

ORDINANCE 3711

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STORM AND SURFACE WATER MANAGEMENT AND WATER QUALITY, REPEALING CHAPTER 107 AND SECTION 115.155 OF THE KIRKLAND ZONING CODE, AND REPEALING AND REENACTING CHAPTER 15.52 OF THE KIRKLAND MUNICIPAL CODE.

WHEREAS, the Washington State legislature enacted the Puget Sound Water Quality Protection Act, RCW Chapter 90.71, in 1996, to provide for a comprehensive conservation and management plan for the Puget Sound Estuary, as required under Section 302 of the Clean Water Act for all designated estuaries of national significance; and

WHEREAS, Chapter 90.71 further requires that local governments implement local elements of the management plan; and

WHEREAS, the City of Kirkland Comprehensive Plan also provides goals relating to storm and surface water management and water quality; and

WHEREAS, the Kirkland Municipal Code must therefore be amended to meet the requirements of the management plan relating to storm and surface water management and water quality and the goals of the Comprehensive Plan; and

WHEREAS, many of the current ordinances relating to storm and surface water management and water quality are contained in different titles of the Kirkland Municipal Code, including the Zoning Code; and

WHEREAS, the City Council has received from the Kirkland Planning Commission a recommendation to delete Chapter 107 and Section 115.155 of the Kirkland Zoning Code, and to replace these Zoning Code Sections with Chapter 15.52 as herein repealed and reenacted; and

WHEREAS, prior to making said recommendation, the Planning Commission, following notice thereof as required by RCW 35A.63.070, on October 21, 1999, held a public hearing on the proposed changes and considered the comments received at said hearing; and

WHEREAS, pursuant to the State Environmental Policy Act, there has accompanied the legislative proposal and recommendation through the entire consideration process, a final determination of nonsignificance, including supporting environmental documents, issued by the responsible official pursuant to WAC 197-11-390; and

WHEREAS, in regular public meeting the City Council considered the environmental documents received from the responsible official, together with the report and recommendation of the Planning Commission and the Houghton Community Council; and

WHEREAS, in addition to amending the ordinances to meet these requirements, it is in the best interests of the City to have these elements relating to storm and surface water management and water quality contained in one title of the KMC; and

WHEREAS, various sections of the Zoning Code must now reference this comprehensive chapter rather than the Zoning Code,

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

Section 1. Kirkland Zoning Code, Chapter 107 is hereby repealed.

Section 2. Kirkland Zoning Code, Section 115.155 is hereby repealed.

Section 3. Kirkland Municipal Code Chapter 15.04, Definitions, is hereby amended by the addition of the following new sections to read as follows:

15.04.034 Best Management Practice (BMP).

Those practices which provide the best available and reasonable physical, structural, managerial, or behavioral activity to reduce or eliminate pollutant loads and/or concentrations leaving the site.

15.04.065 Conveyance system.

The drainage facilities and features, both natural and constructed, which collect, contain, and provide for the flow of surface and stormwater from the highest points on the land down to a receiving water. The natural elements of the conveyance system include swales and small drainage courses, streams, rivers, lakes, and wetlands. The constructed elements of the conveyance system include gutters, ditches, pipes, channels, and most flow control and water quality treatment facilities.

15.04.083 Detention.

The release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system, the difference being held in temporary storage.

15.04.084 Detention Facility.

An above or below ground facility, such as a pond or tank, that temporarily stores stormwater runoff and subsequently releases it at a slower rate than it is collected by the drainage facility system. There is little or no infiltration of stored stormwater.

15.04.105 Erosion.

The wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Detachment and movement of soils or rock fragments by water, wind, ice, or gravity.

15.04.145 Illicit Discharge.

All non-stormwater discharges to stormwater drainage systems that cause or contribute to a violation of state water quality, sediment quality, or groundwater quality standards, including but not limited to sanitary sewer connections, industrial process water, interior floor drains and gray water systems.

15.04.146 Impervious Surface.

A hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam, or other surfaces which similarly impede the natural infiltration of surface and stormwater runoff. Open, uncovered flow control or water quality treatment facilities shall not be considered impervious surfaces.

15.04.175 New Development.

Land disturbing activities; structural development, including construction, installation or expansion of a building or other structure; creation of impervious surfaces; and subdivision and short subdivision of land as defined in RCW 58.17.020.

