 increased staff and maintenance costs associated with these
47 concerns; and

48 WHEREAS, it is essential for members of the public,
49 including downtown workers, library employees and patrons, to
50 feel safe in the garage environment; and

51
52 WHEREAS, it is necessary to adopt new regulations related
53 to the Municipal Garage in order to protect the public health,
54 safety and welfare pursuant to Article XI, Section 11 of the
55 Washington Constitution; and

56
57 WHEREAS, a purpose of this ordinance is to regulate hours
58 of use of the Municipal Garage and to provide for a legally sound
59 process for enabling the City to exclude from the garage those
60 individuals whose behavior is dangerous, unsafe, illegal, or
61 unreasonably disruptive to other users; and

62
63 WHEREAS, a further purpose of this ordinance to provide
64 for a specific method to generally allow for the issuance of
65 trespass warnings to such individuals, including placing limitations
66 on trespass warnings and providing procedures for such
67 individuals to promptly appeal the issuance of trespass warnings.

68
69 NOW, THEREFORE, the City Council of the City of Kirkland
70 do ordain as follows:

71
72 Section 1. Kirkland Municipal Code 12.45.010 is amended
73 to read as follows:

74
75 **12.45.010 Definitions.**

76
77 For the purpose of this chapter:

- 78
- 79 (1) "Central business district" means the combination of areas
- 80 which the city of Kirkland Zoning Code designates as CBD-1A,
- 81 CBD-1B, CBD-2, CBD-3 or CBD-8.
- 82 (2) "Central business district employee" means: (A) a person who
- 83 is engaged for wages, credit or other consideration, or as a
- 84 volunteer, for a business or nonprofit entity within the central
- 85 business district, including temporary workers, contractors,
- 86 and consultants; or (B) an employer of persons who work at
- 87 a location within the central business district; or (C) a
- 88 principal/owner of a business premises within the central
- 89 business district.
- 90 (3) "Employee-restricted parking areas" shall mean all parking
- 91 spaces within the Lake and Central parking lot or the Marina
- 92 Park parking lot that are not municipal permit parking spaces
- 93 and any stall not marked "permit parking" in the Peter Kirk
- 94 Municipal Garage parking garage located at the corner of
- 95 Kirkland Avenue and Third Street.
- 96 (4) "Municipal permit or garage parking" is parking or standing of
- 97 motor vehicles on property owned, leased or operated by the
- 98 city requiring the obtaining of permits, depositing of money
- 99 or use of a credit or other payment card, or compliance with

- 100 pavement designations for the privilege to park at that
 101 location and is subject to restrictions as enacted by the city.
- 102 (5) "Operator" means every person who is in actual physical
 103 control of a vehicle as herein defined, upon a public street or
 104 highway of the city.
- 105 (6) "Overnight camping" means remaining in the garage at any
 106 time during the hours from midnight to five a.m. the following
 107 day, whether in a vehicle or otherwise.
- 108 (76) "Overnight parking" means the parking of a vehicle in
 109 one spot continuously for a period exceeding six hours at any time
 110 during the hours from ~~ten p.m.~~ midnight of the day designated to
 111 five a.m. of the following day.
- 112 (87) "Parking payment device" means any device used to aid
 113 in management and control of the parking of vehicles on city
 114 streets or other rights-of-way, including pay stations.
- 115 (98) "Parking pay station" means any electronic device
 116 placed or erected adjacent to a parking space which, after deposit
 117 of money or use of a credit or other payment card, dispenses a
 118 proof of payment receipt to be displayed on the vehicle.
- 119 (10) "Peter Kirk Municipal Garage" means the municipal
 120 garage owned by the city and located at the northeast corner of
 121 Third Street and Kirkland Avenue.
- 122 (119) "Performing ~~their his or her~~ duties" means being
 123 present at a place of the person's employment anytime between
 124 the hours of nine-a.m. and nine p.m.
- 125 (1210) "Person" means every natural person, firm,
 126 partnership, corporation, association or organization.
- 127 (1311) "Street" or "public street" includes all public ways,
 128 streets, highways and off-street parking facilities owned or
 129 maintained by the city.
- 130 (1412) "Vehicle" means every device capable of being
 131 moved upon a public highway and in, upon, or by which any
 132 person, or property, shall or may be transported or drawn upon
 133 any public highway excepting devices moved by human power.
 134 There is a prima facie presumption that the registered owner of a
 135 violator vehicle was the person who parked such vehicle.
- 136 (15) Behavior that is "dangerous" is behavior that creates an
 137 imminent and unreasonable risk of injury or harm to either
 138 persons or property of another or the actor.
- 139 (16) Behavior that is "illegal" is behavior that is prohibited by
 140 federal, state or city laws or regulations including, but not limited
 141 to, any of the following types of behavior:
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- 152 (a) Threatening another person by communicating either directly
- 153 or indirectly to another person the intent to cause bodily injury
- 154 in the future to the person threatened or to any other person;
- 155 or
- 156 (b) Selling or using alcohol, marijuana or drugs; or
- 157 (c) Threatening or harassing behavior (e.g., fighting or threatening
- 158 to fight, brandishing a weapon, stalking, verbally threatening to
- 159 harm others or their property); or
- 160 (d) Assault; or
- 161 (e) Sexual misconduct or harassment (e.g., indecent exposure,
- 162 offensive touching, sexual acts).

