

ORDINANCE NO. 4151

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND SURFACE MODIFICATIONS; AMENDING PORTIONS OF THE FOLLOWING CHAPTERS OF ORDINANCE 3719 AS AMENDED, THE KIRKLAND ZONING ORDINANCE: CHAPTER 1—USER GUIDE; CHAPTER 5—DEFINITIONS; CHAPTER 30—WD ZONES; CHAPTER 50—CBD ZONES; CHAPTER 52—JBD ZONES; CHAPTER 60—PLA ZONES; AND CHAPTER 115—MISCELLANEOUS STANDARDS; AMENDING PORTIONS OF THE FOLLOWING TITLES OF THE MUNICIPAL CODE: TITLE 9—HEALTH AND SANITATION AND TITLE 21—BUILDINGS AND CONSTRUCTION; ADOPTING A NEW TITLE 29 ENTITLED "LAND SURFACE MODIFICATION" IN THE KIRKLAND MUNICIPAL CODE; AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION, FILE NO. ZON08-00007.

WHEREAS, the City Council has received recommendations from the Kirkland Planning Commission and Houghton Community Council to amend certain sections of the text of the Kirkland Zoning and Municipal codes, all as set forth in that certain report and recommendation of the Planning Commission dated October 7, 2008 and bearing Kirkland Department of Planning and Community Development File No. ZON08-00007; and

WHEREAS, prior to making its recommendation, the Kirkland Planning Commission on July 31, 2008, held a public hearing on the amendment proposals and considered the comments received at said hearing; and

WHEREAS, pursuant to the State Environmental Policy Act (SEPA), there has accompanied the legislative proposal and recommendation through the entire consideration process, a SEPA Addendum to Existing Environmental Documents issued by the responsible official pursuant to WAC 197-11-600; and

WHEREAS, in regular public meeting the City Council considered the environmental documents received from the responsible official, together with the reports and recommendations of the Planning Commission.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. Zoning text amended: The following specified sections of the text of Ordinance 3719 as amended, the Kirkland Zoning Ordinance, are hereby amended to read as follows:

As set forth in Attachment A attached to this ordinance and incorporated herein by this reference.

Section 2 Municipal Code text amended: The following specified sections of the text of the Municipal Code are hereby amended to read as follows:

As set forth in Attachment B attached to this ordinance and incorporated herein by this reference.

Section 3 Municipal Code text adopted: A new Title 29 of the Kirkland Municipal Code entitled "Land Surface Modification" is hereby adopted to read as follows:

As set forth in Attachment C attached to this ordinance and incorporated herein by this reference.

Section 4. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

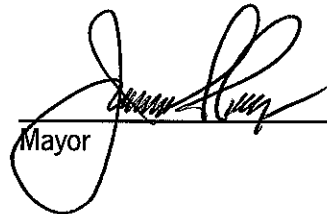
Section 5. To the extent the subject matter of this ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this ordinance shall become effective within the Houghton Community Municipal Corporation on the effective date of this ordinance only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance.

Section 6. This ordinance shall be in full force and effect 90 days from and after its passage by the Kirkland City Council and publication pursuant to Kirkland Municipal Code 1.08.017, in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.

Section 7. A complete copy of this ordinance shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

PASSED by majority vote of the Kirkland City Council in open meeting this 21st day of October, 2008

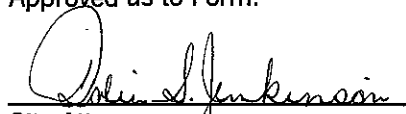
SIGNED IN AUTHENTICATION thereof this 21st day of October, 2008

  
\_\_\_\_\_  
Mayor

Attest:

Acting   
\_\_\_\_\_  
City Clerk

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

## ATTACHMENT A

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### HOW TO READ THIS:

- Text that is covered by a strike-through (~~strike-through~~) is existing text currently contained in the Zoning Code that is to be deleted.
  - Text that is underlined (underlined) is new text that is to be added.
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### Section 1.10

12. Land Surface Modification – Do you want to do any clearing, grading or engage in any land surface modifications including removing vegetation other than trees on the subject property? If so, you should read ~~KZC 115.75~~KMC Title 29, Land Surface Modification.