15.04.176 New Impervious Surface.

The addition of a hard or compacted surface such as pavement, gravel, dirt, or roofs or the addition of a more compacted surface such as the paving of pre-existing dirt or gravel.

15.04.178 Non-residential Stormwater Facilities.

Stormwater detention or water quality facilities that are located on private property and which are not contained in tracts or easements dedicated to the city. These facilities do not serve public streets, but rather serve only buildings, parking lots, and other amenities associated with the privately owned

development. Multi-family developments such as condominiums and apartments are considered non-residential for the purposes of this chapter.

15.04.225 Pollution.

Contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or discharge of any liquid, gaseous, solid, radioactive, or other substance into any water of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

15.04.235 Redevelopment.

On an already developed site, the creation or addition of impervious surfaces, structural development including construction installation or expansion of a building or other structure, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities associated with structure or impervious redevelopment.

15.04.238 Residential Stormwater Facilities.

Stormwater detention or water quality facilities that are either in the public right of way or that are in a tract or easement dedicated to the city. These facilities serve usually serve public streets and single-family residences.

**15.04.335 Source Control Best Management Practices.
(Source Control BMPs)**

BMPs that are intended to prevent pollutants from entering stormwater. Examples include erosion control practices, maintenance of stormwater facilities, roofing of storage and work areas, and directing wash water and similar discharges to the sanitary sewer or a dead end sump.

15.04.345 Stormwater.

That portion of precipitation that does not naturally percolate into the ground or evaporate, but flows overland, via interflow, or through channels or pipes into a defined surface water channel or constructed infiltration facility.

15.04.365 Water quality treatment facility.

A drainage facility designed to reduce pollutants once they are already contained in storm and surface water runoff. Water quality treatment facilities are the structural component of best management practices (BMPs); which provide the best available and reasonable physical, structural, managerial, or behavioral activity, that when used singly or in combination, eliminate or reduce the contamination of surface and/or ground waters.

Section 4. Kirkland Municipal Code Chapter 15.52 is hereby repealed and reenacted to read as follows:

Chapter 15.52

SURFACE WATER MANAGEMENT

Sections:

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| ARTICLE I. | SURFACE WATER UTILITY PURPOSE AND RESPONSIBILITIES |
| 15.52.010 | Surface water utility created – Responsibilities. |
| 15.52.020 | Purpose. |
| 15.52.030 | Comprehensive drainage and storm sewer plan. |
| 15.52.040 | Work contracted out. |
|
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| ARTICLE II. | REQUIREMENTS FOR DEVELOPMENT ACTIVITIES |
| 15.52.050 | Applicability – stormwater plan required. |
| 15.52.060 | Design and construction standards and requirements. |
| 15.52.070 | City Acceptance of New Stormwater Facilities. |
| 15.52.080 | Bonds and Irrevocable License to Enter. |
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| ARTICLE III. | WATER QUALITY AND FLOOD PROTECTION |
| 15.52.090 | Illicit discharges and connections. |
| 15.52.100 | Source control best management practices. |
| 15.52.110 | Water quality standards . |
| 15.52.120 | Operation and maintenance of stormwater facilities. |
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| ARTICLE IV. | INSPECTION AND ENFORCEMENT |
| 15.52.130 | Inspection and sampling. |
| 15.52.140 | Enforcement, violations and penalties. |
| 15.52.150 | Conflicts. |
| 15.52.160 | Severability. |

ARTICLE I. SURFACE WATER UTILITY PURPOSE AND RESPONSIBILITIES

15.52.010 Surface water utility created – Responsibilities.

There is hereby created and established, pursuant to RCW Chapters 35A.80 and 35.67, a storm and surface water utility to be known as the "Kirkland surface water utility." All references to "the utility" in this chapter refer to the Kirkland stormwater utility. The utility will have primary authority and responsibility for carrying out the city's comprehensive drainage and storm sewer plan, including responsibilities for planning, design, construction, use,

maintenance, inspection, administration, and operation of all city storm and surface water facilities; establishing standards for design, construction, and maintenance of improvements on private property where these might affect storm and surface water management; and to establish programs and regulations to assure the quality of the water in such systems, to minimize the chance of flooding, and to provide for the enforcement of the provisions of this code. The director of public works shall be the administrator of the utility. The administrator of the utility shall formulate and propose to the city council for adoption by ordinance a system of rates and charges for services of the utility. To the extent required by law, rates charged shall be uniform for the same class of customers or services.