163 (17) Behavior that is "unreasonably disruptive to other users"
 164 is behavior that is not constitutionally protected and that, in
 165 consideration of the nature, scope, use and purpose of the parking
 166 garage, unreasonably interferes with others' use and enjoyment
 167 of such garage. Examples of behavior that may unreasonably
 168 interfere with others' use and enjoyment of the garage include,
 169 but are not limited to, any of the following:

- 171 (a) Use of unreasonably hostile or aggressive language or
- 172 gestures; or
- 173 (b) Unreasonably loud vocal expression or unreasonably
- 174 boisterous physical behavior; or
- 175 (c) Using electronic or other communication devices in a
- 176 manner that is unreasonably disruptive to others; or
- 177 (d) Unreasonably interfering with the free passage of staff or
- 178 patrons in or on the garage property; or
- 179 (e) Behavior that is unreasonably inconsistent with the normal
- 180 use for which the garage was designed and intended to be used
- 181 (e.g., overnight camping), provided, however, that individuals
- 182 experiencing homelessness will be directed to available shelter
- 183 beds or a different location within Kirkland where overnight
- 184 camping is allowed.

185
 186 Section 2. Kirkland Municipal Code Section 12.45.020 is
 187 amended to read as follows:

188
 189 **12.45.020 Parking restrictions—Designation.**
 190 The chief of police or delegate ~~or~~, the director of public works or
 191 delegate, ~~or the traffic engineer~~ may from time to time designate
 192 portions of streets of the city and property of the city as prohibited
 193 parking areas, restricted parking zones, municipal permit or
 194 garage parking, and/or parking payment device spaces. Such
 195 designation shall be shown by signage or other appropriate
 196 indicators. The same procedure may be followed in altering or
 197 abandoning a designation relating to parking.

198
 199 Section 3. A new Section 12.45.400 of the Kirkland
 200 Municipal Code is added to read as follows:

201
 202 **Part V. Peter Kirk Municipal Garage**
 203 **12.45.400 Municipal garage use – Civil infractions.**
 204 The Peter Kirk Municipal Garage is reserved for use as follows:

205 (1) The surface parking lot above the parking garage and
206 the ramp to the level below is reserved for use by library patrons
207 during the library's posted hours of operation Monday through
208 Sunday, excluding library holidays.

209
210 (2) Garage parking below the surface parking lot and the
211 ramp to the level below is reserved for members of the public,
212 including library patrons, Monday through Sunday, and between
213 the hours of five a.m. and midnight limited to four hours. Central
214 business district employees with valid city parking permits may
215 park on the lower level and the ramp to the lower level between
216 the hours of five a.m. and five p.m. Monday through Friday.
217 Permitted areas are available to the general public on weekends
218 and holidays. Parking shall be in designated areas.

219
220 (3) Garage parking at times not allowed by this section is
221 prohibited and constitutes a civil infraction in accordance with
222 KMC Section 12.45.030; provided, however, that overnight
223 parking shall not constitute a civil infraction. This penalty is in
224 addition to any other penalties imposed for the underlying
225 infraction.

226
227 Section 4. A new Section 12.45.410 of the Kirkland
228 Municipal Code is added to read as follows:

229
230 **12.45.410 Trespass warnings.**

231 Trespass warnings at the parking garage, including its surface lot.

232
233 (1) City police officers are authorized to issue a trespass
234 warning to any individual who the officer has probable cause to
235 believe has violated any city ordinance, state statute, or
236 government rule or regulation, relating to or prohibiting conduct
237 that is dangerous, illegal, or unreasonably disruptive to other
238 users of the parking garage, as defined in this chapter, while such
239 individual is on or within such garage.