### Section 5.10

- .455 Land Surface Modification – The clearing or removal of ~~trees, shrubs, groundcover and other vegetation, excluding trees,~~ and all grading, excavation and filling of materials. ~~–The removal of overhanging vegetation and fire hazards as specified in Chapter 9.12 KMC shall not be deemed to be land surface modification.~~

### Sections 30.17, 30.27, 30.37, 50.20, 52.35, 60.28, 60.173

4. Land Surface Modification Landward of the High Waterline Yard – Land surface modification landward of the high waterline yard is regulated like land surface modifications throughout the City. See KMC Title 29 Chapter 115 KZC for those regulations.

### Section 60.18

4. Land Surface Modification Other than Waterward of the High Waterline or the Regulated Wetland or Wetland Buffer – See KMC Title 29 Chapter 115 KZC for regulations regarding land surface modifications other than waterward of the high waterline or within the regulated wetland or wetland buffer.

### Table of Contents for Chapter 115 – Miscellaneous Use Development and Performance Standards

~~115.75 Land Surface Modification~~

### Section 115.75

~~115.75 Land Surface Modification~~

1. ~~General~~—The applicant shall comply with this section with respect to all land surface modifications.

2. ~~Nature of Fill Materials~~—All materials used as fill must be nondissolving and nondecomposing. Fill material must not contain organic or inorganic material that would be detrimental to the water quality, or existing habitat, or create any other significant adverse impacts to the environment.

3. A land surface modification is permitted, only if it:

a. ~~Has been approved as part of a valid development permit, subdivision, or substantial development permit; or~~

b. ~~Is for cemetery graves; or~~

c. ~~Is in a right-of-way authorized in writing by the Director of the Department of Public Works; or~~

d. ~~Is for mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate or clay where a permit has been issued by the state of Washington, Department of Natural Resources; or~~

e. ~~Is for exploratory excavations under the direction of a professional engineer licensed in the state of Washington, as long as the extent of the land surface modification does not exceed the minimum necessary to obtain the desired information; or~~

f. ~~Is for normal maintenance and repair of the facilities of a common carrier by rail in interstate commerce within its existing right-of-way; or~~

g. ~~Is for excavations for utility service connections to serve existing and/or new structures; or~~

h. ~~Is for actions which must be undertaken immediately, or within a time too short to allow full compliance with the permit requirements of subsection (4) of this section, to avoid an imminent threat to public health or safety; to prevent an imminent danger to public or private property; or to prevent an imminent threat of serious environmental degradation. This determination will be made by the Planning Official; or~~

i. ~~Is for the removal of overhanging vegetation and fire hazards as specified in Chapter 9.12 KMC, and the removal of blackberry vines or dead, dangerous, or diseased trees, when authorized by the Building Official; or~~

j. ~~Is for placement of fill on land owned or controlled by the City; or~~

k. ~~Complies with all of the following criteria:~~

1) ~~The subject property contains a permanent building or an active use; and~~

~~2) The land surface modification will not change the points where the storm water or groundwater enters or exits the subject property; and will not change the quality, quantity, or velocity of storm water or groundwater; and~~

~~3) The land surface modification is not in a stream, lake, wetland, or required setback therefrom; is not on or within 25 feet of a geologically hazardous area; and is not in an area with soft compressible soils; and~~

~~4) The land surface modification is not located on a site for which a development permit, subdivision, or substantial development permit has been submitted or is under review but has not yet been approved; and~~

~~5) In any one-year period, not more than 500 cubic yards of fill material is deposited on, excavated and removed from or moved from place to place on the subject property and will not result in more than a two-foot increase or one-foot decrease in average slope. If the subject property is larger than one acre, the limit is 500 cubic yards within each acre; and~~

~~6) If the land surface modification is between 100 and 500 cubic yards, the City may require a soils report. If a soils report is required, it shall contain a description of any on or off site impacts of the proposed land surface modification on each of the following elements:~~