15.52.020 Purpose.

The city council finds that this chapter is necessary to promote sound development policies and construction procedures which respect and preserve the city's watercourses; to minimize water quality degradation and control of sedimentation of creeks, streams, ponds, lakes, and other water bodies; to protect the life, health, and property of the general public; to preserve and enhance the suitability of waters for contact recreation and fish habitat; to preserve and enhance the aesthetic quality of the waters; to maintain and protect valuable ground water quantities, locations, and flow patterns; to insure the safety of city roads and rights-of-way; and to decrease drainage-related damages to public and private property.

15.52.030 Comprehensive drainage and storm sewer plan

A comprehensive drainage and storm sewer plan shall be developed by the City for review and adoption by the City Council. Such a plan may include basin-specific or city-wide recommendations for regulations, procedures, and programs. Such regulations, procedures and programs may include but are not limited to capital projects, public education and enforcement activities, operation and maintenance of city storm and surface water facilities, and land use management regulations to be recommended for adoption by ordinance for managing surface and stormwater management facilities. Once adopted by the City Council, elements of the comprehensive drainage and storm sewer plan pertaining to new development and redevelopment projects shall be incorporated into the standard plans.

15.52.040 Work contracted out.

The director of public works may arrange to have work that would be done by the utility performed by a private party or contracted out when it is determined that it would be economically beneficial to do so.

ARTICLE II. REQUIREMENTS FOR DEVELOPMENT ACTIVITIES

15.52.050 Applicability – stormwater plan required.

All developers taking any of the following actions or applying for any of the following permits and/or approvals will be required to submit for approval a stormwater plan with their application and/or request, unless exempted by the city engineer or his designee. The stormwater plan shall include those items designated in the public works standard plans. Work on the site can only be allowed after approval of the stormwater plan.

- (1) Creation or alteration of new or additional impervious surfaces;
- (2) New development;
- (3) Redevelopment;
- (4) Building permit;
- (5) Subdivision approval;
- (6) Short subdivision approval;
- (7) Commercial, industrial, or multifamily site plan approval;
- (8) Planned unit development;
- (9) Development within or adjacent to critical areas;
- (10) Rezones;
- (11) Conditional use permits;
- (12) Substantial development permit required under RCW Chapter 90.58 (Shoreline Management Act);
- (13) Land Surface Modification Permit.

15.52.060 Design and construction standards and requirements.

- (a) The standard plans as defined in 15.04.340 shall include requirements for temporary erosion control measures, stormwater detention, water quality treatment and stormwater conveyance facilities that must be provided by all new development and redevelopment projects. These standards shall meet or exceed the stormwater control requirements of *Stormwater Management in Washington State (Volumes 1-5)*, as presently written or hereafter amended, and as administered by the State Department of Ecology.
- (b) Unless otherwise provided, it shall be the developer's and property owner's responsibility to design, construct, and maintain a system which complies with the standards and minimum requirements as set forth in the standard plans.
- (c) In addition to providing stormwater quality treatment facilities as required in this section and as outlined in the standard plans, the developer and/or property owner shall provide source control BMPs such as structures and/or a manual of practices designed to treat or prevent stormwater

pollution arising from specific activities expected to occur on the site. Examples of such specific activities include but are not limited to car-washing at multi-family residential sites and oil storage at auto repair businesses. Criteria for development and submittal of designs and plans for such BMPs are included in the standard plans.

- (d) The City will inspect all permanent stormwater facilities prior to final approval of the relevant permit. All facilities must be clean and fully operational before the City will grant final approval of the permit. A performance bond may not be used to obtain final approval of the permit prior to completing the stormwater facilities required under this Chapter.
- (e) Exception (adjustment) Process
Any developer proposing to adjust the requirements for, or alter design of, a system required as set forth in the standard plans must follow the adjustment process as set forth in the standard plans.
- (f) Other Permits and Requirements
It is recognized that other city, county, state, and federal permits may be required for the proposed action. Further, compliance with the provisions of this chapter when developing and/or improving land may not constitute compliance with these other jurisdictions' requirements. To the extent required by law, these other requirements must be met.