240
241 (2) Trespass warnings may be delivered in person to the
242 individual or by first class mail to the individual at the individual's
243 last known address.

244
245 (3) The individual need not be charged, tried, or convicted of
246 any crime or infraction in order for the trespass warning to be
247 issued or be effective. The warning may be based upon
248 observation by a police officer or a city employee or may be based
249 upon a civilian report that would ordinarily be relied upon by police
250 officers in the determination of probable cause.

251
252 (4) If the individual:

253 (a) Has not been excluded from the parking garage by a
254 trespass warning issued within one year prior to the violation, then
255 the warning may exclude the individual from the garage for a
256 period not exceeding seven days from the date of the warning.

257 (b) Has been the subject of only one prior trespass warning
258 related to the garage issued within one year prior to the current

259 violation, then the warning may exclude the individual from the
260 garage for a period of not more than 90 days from the date of the
261 current warning.

262 (c) Has been the subject of two or more prior trespass
263 warnings related to the garage and issued within one year prior
264 to the current violation, then the warning may exclude the
265 individual from the garage for a period of not more than one year
266 from the date of the current warning.

267
268 (5) The parking garage trespass warning shall be in writing,
269 shall contain the date of issuance, shall describe the behavior that
270 is the basis for the trespass warning, shall specify the length and
271 place of exclusion, shall be signed by the issuing police officer,
272 and shall state the consequences for failure to comply. A trespass
273 warning hereunder shall not prohibit access to another city
274 property or place that is unrelated to the garage.

275
276 (6) For good cause, the city manager, or designee may
277 rescind, shorten or modify a trespass warning issued. A written
278 request for review of a trespass warning must be delivered to the
279 city clerk no later than two business days after it is issued.

280 (a) The city manager or designee will, within three business
281 days of receipt of a request for review of any parking garage
282 trespass warning that excludes the alleged individual for seven or
283 fewer days, review the decision;

284 (b) The city manager or designee will, within five business days
285 of receipt of a request for review of any trespass warning that
286 excludes the alleged individual for more than seven days, review
287 the decision;

288 (c) The city clerk will notify the alleged individual of the date,
289 time, and place or telephone number at which the review will be
290 conducted;

291 (d) The review decision shall be communicated no later than
292 two business days following the review;

293 (e) As a follow-up to verbal communication, specify how a
294 written decision will be served on the alleged individual; and

295 (f) At the end of every written decision, inform the alleged
296 individual that such individual has the right to seek judicial review
297 of the decision and that the timeframe for seeking judicial review
298 runs from the date of service of the written decision.

299
300 (7) For purposes of this section, "good cause" to rescind,
301 shorten or modify a parking garage trespass warning shall be
302 found where:

303 (a) The alleged individual demonstrates by a preponderance
304 of the evidence that such individual's conduct was intended to be
305 expressive conduct protected by the federal or state Constitutions;
306 or

307 (b) The individual would not have known and was not given
308 prior warning that the conduct in question was subject to a
309 trespass warning; or

310 (c) The trespass warning was based solely upon the statement
311 of a third party, was not observed personally by the issuing officer
312 or a city or other government employee, would not ordinarily be

313 relied upon by police officers in the determination of probable
314 cause, and the alleged individual claims that such individual did
315 not commit the action for which such individual was warned; or

316 (d) In the judgment of the city manager or designee, the
317 circumstances warrant a modification or rescission of the trespass
318 warning. The city manager or designee shall rescind the trespass
319 warning if, considering all the circumstances, the city manager or
320 designee finds that reasonable minds could differ on the question
321 of whether the conduct in question was unreasonably disruptive
322 to others at the garage at that time. The review by the city
323 manager or designee shall constitute the only city review available
324 for a trespass warning.

325
326 (8) At the review hearing, the violation must be proved by a
327 preponderance of the evidence in order to uphold the parking
328 garage trespass warning. The city manager or designee shall
329 consider a sworn report or declaration from the officer who issued
330 the trespass warning or upon whose observation the trespass
331 warning was based, without further evidentiary foundation, as
332 prima facie evidence that the individual committed the violation
333 as described. The city manager or designee may consider
334 information that would not be admissible under the evidence rules
335 in a court of law but that the city manager or designee considers
336 relevant and trustworthy. If the warning was issued because of
337 the alleged violation of any criminal law, the individual need not
338 be charged, tried, or convicted for the warning to be upheld.