~~a) Slope stability — if the site has an average slope 15 percent or greater;~~

~~b) Landslide hazard, sloughing or mud flows;~~

~~c) Seismic hazards (based on subclassifications within the Class III risk zone);~~

~~d) Erosion hazards;~~

~~e) Drainage;~~

~~f) Springs or seeps or any other surface water;~~

~~g) Groundwater;~~

~~h) Flood hazard;~~

~~i) Existing vegetation;~~

~~The soils report also must contain recommended methods for mitigating identified impacts and a description of how these mitigating measures impact adjacent properties. The City may require implementation of recommendations in the soils report to mitigate identified impacts.~~

4. ~~The Planning Official may approve a land surface modification which does not comply with subsection (3) of this section if the land surface modification:~~

~~a. Except as allowed by Chapter 90-KZC, does not alter or adversely affect streams, lakes, wetlands, or significant trees, either on the subject property or on any other property; and~~

~~b. Does not violate any expressed policy of the City; and~~

~~c. Either:~~

~~1) Is proposed to correct an erosion or drainage problem on an undeveloped site; or~~

~~2) Is proposed to create new utility or access corridors; or~~

~~3) The subject property contains a permanent building or an active use and in any one-year period more than 500 cubic yards of fill material is deposited on, excavated and removed from, or moved from place to place on the subject property and will not result in more than a two-foot increase or one-foot decrease in average slope. If the subject property is larger than one acre, the threshold is 500 cubic yards within each acre; or~~

~~4) The subject property contains a permanent building or an active use and is on or within 25 feet of a regulated slope or is within an area of soft compressible soils; or~~

~~5) Is proposed to ensure grading is done to avoid erosion, landslides, or other environmental hazards for a development activity for which a complete building permit application is being processed and a bond for restoration has been submitted. All land surface modification authorized by the Planning Official must be completed no later than October 1st, unless extended by the Building Official. The bond shall be held until all site work associated with the approved building permit is completed.~~

5. ~~Prior to approving a land surface modification under subsection (4) of this section, the applicant shall submit to the Planning Official:~~

~~a. Survey of the subject property;~~

~~b. Limits of proposed grading;~~

~~c. Tree retention plan;~~

~~d. Utility locations;~~

~~e. Easement and right-of-way improvement locations;~~

~~f. Erosion control/construction phase storm water control plan; and~~

~~g. A soils report which contains all elements described in subsection (3)(k)(7) of this section.~~

~~6. In approving the LSM, the Planning Official may require measures to mitigate the impacts of the LSM, including but not limited to the following:~~

~~a. The limit of grading line shall be clearly marked in the field with the installation of a six-foot-high temporary chain link fence and signage and flagging of trees to be retained.~~

~~b. An erosion control siltation fence shall be erected along required setbacks from streams, wetlands, and steep-sloped areas.~~

~~7. Appeals—The decision of the Planning Official in approving or denying a land surface modification may be appealed using the appeal provision, as applicable, of Process I, KZC 145.60 through 145.110.~~

~~8. Bonds—The City may require the following bonds, per Chapter 175 KZC:~~

~~a. A performance bond to guarantee that the land surface modification will conform to City standards; and/or~~

~~b. A maintenance bond after the land surface modification is completed.~~

#### ~~9. Tree and Plant Restoration~~

~~If any tree required to be retained or planted is damaged or destroyed, the applicant shall plant a tree of the same species at least three to five inches in diameter, if deciduous, as measured one foot above grade or at least 16 feet high, if coniferous, in the immediate vicinity of the damaged or destroyed tree. The City may require the applicant to remove the damaged or destroyed tree.~~

~~In addition, if grading or clearing destroys groundcover or shrubbery, the applicant shall hydroseed the bare soil and plant shrubs at least 24 inches in height in the immediate vicinity of the damaged or destroyed vegetation.~~

**ATTACHMENT B**

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**HOW TO READ THIS:**

- Text that is covered by a strike-through (~~strike-through~~) is existing text currently contained in the Municipal Code that is to be deleted.
  - Text that is underlined (underlined) is new text that is to be added.
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**Title 9:**

**9.12.010 Removal of overhanging vegetation and fire hazards.**

(a) The owner of any property in the city shall remove or destroy, in a manner permitted by law, all trees, plants, shrubs or vegetation or parts thereof that which overhangs or is growing on any sidewalk or street, or which are growing thereon in such a manner as to that obstructs or impairs the free and full use of the sidewalk or street by the public; and. Prior authorization is required from the City to the extent pruning or removal of trees is required.