15.52.070 City Acceptance of New Stormwater Facilities.

- (a) The City will release the maintenance bond and accept for maintenance new residential stormwater facilities constructed under an accepted Permit as listed in Section 15.52.050 of this Chapter that meet the following conditions:
 - (1) An inspection by the director or designee has determined that the stormwater facilities are functioning as designed,
 - (2) The stormwater facilities have had at least 2 years of satisfactory operation and maintenance,
 - (3) The stormwater facility, as designed and constructed, conforms to the provisions of the Chapter,
 - (4) All easements and tract dedications required by this Chapter, entitling the City to properly access, operate and maintain the subject drainage facility, have been recorded with the King County Office of Records and Elections, and a copy has been conveyed to the City,

- (5) Agreements between the property owner and maintenance contractor, if required, have been submitted to and approved by the City,
 - (6) For non-standard drainage and water quality facilities, an operation and maintenance manual, including a schedule detailing the suggested seasonal timing and frequency of maintenance, has been submitted to and accepted by the City,
 - (7) A complete and accurate set of reproducible mylar as-builts, computer files of plans, and microfiche of plans have been received and accepted by the City.
- (b) City Acceptance of New Non-Residential Stormwater facilities. The City will release the maintenance bond for new non-residential stormwater facilities that meet all except items (4) and (6) in Section (a) above.

15.52.080 Bonds and Irrevocable License to Enter.

- (a) Prior to commencing construction on any project disturbing greater than 1000 square feet of land area that meets conditions for a sensitive site as set forth in the standard plans, the applicant must post an erosion control bond using the same procedures as provided in Chapter 23.175 of the Kirkland Municipal Code. The nature of the bond must permit the city to obtain the proceeds of the bond immediately upon request.
- (1) The bond must be in an amount sufficient to cover the cost of corrective work on or off the site performed specifically for the given project. Before the City releases the bond, the applicant must do the following:
 - (i) Construct drainage facilities required in the stormwater plan,
 - (ii) Receive final approval of the stormwater system from the City of Kirkland, and
 - (iii) Pay all required fees
 - (2) All applicants shall post a maintenance bond using the same procedures as provided in chapter 23.175 of this Code to ensure maintenance of installed stormwater facilities for 2 years from the date of final approval of the stormwater facilities. Before the City will release the bond, the stormwater facilities must meet the requirements of Section 15.52.070.
- (b) Prior to final approval of the stormwater facilities, the property owner of all non-residential stormwater facilities shall submit, as described in Chapter 23.175, an irrevocable license to enter the property for the purposes of

inspection. The following language must be included in the irrevocable license to enter:

- (1) Statement that the property owner is to be responsible for the maintenance of stormwater facilities on the property,
- (2) Statement granting the director or designee the right to enter the property for the purposes of inspecting the stormwater facilities, and
- (3) A statement that the director shall have the authority to order repair or cleaning of the stormwater facilities if the owner does not take action to conduct this work or if the site poses a threat to public health and safety.

ARTICLE III. WATER QUALITY AND FLOOD PROTECTION

15.52.090 Illicit discharges and connections.

- (a) All illicit discharges, as set forth in the standard plans, made either directly or indirectly to a public drainage control system, are prohibited and constitute a violation of this chapter.
- (b) Certain discharges may be made directly or indirectly to a public drainage control system, or are exempt from section (a), as set forth in the standard plans
- (c) Any connection, identified by the director, that could convey anything not composed entirely of surface and stormwater directly to surface, storm, or ground waters is considered an illicit connection and is prohibited with the following exceptions: Connections conveying allowable discharges, connections conveying discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) permit as issued by the State (other than an NPDES stormwater permit) or a State Waste Discharge Permit, and connections conveying effluent from onsite sewage disposal systems to subsurface soils. Presence of prohibited connections as defined herein constitutes a violation of this Chapter.

15.52.100 Source control best management practices.

Any person causing or allowing discharge to a public drainage facility, natural drainage system, surface and stormwater, or ground water shall control contamination in the discharge by implementing appropriate source control BMPs. Failure to implement such practices shall constitute a violation of this Chapter. Guidance on designing and implementing BMPs is provided in the standard plans.

15.52.110 Water quality standards.

The City of Kirkland hereby adopts by reference the water quality standards established under the authority of RCW 90.48 and contained within 173-201A WAC as presently written or hereafter amended.

