

ORDINANCE O-4756

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING SURFACE WATER MANAGEMENT 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 responsible  
10 Party(s) have been previously educated on the KMC; and  
11

12 WHEREAS, based upon the City's experience with these code  
13 enforcement regulations over the past several years, including the  
14 effectiveness of the regulations to prevent environmental damage  
15 and/or correct environmental damage, and the clarity of the language  
16 of the code language, staff recommends certain revisions to the City's  
17 Code Enforcement Regulations in Chapter 1.12 KMC.  
18

19 NOW, THEREFORE, the City Council of the City of Kirkland do  
20 ordain as follows:  
21

22 Section 1. Kirkland Municipal Code Section 1.12.020 is amended  
23 to read as follows:  
24

25 **1.12.020 Definitions.**  
26

27 As used in this chapter, unless a different meaning is plainly required:  
28

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

34 (b) "Act" means doing or performing something.

35 (c) "Applicable department director" means the director of the  
36 department or his or her designee.

37 (d) "Civil violation" means a violation for which a monetary penalty  
38 may be imposed as specified in this chapter. Each day or portion of a  
39 day during which a violation occurs or exists is a separate violation.  
40 Traffic infractions issued pursuant to Title 12 are specifically excluded  
41 from the application of this chapter.

- 42 (e) "Development" means the erection, alteration, enlargement,  
43 demolition, maintenance or use of any structure or the alteration or use  
44 of any land above, at or below ground or water level, and all acts  
45 governed by a city regulation.
- 46 (f) "Emergency" means a situation which in the opinion of the  
47 applicable department director requires immediate action to prevent or  
48 eliminate an immediate threat to the health or safety of persons or  
49 property.
- 50 (g) "Hearing examiner" means the Kirkland hearing examiner and the  
51 office thereof established pursuant to Chapter 3.34.
- 52 (h) "Omission" means a failure to act.
- 53 (i) "Person" means any individual, firm, association, partnership,  
54 corporation, or any entity, public or private. For purposes of this chapter  
55 only, "person" does not mean the City of Kirkland.
- 56 (j) "Person responsible for the violation" means any person who is  
57 required by the applicable regulation to comply therewith, or who  
58 commits any act or omission which is a civil violation or causes or  
59 permits a civil violation to occur or remain upon property in the city, and  
60 includes but is not limited to owner(s), lessor(s), tenant(s), vendor(s),  
61 contractor(s), or other person(s) entitled to control, use and/or occupy  
62 property where a civil violation occurs. For violations of the city sign  
63 regulations, this definition includes, but is not limited to, sign  
64 installers/posters, sign owners, and any other persons who cause or  
65 participate in the placement of a sign in a manner that constitutes a civil  
66 violation. For violations of city tree regulations, this definition includes  
67 any person who caused or participated in the removal of a tree in a  
68 manner that constitutes a civil violation.
- 69 (k) "Regulation" means and includes the following, as they now exist  
70 or are hereafter amended:
- 71 (1) Title 23 (Kirkland Zoning Code);
- 72 (2) Title 21, Buildings and Construction (including codes adopted by  
73 reference);
- 74 (3) Chapter 15.52 (Surface Water Management);
- 75 (4) Title 29 (Land Surface Modification);
- 76 (5) Chapter 19.04 (Obstructing Streets or Sidewalks);
- 77 (6) Chapter 11.76 (Junk Vehicles);
- 78 (7) Chapter 11.24 (Nuisances);
- 79 (8) Chapter 11.64 (Littering);

80 (9) The terms and conditions of any permit or approval issued by the  
81 city, or any concomitant agreement with the city;

82 (10) Chapter 7.74 (Fair Housing Regulations);

83 (11) Chapter 16.05 (Retail Carryout Bags, including definitions set  
84 forth in Chapter 16.04);

85 (12) Chapter 16.08 (Garbage Disposal); and

86 (13) Chapter 7.02 (Business Licenses and Regulations).

87 (l) "Repeat violation" means a violation of the same regulation in any  
88 location in the city by the same person or responsible party for which  
89 compliance previously has been sought or a notice of civil violation has  
90 been issued.

91 (m) "Required Plan" means a city-required plan that addresses  
92 Stormwater or Surface Water Management including, but not limited to,  
93 a temporary sediment and erosion control (TESC) plan, stormwater  
94 pollution prevention plan (SWPPP), permit conditions and/or notes.

95  
96 (n) "Responsible party" means any person who is required by the  
97 applicable regulation to comply therewith, or who commits any act or  
98 omission which is a civil violation or causes or permits a civil violation to  
99 occur or remain upon property in the city, and includes but is not limited  
100 to owner(s), lessor(s), tenant(s), vendor(s), contractor(s), or other  
101 person(s) entitled to control, use and/or occupy property where a civil  
102 violation occurs.

103 (o) "Violation" means an act or omission contrary to a city  
104 development regulation including an act or omission at the same or  
105 different location by the same person and including a condition resulting  
106 from such act or omission.