(b) The owner of any property in the city shall also remove or destroy (in a manner permitted by law), all grass, weeds, shrubs, bushes, trees or vegetation growing or which have grown and died and to remove or destroy (in a manner permitted by law) all or debris upon property owned or occupied by them and which are that is a fire hazard or a menace to public health, safety or welfare. Such work, when proposed in a critical area or its buffer, requires prior approval from the Department of Planning and Community Development. Prior authorization also is required from the City to the extent pruning or removal of trees is required. (Ord. 2149 § 1, 1974)

**From Municipal Code Title 21:**

**Chapter 21.08  
INTERNATIONAL BUILDING CODE**

**Sections:**

- 21.08.010 International Building Code adopted.
- 21.08.020 IBC Section 403.10.2 amended.
- 21.08.025 IBC Section 403.15 amended.
- 21.08.030 IBC Section 405.9 amended.
- 21.08.035 IBC Section 501.2 amended.
- 21.08.040 IBC Section 707.2 Exception 2.1 amended.
- 21.08.055 IBC Section 1608.1 amended.



~~21.08.060 IBC Section 1704.12 amended.~~  
~~21.08.075 IBC Chapter 31 amended.~~  
~~21.08.105 IBC Section J102 amended.~~  
~~21.08.110 IBC Section J103 amended.~~  
~~21.08.115 IBC Appendix Section J103.3 added.~~

~~21.08.105 IBC Section J102 amended.~~

~~Section J102 of the International Building Code is amended and supplemented by the addition of the following definition:~~

~~LAND SURFACE MODIFICATION shall include clearing or removal of trees, shrubs, ground cover and other vegetation, and all grading, excavation and filling of materials. The removal of overhanging vegetation and fire hazards as specified in Chapter 9.12 of the Kirkland Municipal Code and the removal of dead, dangerous, or diseased trees or blackberry vines when authorized by the Building Official shall not be deemed to be a Land Surface Modification.~~

~~(Ord. 4099 § 3 (part), 2007; Ord. 3946 § 1 (part), 2004)~~

~~21.08.110 IBC Section J103 amended.~~

~~Section J103 of the International Building Code is amended and supplemented to read:~~

~~Section J103. PERMITS REQUIRED. Except as exempted in Section J103.2, no land surface modification shall be performed without first having obtained a permit from the building official.~~

~~Section J103.2. Exemptions. A land surface modification permit shall not be required for the following:~~

- ~~1. Land surface modification performed in the normal course of maintaining existing landscaping on a lot associated with an existing building or buildings, provided such work does not modify any drainage course and does not involve more than 50 cubic yards of material in an 12 month period.~~
- ~~2. Any excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid Building Permit. This shall not exempt any fill made with the material from such excavation when the material is removed from the lot or any fill material which is placed on the lot.~~
- ~~3. Cemetery graves.~~
- ~~4. Fill deposited on previously approved disposal sites under the control of other City Administrative Departments.~~
- ~~5. Excavations for wells or tunnels, or utilities or other work supervised by the City of Kirkland.~~

~~6. Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate or clay where a permit has been issued by the State of Washington, Department of Natural Resources.~~

~~7. Exploratory excavations under the direction of soil engineers or engineering geologists.~~

~~8. Normal maintenance and repair of the facilities of a common carrier by rail in interstate commerce within its existing right-of-way.~~

~~9. Excavations for utility service connections to serve existing and/or new structures.~~

~~10. Correction of drainage problems when supervised by the Department of Public Works; and the installation of approved preliminary plat and short plat improvements as permitted by Section J103.3.~~

~~Exemption from the permit requirements of this Chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction.~~

~~(Ord. 4099 § 3 (part), 2007; Ord. 4017 § 7, 2005; Ord. 3946 § 1 (part), 2004)~~