15.52.120 Operation and maintenance of stormwater facilities.

- (a) Standards for maintenance of stormwater facilities existing on public or private property within the City of Kirkland are contained in the standard plans. Any maintenance agreement submitted and approved by the City through the permit process shall supercede maintenance requirements contained in the standard plans.
- (b) No person shall cause or permit any drainage facility on any public or private property to be obstructed, filled, graded, or used for disposal of debris. Any such activity constitutes a violation of this Chapter.
- (c) Any modification of an existing drainage facility must be approved and permitted by the City. Failure to obtain permits and approvals or to violate conditions thereof for any such alteration constitutes a violation of this Chapter.
- (d) The City will maintain all elements of the storm drainage system beginning at the first catch-basin within the public right of way, and in easements or tracts dedicated to and accepted by the City. All other facilities, including but not limited to non-residential stormwater facilities, and roof downspout drains and driveway drains serving single family residences shall be maintained by the property owner.
- (e) Maintenance of Non-Residential Stormwater Facilities by Owners
 - (1) Any person or persons holding title to a non-residential property for which stormwater facilities have been required by the City of Kirkland shall be responsible for the continual operation, maintenance, and repair of said stormwater facilities in accordance with the criteria set forth in the standard plans
 - (2) For non-residential stormwater facilities, failure to meet the maintenance requirements specified in the standard plans constitutes a violation of this Chapter, and shall be enforced against the owner(s) of the subject property served by the stormwater facility.
- (f) City Acceptance of Existing Residential Stormwater Facilities. The City may accept for maintenance those stormwater facilities serving residential developments existing prior to the effective date of this Ordinance that meet the following conditions:

- (1) The stormwater facilities serve more than one individual house or property,
 - (2) An inspection by the director has determined that the stormwater facilities are functioning as designed,
 - (3) The stormwater facilities have had at least two (2) years of satisfactory operation and maintenance, unless otherwise waived by the director,
 - (4) An inspection by the director has determined that the stormwater facilities are accessible for maintenance using existing City equipment,
 - (5) The person or persons holding title to the properties served by the stormwater facilities must submit a petition containing the signatures of the title holders of more than 50% of the lots served by the stormwater facilities requesting that the City maintain the stormwater facilities,
 - (6) All easements entitling the City to properly access, operate and maintain the subject stormwater facilities have been conveyed to the City and have been recorded with the King County Office of Records and Elections,
 - (7) The person or persons holding title to the properties served by the stormwater facilities show proof of the correction of any defects in the drainage facilities, including provision of maintenance access, as required by the director.
- (g) Disposal of waste from maintenance activities shall be conducted in accordance with the minimum Functional Standards for Solid Waste Handling, Chapter 173-304 Washington Administrative Code; guidelines published by the Washington State Department of Ecology for disposal of waste materials from stormwater maintenance activities; and where appropriate, the Dangerous Waste Regulations, Chapter 173-303 Washington Administrative Code.

ARTICLE IV. INSPECTION AND ENFORCEMENT

15.52.130 Inspection and sampling.

- (a) Inspections for compliance with the provisions of this chapter shall be allowed as follows:
- (1) Construction and Development Inspection. The director or designee shall have access to any site for which a Permit as listed in Section

15.52.050 has been issued, during regular business hours for the purpose of review of erosion control practices and stormwater facilities, and to insure compliance with the terms of such Permit. Applicant for any such Permit shall agree in writing, as a condition of issuance thereof, that such access shall be permitted for such purposes. Inspection procedures shall be as outlined in Section 15.52.130(b).

- (2) Inspection for Cause. Whenever there is cause to believe that a violation of this Chapter has been or is being committed the director or designee is authorized to inspect the property during regular business hours, and at any other time reasonable in the circumstances. Inspection procedures shall be as outlined in Section 15.52.130(b).
 - (3) Inspection for Maintenance and Source Control Best Management Practices. The director or designee may inspect stormwater facilities in order to ensure continued functioning of the facilities for the purposes for which they were constructed, and to ensure that maintenance is being performed in accordance with the standards of this Chapter and any maintenance schedule adopted during the plan review process for the property. The director also may enter the site for the purposes of observing Source Control Best Management Practices. The property owner or other person in control of the site shall allow any authorized representative of the director or designee access during regular business hours, or at any other time reasonable in the circumstances, for the purpose of inspection, sampling, and records examination.
- (b) Inspection Procedure. Prior to making any inspections, the director or designee shall present identification credentials, state the reason for the inspection and request entry of the owner or other person having charge or control of the property, if available, or as provided below.
- (1) If the property or any building or structure on the property is unoccupied, the director or his designee shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.
 - (2) If after reasonable effort, the director or his designee is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the site or of the stormwater drainage system creates an imminent hazard to persons or property, the inspector may enter.
- (c) Water sampling and analysis for determination of compliance with this chapter shall be allowed as follows:

- (1) **Sample Collection.** When the director has reason to believe that a violation exists or is occurring on a property, the director shall have the authority to set up on the site such devices as are necessary to conduct sampling, inspection, compliance monitoring, or flow measuring operations.
- (2) **Sample Analysis.** Analysis of samples collected during investigation of potential violations shall be analyzed by a laboratory certified by the State Department of Ecology as competent to perform the required analysis using standard practices and procedures.
- (3) **Cost of Sample Collection and Analysis.** If it is determined that a violation of this Chapter exists on the site, the owner of the property shall pay the City's actual costs for collecting samples and for laboratory analysis of those samples. If it is found that a violation does not exist, City will pay such charges.

15.52.140 Enforcement, violations and penalties.

- (a) The provisions set forth in this section shall apply to all violations of this chapter or the standard plans. In addition to the listed enforcement options, the city may also pursue any other lawful civil, criminal or equitable remedy or relief. At the director of public works discretion, the choice of enforcement option taken and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the persons subject to the enforcement action. Enforcement options are cumulative and shall not be deemed exclusive.
 - (1) **Nuisance.** Any structure, condition, act or failure to act which violates any provision of this chapter shall be, and the same is declared to be, unlawful and a public nuisance, and may be abated using the procedures of KMC Chapter 11.24 as currently written or hereafter amended or as otherwise allowed by law.
 - (2) **Order to Cease Activity.** The director or designee shall have the authority to order immediate cessation of any activity that is in violation of this Chapter whether occurring on public or private property.
 - (a) **Posting and Notice.** The director or designee shall prominently post this Order at the subject location and shall make reasonable attempts to send this Order on to the property owner, the person in charge of the property,

or the person causing the activity to be conducted or the improvement erected or altered.

- (b) Effect. When an Order to Cease Activity has been posted on the subject location, it is a violation for any person with actual or constructive knowledge of the Order to conduct the activity or do the work covered by the Order until such time as the director or designee has removed or authorized removal of the Order. If an Order to Cease Activity is violated, the director or designee may issue a Notice of Civil Infraction under Section 15.52.140(a)(4).
 - (c) Appeal. An Order to Cease Activity may be appealed in like manner as a Notice of Civil Infraction under Section 15.52.140(a)(4). If a Notice of Civil Infraction has also been issued and appealed, the appeals shall be consolidated for hearing.
- (3) Notice of Violation. If the public works director or assignee determines that any structure, condition, act or failure to act exists that is in violation of this Chapter, he/she may issue a Notice of Violation. This Notice will specifically indicate:
- (a) The name and address of the property owner or other person to whom the Notice of Violation is directed,
 - (b) The street address or description sufficient for identification of the location where the violation has occurred or is occurring,
 - (c) A description of the violation and a reference to the provision or provisions of this Chapter being violated; and
 - (d) A statement of the action required to be taken to correct the violation as determined by the public works director and a date or time by which correction is to be completed.
 - (e) A statement that a monetary penalty in an amount per day for each violation as specified by Section 15.52.140(c) under this Chapter shall be assessed against the person to whom the Notice of Violation is directed for each and every day, or portion of a day, on which the violation continues following the date set for correction.

- (f) Notice to Property Owner and Responsible Party. The public works director or designee shall—
- (i) Leave a copy of this Notice with the occupant or responsible party or post it in a conspicuous place on the subject property; and
 - (ii) Send a copy of the Notice by Certified Mail to the owner of the subject property.
 - (iii) Extension. Upon written request received prior to the correction date or time, the public works director or designee may extend the date set for correction for good cause. The public works director or designee may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.

(4) Notice of Civil Infraction.

- (a) General. The public works director or designee may cause a Notice of Civil Infraction to be issued in either of the following circumstances.
- (i) There is a violation of a posted order to cease activity, or
 - (ii) If, after the time specified in a Notice of Violation, the corrections specified in the Notice of Violation have not been completed, and a violation persists.
- (b) Issuance. The Notice of Civil Infraction will be issued to the owner of the property and to the responsible party. if the violation exists on private property, or to the party responsible for the activity or condition if the violation exists on public property.
- (i) Notwithstanding the provisions of Sections 15.52.140(a)(2) and 15.52.140(a)(3) of this Chapter, the public works director or designee may issue a Notice of Civil Infraction without having issued an Order to Cease Activity when a repeated violation occurs within a 6-month period of time or otherwise at the directors or designee's discretion.