339
340 (9) If the city manager or designee rescinds an exclusion, for
341 good cause or because the violation was not proved, the exclusion
342 shall not be considered a prior trespass warning for purposes of
343 subsection (4) of this section.

344
345 (10) The decision of the city manager or designee will be the
346 city's final decision. An individual seeking judicial review of the
347 city's final decision must file an application for a writ of review in
348 King County superior court within 15 days of receipt of the city's
349 final decision.

350
351 (11) The trespass warning shall remain in effect during the
352 pendency of any administrative or judicial proceeding.

353
354 (12) No determination of facts made by the city manager or
355 designee shall have any collateral estoppel effect on a subsequent
356 criminal prosecution or civil proceeding and shall not preclude
357 litigation of those same facts in a subsequent criminal prosecution
358 or civil proceeding.

359
360 (13) This section shall be enforced so as to emphasize
361 voluntary compliance with laws and garage rules and so that
362 inadvertent minor violations of this section can be corrected
363 without resort to a trespass warning.

364
365 (14) Any person who is found on the parking garage premises
366 in violation of a trespass warning issued in accordance with this

367 chapter for a period longer than seven days and who accordingly
368 has had the right to a hearing regarding the trespass warning,
369 may be arrested for trespassing, except as otherwise provided in
370 subsection (15) of this section and provided, however, that
371 nothing herein contained shall prevent an individual from being
372 removed if necessary for overnight camping or attempting to
373 remain in the garage after hours as provided for herein.
374

375 (15) The chief of police or designee may upon request
376 authorize an individual who has received a trespass warning in
377 accordance with this chapter to enter the garage to exercise such
378 constitutionally protected free speech rights if there is no other
379 reasonable alternative location to exercise such rights. Such
380 authorization must be in writing and specify the duration of the
381 authorization and any conditions thereof. The chief of police or
382 designee shall issue a decision on a request for parking garage
383 entry by the recipient of a trespass warning during a period of
384 exclusion no later than 48 hours after receipt of the request.
385

386 (16) Any constitutionally protected action or speech is
387 excluded from the prohibited behavior listed in this section.
388

389 (17) Nothing in this section limits the ability of the city to
390 concurrently enforce any other city ordinance, state statute, or
391 government rule or regulation relating to or prohibiting conduct
392 that is dangerous, illegal, or unreasonably disruptive to other
393 users of the parking garage, and the trespass warnings process
394 set forth in this section does not apply in circumstances where an
395 individual has refused to leave the parking garage after hours,
396 except as specifically otherwise provided for herein.
397

398 Section 5. If any provision of this ordinance or its
399 application to any person or circumstance is held invalid, the
400 remainder of the ordinance or the application of the provision to
401 other persons or circumstances is not affected.
402

403 Section 6. This ordinance shall be in force and effect five
404 days from and after its passage by the Kirkland City Council and
405 publication pursuant to Kirkland Municipal Code 1.08.017 in the
406 summary form attached to the original of this ordinance and by
407 this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 7th day of April, 2020.

Signed in authentication thereof this 7th day of April, 2020.


Penny Sweet, Mayor

Attest:


Kathi Anderson, City Clerk

Approved as to Form:


Kevin Raymond, City Attorney

Publication Date: 04/13/2020

PUBLICATION SUMMARY
OF ORDINANCE NO. 4718

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PARKING, PROHIBITED CONDUCT, TRESPASS WARNINGS AND THE PETER KIRK MUNICIPAL GARAGE.

SECTION 1. Amends Section 12.45.010 of the Kirkland Municipal Code related to parking definitions.

SECTION 2. Amends Section 12.45.020 related to parking restrictions and designations.

SECTION 3. Adds a new Section 12.45.400 related to use of the Peter Kirk Municipal Garage.

SECTION 4. Adds a new Section 12.45.410 related to trespass warnings in the Peter Kirk Municipal Garage.

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 7 day of April, 2020.

I certify that the foregoing is a summary of Ordinance O-4718 approved by the Kirkland City Council for summary publication.



Kathi Anderson, City Clerk

Publication Date: 04/13/2020