#### 21.08.115 IBC Appendix Section J103.3 added.

Appendix Section J103.3 of the International Building Code is amended by the addition of a new subsection:

Section J103.3. Permit Issuance. No land surface modification or grading permit shall be issued in the following circumstances:

1. Prior to the approval of a preliminary plat or short plat.

~~Exception: After the approval of a preliminary plat or short plat, a land surface modification or grading permit may be issued for land surface modification or grading work to be done within rights-of-way, utility easements or access easements as designated on the approved preliminary plat drawings. A limited amount of grading may be permitted and stockpiling of materials on individual lots with the concurrence of the departments that normally review development permit applications. Permits to be issued for activities covered by this subparagraph shall be issued by the department of public works who shall with respect to such activities, have full authority to administer and enforce the provisions of Appendix Chapter J of the International Building Code as herein amended and supplemented.~~

2. Prior to the issuance of a building permit.

~~Exception: After the receipt of a complete application for a building permit, a land surface modification or grading permit may be issued only for the minimum land surface modification or grading necessary~~

~~to locate structures or other associated improvements designated on the submitted building permit plans.~~

~~3. In areas served by inadequate water, sewer, storm drainage or transportation systems as determined by the Public Works Department.~~

~~Exception: When such action proposes the improvement of any deficient system to minimum city standards and at the expense of the private sponsor and such improvements are associated with the issuance of a valid building permit.~~

~~4. Prior to the approval specified in Section 115.75, Kirkland Zoning Code, where no Building Permit is required.~~

~~5. Prior to the approval of a preliminary Planned Unit Development.~~

~~Exception: After the approval of a preliminary Planned Unit Development, a Land Surface Modification or Grading Permit may be issued for land surface modification or grading work to be done within rights-of-way, utility easements, access easements or other major components of the internal vehicular circulation system so designated in the approved Preliminary Planned Unit Development.~~

~~(Ord. 4099 § 3 (part), 2007; Ord. 3946 § 1 (part), 2004)~~

**ATTACHMENT C**

*Add new listing to Municipal Code Table of Contents:*

Title 29 Land Surface Modification

Title 29

**LAND SURFACE MODIFICATION**

Chapters:

- 29.04 General Provisions
- 29.08 Definitions
- 29.12 Permit Exemptions
- 29.16 Permit Application
- 29.20 Permit Approval Criteria
- 29.24 Development Standards
- 29.28 Bonds and Restoration
- 29.32 Expiration
- 29.36 Suspension or Revocation, Appeals and Enforcement

**Chapter 29.04  
GENERAL PROVISIONS**

Sections:

- 29.04.010 Purpose and Intent
- 29.04.020 Applicability
- 29.04.030 Right of Entry.
- 29.04.040 Inspections.

**29.04.010 Purpose and Intent**

The purpose of this title is to provide for and promote the health, safety and welfare of the general public by minimizing risks to life and property and ensuring that land surface modification occurs in a manner compatible with City goals for environmental protection. To preserve natural features and functions of the land until a development plan is reviewed and approved, speculative grading is discouraged.

**29.04.020 Applicability.**

The provisions of this title apply to all land surface modifications conducted after the effective date of the ordinance codified in this title. Except as exempted in

Chapter 29.12, no land surface modification shall be performed without first having obtained a permit from the City of Kirkland.

#### 29.04.030 Right of entry.

Where it is necessary to make an inspection to enforce the provisions of this chapter, or where the City has reasonable cause to believe that there exists upon a site a condition which is contrary to or in violation of this chapter, the City is authorized to enter the site at reasonable times to inspect or to perform the duties imposed by this chapter.

#### 29.04.040 Inspections.

Land surface modifications for which a permit is required shall be subject to inspection by the City to ascertain compliance with the provisions of this chapter and other City laws and regulations. It shall be the duty of the applicant to cause the work to remain accessible for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this chapter or of other codes or ordinances of the City.

### Chapter 29.08 DEFINITIONS

#### Sections:

- 29.08.010 General
- 29.08.020 Definitions

#### 29.08.010 General.

The definitions in this Chapter apply throughout this title.