- (ii) A Notice of Civil Infraction represents a determination that a Civil Infraction has been committed. The determination is final unless appealed as provided in this Chapter.
- (c) Content. The following shall be included in the Notice of Civil Infraction.
- (i) The name and address of the property owner or other persons to whom the Notice of Civil Infraction is directed,
 - (ii) The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring,
 - (iii) A description of the violation and a reference to that provision or provisions of this Chapter which has been violated,
 - (iv) A statement that the monetary penalty in the amount per day for each violation as specified in Section 15.52.140(c) of this Chapter is assessed against the person to whom the Notice of Civil Infraction is directed for each and every day, or portion thereof during which the violation continues beyond the date or time established for correction in the Notice of Violation; and
 - (v) A statement that the person to whom the Notice of Civil Infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the City Clerk or may appeal the Notice of Civil Infraction as provided in Section 15.52.140(a)(4)(e) of this Chapter.
- (d) Service of Notice. The public works director or designee shall serve the Notice of Civil Infraction upon the person to whom it is directed, either personally or by mailing a copy of the Notice of Civil Infraction by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting the Notice of Civil Infraction conspicuously on the affected property or structure. The person who effected personal service shall make proof of service at the time of service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made.

(e) Appeal to Hearing Examiner.

- (i) A person to whom a Notice of Civil Infraction is directed may appeal the Notice of Civil Infraction, including the determination that a violation exists, or may appeal the amount of any monetary penalty imposed to the Hearing Examiner.
- (ii) A person may appeal the Notice of a Civil Infraction by filing a written notice of appeal with the Department of Public Works Within seven calendar days from the date of service of the Notice of Civil Infraction.
- (iii) The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the hearing examiner may impose a daily monetary penalty from the date of service of the Notice of Civil Infraction if he finds that the appeal is frivolous or intended solely to delay compliance.
- (iv) The hearing before the Hearing Examiner shall be conducted as follows:
 - i. The office of the Hearing Examiner shall give notice of the hearing before the Hearing Examiner to the appellant seventeen calendar days before such hearing.
 - ii. The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of procedure as provided by the Administrative Procedure Act, Chapter 34.05 RCW. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

(f) Action of Hearing Examiner.

- (i) The Hearing Examiner shall determine whether the City has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the Notice of Civil Infraction with or without written conditions.

(ii) The Hearing Examiner shall consider the following in making his/her determination:

- i. Whether the intent of the appeal was to delay compliance, or
- ii. Whether the appeal is frivolous, or
- iii. Whether there was a written contract or agreement with another party which specified the securing by the other party of the applicable permit or approval from the City, or
- iv. Whether the appellant exercised reasonable and timely effort to comply with applicable development regulations, or
- v. Any other relevant factors.

(g) Notice of Decision – The Hearing Examiner shall mail a copy of his or her decision to the appellant by certified mail, postage prepaid, return receipt requested.

(h) Judicial Review – The decision of the Hearing Examiner may be reviewed pursuant to the standards set forth in RCW 36.70C. in King County Superior Court. The land use petition must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the Hearing Examiner. For more information on the judicial review process for land use decisions, see RCW 36.70C.

(i) Criminal Penalty – Any willful violation of an order issued pursuant to this Section for which a criminal penalty is not prescribed by state law is a misdemeanor.

(5) Criminal. Any willful violation of the provisions of this Chapter is deemed a misdemeanor unless a more exacting charge is allowed by law.

(b) Damages. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this Chapter shall be liable for all damages to public or private property arising from such violation. If the city repairs or replaces the damaged property, the actual cost to the City or such repair or replacement shall be assessed against the responsible party and shall be due and payable within ten days of the date of written notice of the same. Delinquent bills may be collected by a civil action in the Kirkland municipal court or as otherwise allowed by law. If the City obtains judgment, it shall also be entitled to reimbursement for court costs and reasonable attorney's fees expended in the litigation.