107 Section 2. Kirkland Municipal Code Section 1.12.200 is amended  
108 to read as follows:

109  
110 **1.12.200 Special provisions relating to enforcement of Chapter**  
111 **15.52 (Surface Water Management).**  
112

113 (a) General Requirements. This section applies to violations of Chapter  
114 15.52, including illicit discharges and connections that discharge into the  
115 municipal storm drain system and/or surface and ground waters.  
116 Enforcement shall be conducted in accordance with procedures set forth  
117 in this chapter.

118 Special enforcement provisions related to illicit discharges and  
119 connections are set forth in this section.

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

122 (c) Determining Fines for Illicit Discharges and Connections and Other  
 123 Violations of Chapter 15.52.

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

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

128 (3) Fines for a violation shall be determined using the surface water  
 129 enforcement matrix (Table 1) and administered per violation.

**Table 1. Surface Water Enforcement Matrix**

<b>Enforcement Evaluation Criteria</b>	<b>No <u>Zero</u> (0) points)</b>	<b>Possibly <u>One</u> (1) point)</b>	<b>Definitely <u>Two</u> (2) points)</b>
1) Perceived Public Health Risk?			
2) Environmental Damage?			
3) <u>Impacting Discharge into Municipal Storm Drain System?</u>			
4) <u>Willful or Knowing Violation?</u>			
5) <u>Unresponsive in Correcting Action?</u>			
6-5) <u>Was the violation a result of a responsible party(s) failure to properly operate, maintain, or implement a Required Plan ? Improper Operation or Inadequate Maintenance?</u>			
7) <u>Economic Benefit to Noncompliance?</u>			

130 The surface water enforcement matrix (Table 1) is comprised of a set  
 131 of criteria formulated as questions for the director to evaluate and  
 132 answer. The director uses the guidelines below to determine the total

- 133 points to be assessed according to the violation. The surface water  
134 fine(s) are determined by the total score of the matrix.
- 135 1. Did the violation result in a public health risk?
- 136 a. ~~Answer "no"~~ Assess zero (0) points if there is no evidence to support  
137 a claim of public health risk or adverse health effects.
- 138 b. ~~Answer "possibly"~~ Assess one (1) point if evidence supports a claim  
139 of public health risk and there is a plausible connection between this  
140 violation and health effect.
- 141 c. ~~Answer "definitely"~~ Assess two (2) points if there is direct evidence  
142 directly linking public health risk or adverse effects with the violation.
- 143 2. Did the violation result in environmental (e.g., physical, chemical,  
144 or biological) damage?
- 145 a. ~~Answer "no"~~ Assess zero (0) points if there is no evidence to support  
146 a claim of environmental damage.
- 147 b. ~~Answer "possibly"~~ Assess one (1) point if environmental damage  
148 can be reasonably inferred from evidence or knowledge of the effects  
149 of the violation.
- 150 c. ~~Answer "definitely"~~ Assess two (2) points if there is direct evidence  
151 directly linking environmental damage with the violation.
- 152 3. Did the violation impact discharge into the municipal storm drain  
153 system?
- 154 a.) ~~Answer "no"~~ Assess zero (0) points if there is no evidence to  
155 support a claim of impact to municipal storm drain system.
- 156 b. ~~Answer "possibly"~~ Assess one (1) point if impact to municipal storm  
157 drain system can be reasonably inferred from evidence or knowledge of  
158 the effects of the violation.
- 159 c. ~~Answer "definitely"~~ Assess two (2) points if there is direct evidence  
160 directly linking municipal storm drain system impacts to the violation.
- 161 4. ~~Was the action a willful and knowing violation?~~
- 162 a. ~~Answer "no" if the violator obviously did not know that the action~~  
163 ~~or inaction constituted a violation.~~
- 164 b. ~~Answer "possibly" if the violator should have known.~~
- 165 c. ~~Answer "definitely" if the violator clearly knew or was previously~~  
166 ~~informed of the violation by the city's inspectors or permit conditions.~~
- 167 54. Was the responsible party unresponsive in correcting the violation?

168 a. ~~Answer "no" Assess zero (0) points if the violation was corrected~~  
 169 ~~as soon as the responsible party learned of it.~~

170 b. ~~Answer "possibly" Assess one (1) point if the violation was~~  
 171 ~~corrected, or measures were attempted to be implemented, in a less~~  
 172 ~~timely and cooperative fashion.~~

173 c. ~~Answer "definitely" Assess two (2) points if the responsible party~~  
 174 ~~made no attempt to correct the violation or no measures were~~  
 175 ~~attempted to be implemented to prevent further violation.~~

176 ~~6 5. Was the violation a result of a responsible party(s) failure to~~  
 177 ~~properly operate, maintain, or implement a Required Plan?—improper~~  
 178 ~~operation or inadequate maintenance?~~

179 a. ~~Answer "no" Assess zero (0) points if the violation was not the~~  
 180 ~~result of improper operation or inadequate maintenance actions or~~  
 181 ~~inactions described above.~~