#### 29.08.020 Definitions.

- a. "Development Permit" means any permit or approval under the Zoning Code or the Building Code that must be issued before initiating a use or development activity.
- b. "Land Surface Modification" means the clearing or removal of ~~trees~~, shrubs, groundcover and other vegetation, excluding trees, and all grading, excavation and filling of materials.

### Chapter 29.12 PERMIT EXEMPTIONS

#### Sections:

- 29.12.010 Permit Exemptions.
- 29.12.020 Emergency Exemption.
- 29.12.030 Relationship to Other Regulations.

## 29.12.010 Permit Exemptions

Except in (1) critical areas and their buffers, (2) areas waterward of the high waterline, (3) high waterline required yards, or (4) areas with an historic overlay designation, a land surface modification permit shall not be required for the following:

- a. The removal of overhanging vegetation and fire hazards as specified in Chapter 9.12 of the Kirkland Municipal Code.
- b. The removal of prohibited vegetation.
- c. Land surface modification performed in the normal course of maintaining existing landscaping on a lot associated with an existing building or buildings, provided such work:
  - 1) does not substantially change the points where the stormwater or groundwater enters or exits the subject property; and will not change the quality, quantity, or velocity of stormwater or groundwater;
  - 2) does not result in an increase or decrease in topography at any point of more than 4'; and
  - 3) does not involve more than 50 cubic yards of material in any 12 month period.
- d. Any excavation authorized by a valid Building Permit. This shall not exempt any fill made with the material from such excavation when the material is removed from the lot or any fill material which is placed on the lot.
- e. Utilities or other work in a right-of-way supervised by the City of Kirkland, authorized in writing by the Director of the Department of Public Works, or as allowed by a right-of-way permit approved under KMC 19.12.
- f. Excavations for franchise utility service connections (power, telephone, cable, gas, etc.) to serve existing and/or new structures.
- g. Correction of storm drainage problems when supervised by the Department of Public Works.
- h. Exploratory excavations under the direction of a professional engineer licensed in the state of Washington, as long as the extent of the land surface modification does not exceed the minimum necessary to obtain the desired information.
- i. Normal maintenance and repair of the facilities of a common carrier by rail in interstate commerce within its existing right-of-way.
- j. Cemetary graves.

## 29.12.020 Emergency Exemption.

A land surface modification permit shall not be required for actions which must be undertaken immediately or within a time too short to allow full compliance with the permit requirements of this title to avoid an imminent threat to public health or

safety; to prevent an imminent danger to public or private property; or to prevent an imminent threat of serious environmental degradation. The party conducting the land surface modification shall contact the City within seven days of the land surface modification to provide evidence of threat or imminent danger. Within this same seven-day period, the party conducting the land surface modification shall be solely responsible for notifying adjacent property owners and residents of any actions taken that may affect their property. The City may require that the party obtain a permit after-the-fact, and/or require other mitigation as necessary.

### 29.12.030 Relationship to Other Regulations.

Exemption from the permit requirements of this title shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this title or any other laws or ordinances of this jurisdiction. In particular, requests for pruning or removal of trees shall follow the procedures and comply with the standards outlined in KZC Chapter 95.

## Chapter 29.16 PERMIT APPLICATION

### Sections:

- 29.16.010 Application--Contents
- 29.16.020 Geotechnical Report
- 29.16.030 Third Party Review Authorized

### 29.16.010 Application—Contents.

The applicant shall apply for a land surface modification permit by submitting information to the City. The City is hereby authorized to maintain a list of the application requirements that may include, but is not limited to, the following:

- a. Permit application form;
- b. Fees as established in KMC Titles 5 and 21, as applicable;
- c. Survey of the subject property;
- d. Any additional pertinent information.