(c) Monetary penalty. The amount of the monetary penalty per day or portion thereof for each violation of this chapter is as follows:

- (1) The monetary penalty constitutes a personal obligation of the person to whom the Notice of Civil Infraction is directed. Any monetary penalty assessed must be paid to the city clerk within seven calendar days from the date of service of Notice of Civil Infraction or, if an appeal was filed pursuant to Section 15.52.140(a)(3)(e) of this Chapter, within seven calendar days of the Hearing Examiner's decision.
- (2) The City Attorney, on behalf of the City, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.
- (3) In the event of failure to appear at a hearing provided in Section 15.52.140(a)(3)(e), the Hearing Examiner shall assess the monetary penalty prescribed and a penalty of twenty-five (\$25) dollars.
- (4) In the event of a conflict between this Chapter and any other provision of this code of city ordinances providing for a civil penalty, this Chapter shall control.

Payment of a monetary penalty pursuant to this Chapter does not relieve a person of the duty to correct the violation as ordered by the director of public works.

(d) No Personal Liability for Acts or Omissions.

Each person responsible for the enforcement or administration of this Chapter and each member of a Committee, Board, Commission or Council responsible for making any decision or recommendation under this Chapter is relieved from any personal liability whatsoever from any injury to personal or property as a result of his/her act or omission in the good faith discharge of his/her responsibilities. If the person or member is sued for acts or omissions occurring in the good faith discharge of his/her responsibilities, the City shall defend and provide legal representation to the person or member until final disposition of the proceedings. The City shall reimburse the person or member for any costs incurred in defending against alleged liability for the acts or omissions of the person or members in the good faith discharge of his/her duties.

15.52.150 Conflicts.

If any provisions of any other chapter of the Kirkland Municipal Code, including the Zoning Code (KMC Title 23), conflict with this chapter, that which provides more environmental protection shall apply unless specifically provided otherwise in this chapter.

15.52.160 Severability.

If any provision of this chapter or its application to any person or property is held invalid, the remainder of the chapter or the application of the provision to other persons or property if allowed shall not be affected.

Section 5. References in the Kirkland Zoning Code to "Chapter 107 Storm Drainage" shall be changed to read "Title 15 KMC."

Section 6. As shown in Attachment A, "Item 16 – Storm Water Retention" in the "User's guide" of the Zoning Code shall be deleted, and subsequent items shall be renumbered.

Section 7. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.107, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.


Passed by majority vote of the Kirkland City Council in open meeting this 7th day of December, 1999.

Signed in authentication thereof this 7th day of December, 1999.



MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney

Ord\strmsurfwr

PUBLICATION SUMMARY
OF ORDINANCE NO. 3711

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STORM AND SURFACE WATER MANAGEMENT AND WATER QUALITY, REPEALING CHAPTER 107 AND SECTION 115.155 OF THE KIRKLAND ZONING CODE, AND REPEALING AND REENACTING CHAPTER 15.52 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Repeals Chapter 107 of the Kirkland Zoning Code "Storm Water Control", which chapter provides water quality requirements relating to storm and surface water management for development projects and activities.

SECTION 2. Repeals Section 115.155 of the Kirkland Zoning Code "Water Quality Regulations", which section pertains to the quality of storm and surface water entering streams, lakes, the public storm drainage system, and the ground, and which section also details procedures for enforcement actions concerning water quality.

SECTION 3. Amends Chapter 15.04 of the Kirkland Municipal Code, which chapter provides definitions for all chapters of Title 15. The definitions added are for the new terms appearing in the reenactment of Chapter 15.52 regarding storm and surface water management and water quality.

SECTION 4. Repeals and Reenacts Chapter 15.52 of the Kirkland Municipal Code entitled "Surface Water Management", sets forth minimum standards and guidelines for the development, redevelopment, operation, maintenance and inspection of stormwater facilities, expands water quality protection provisions, substantially enlarges the provisions on violation enforcement and provides severability and conflict resolution clauses.

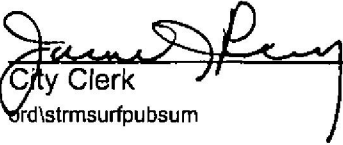
SECTION 5. Changes Zoning Code references to "Chapter 107" to read "Title 15 KMC"

SECTION 6. Deletes Item 16 "Storm Water Retention" from the Zoning Code User's Guide, and renumbers subsequent sections accordingly.

SECTION 7. 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 7th day of December, 1999.

I certify that the foregoing is a summary of Ordinance
3711 approved by the Kirkland City Council for summary
publication.


City Clerk
ord\strmsurfpubsum