182 b. ~~Answer "possibly" Assess one (1) point if proper operation or actions~~  
 183 ~~described above were and/or maintenance was completed but a~~  
 184 ~~violation still occurred.~~

185 c. ~~Answer "definitely" Assess two (2) points if the violation was a result~~  
 186 ~~of improper operation or inadequate maintenance actions or inactions~~  
 187 ~~described above.~~

188 ~~7. Did anyone benefit economically from noncompliance?~~

189 a. ~~Answer "no" if it is clear that no one gained an economic benefit.~~

190 b. ~~Answer "possibly" if someone might have benefited.~~

191 c. ~~Answer "definitely" if the economic benefit is quantifiable.~~

192 Once the total amount of penalty points is determined, a rating and a  
 193 corresponding surface water fine amount are established (Table 2).

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

<b>Rating</b>	1—2	3—4	5—6	7—8	8—10	9—11— 12	10—13— 14
<b>Fine</b>	\$500	\$1,500	\$2,500	\$4,000	\$6,000	\$8,000	\$10,000

194 (d) Self-Reported Violations. The director or designee may reduce or  
 195 waive the surface water fine for persons who immediately self-report  
 196 violations to the city at 425-587-3900.

197 (e) Assessment of Fines.

198 (1) Fines. The director or designee shall assess the surface water fine  
199 against any responsible party in a written notice that sets forth the  
200 nature of the violation and the determination of the amount of the fine.  
201 The director or designee may elect not to seek surface water fines if he  
202 or she finds that rare and unique circumstances do not warrant  
203 imposition of fines.

204 (2) Repeat Violations. Where the city finds a repeat violation of  
205 Chapter 15.52 has occurred pursuant to Section 1.12.020(l), the fine for  
206 the repeat violation shall be determined by multiplying the surface water  
207 fine amount in Table 2 by the number of violations. For example, the  
208 fine for second time violators is multiplied by two, and the fine for third  
209 time violators is multiplied by three, and so on.

210 (f) Corrective Action and Summary Abatement. In addition to surface  
211 water fines, the city may require the responsible party to take corrective  
212 action to cease violating Chapter 15.52, including, but not limited to,  
213 requiring the responsible party to fully remove pollutants from private  
214 storm system(s) which enter into the municipal storm system. In the  
215 event the responsible party fails to take necessary corrective action in a  
216 timely fashion, the city may take summary abatement action in  
217 accordance with Section 1.12.060(b).

218 (g) Cost Recovery. The director or designee shall assess costs  
219 associated with cleaning or restoring the municipal storm drain system  
220 against any responsible party in a written notice that sets forth the  
221 nature of the violation and the determination of the amount. The  
222 director or designee may elect not to seek costs if he or she finds that  
223 unique circumstances do not warrant such collection.

224 (h) Real Property Owner Liability. Where a violation of Chapter 15.52  
225 has occurred at least in part on private property, and when more than  
226 one person is responsible for fines and/or costs under subsection (d),  
227 (e) and/or (f) of this section, the director or designee may determine  
228 that the owner of the real property where the violation occurred shall  
229 be jointly and severally liable for all of the fines and/or costs assessed  
230 against each person.

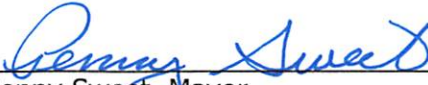
231 (i) Notice of Civil Violation and Hearing on Violation. The city may  
232 issue a notice of civil violation to any responsible party who violates  
233 Chapter 15.52 and who fails to pay surface water fines and/or costs of  
234 recovery, and/or costs of abatement, and/or fails to take other  
235 necessary corrective action. The hearing on the notice of civil violation  
236 shall be held in accordance with Section 1.12.050.

237  
238 Section 3. If any provision of this ordinance or its application to  
239 any person or circumstance is held invalid, the remainder of the  
240 ordinance or the application of the provision to other persons or  
241 circumstances is not affected.

242           Section 4. This ordinance shall be in force and effect five days  
243 from and after its passage by the Kirkland City Council and publication  
244 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary  
245 form attached to the original of this ordinance and by this reference  
246 approved by the City Council.

247  
248           Passed by majority vote of the Kirkland City Council in open  
249 meeting this 4 day of May, 2021.

250           Signed in authentication thereof this 4 day of May, 2021.  
251

  
Penny Sweet, Mayor

Attest:

  
Kathi Anderson, City Clerk

Approved as to Form:

  
Kevin Raymond, City Attorney

Publication Date: 5/10/21



PUBLICATION SUMMARY  
OF ORDINANCE NO. 4756

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING SURFACE  
WATER MANAGEMENT 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 surface water management, Kirkland Municipal Code Chapter 15.52.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. 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 4 day of May, 2021.

I certify that the foregoing is a summary of Ordinance 4756 approved by the Kirkland City Council for summary publication.

  
\_\_\_\_\_  
Kath Anderson, City Clerk