### 29.16.020 Geotechnical Report

The City may require a geotechnical report as part of any land surface modification permit application. If a geotechnical report is required, it shall be prepared by a qualified geotechnical engineer or engineering geologist and must contain a description of any on- or off-site impacts of the proposed land surface modification on each of the following elements:

- a. Geologically hazardous areas, including landslide hazard areas, erosion hazard areas and seismic hazard areas;
- b. Storm drainage;

- c. Groundwater;
- d. Springs or seeps or other surface expressions of groundwater;
- e. Surface water, including streams, seasonal runoff and wetlands.
- f. Flood hazards;
- g. Existing vegetation, including trees; and
- h. Stability of existing or proposed structures or landforms.

The geotechnical report also must contain recommended methods for mitigating identified impacts and a description of how these mitigating measures impact adjacent properties.

If the land surface modification proposal is subject to the requirements of KZC Chapter 85, additional geotechnical information may be required.

#### 29.16.030 Third Party Review Authorized

At the City's option, funding for a qualified geotechnical engineer or engineering geologist to review the geotechnical report and recommendations may be required of the applicant. The geotechnical engineer or engineering geologist will be selected and retained by the City subject to a three-party contract.

### Chapter 29.20 PERMIT APPROVAL CRITERIA

#### Sections:

- 29.20.010 For projects with a valid development permit, subdivision or substantial development permit.
- 29.20.020 For projects without a valid development permit, subdivision or substantial development permit, but with a submitted building permit application.
- 29.20.030 For projects without a valid development permit, subdivision or substantial development permit, on a site with an existing building or an active use and involving up to 500 cubic yards of material.
- 29.20.040 For projects without a valid development permit, subdivision or substantial development permit, on a vacant site or involving more than 500 cubic yards of material.
- 29.20.050 General criteria

29.20.010 For projects with a valid development permit, subdivision or substantial development permit.

A land surface modification permit may be approved as part of a valid development permit, substantial development permit or subdivision.



After approval of a zoning or substantial development permit, a land surface modification permit may be issued for land surface modification to be done within rights-of-way, utility easements, access easements, the internal vehicular circulation system, or other portions of the site pursuant to the approved zoning or substantial development permit.

After approval of a preliminary subdivision or short plat, a land surface modification permit may be issued for land surface modification to be done within rights-of-way, utility easements or access easements as designated on the approved engineering plans. A limited amount of grading, as well as stockpiling of materials, on individual lots may be permitted with City approval.

**29.20.020** For projects without a valid development permit, subdivision or substantial development permit, but with a submitted building permit application.

A land surface modification may be approved for a project on a site without a valid development permit, subdivision or substantial development permit, but with a submitted building permit application, if the land surface modification complies with all of the following criteria:

- a. A complete building permit application for the site has been submitted.
- b. The land surface modification is not located on a site for which a zoning permit, subdivision, or substantial development permit has been submitted or is under review but has not yet been approved.
- c. The land surface modification is the minimum necessary to locate structures or other associated improvements designated on the submitted building permit plans.
- d. The land surface modification will not substantially change the points where the stormwater or groundwater enters or exits the subject property; and will not change the quality, quantity, or velocity of stormwater or groundwater.
- e. The land surface modification complies with the criteria in Section 29.20.050.
- f. A bond is submitted prior to issuance of the land surface modification permit for restoration of the site in the event the building permit is not approved.

**29.20.030** For projects without a valid development permit, subdivision or substantial development permit, on a site with an existing building or an active use and involving up to 500 cubic yards of material.

A land surface modification may be approved for a project on a site without a valid development permit, subdivision or substantial development permit, but with an existing building or an active use, if the land surface modification complies with all of the following criteria:

- a. The land surface modification is not located on a site for which a development permit, subdivision, or substantial development permit has been submitted or is under review but has not yet been approved.

- b. The land surface modification will not substantially change the points where the stormwater or groundwater enters or exits the subject property; and will not change the quality, quantity, or velocity of stormwater or groundwater.
- c. In any one-year period, not more than 500 cubic yards of fill material is deposited on, excavated and removed from, or moved from place to place on, the subject property. If the subject property is larger than one acre, the limit is 500 cubic yards within each acre.
- d. The land surface modification complies with the criteria in Section 29.20.050.

**29.20.040** For projects without a valid development permit, subdivision or substantial development permit, on a vacant site or involving more than 500 cubic yards of material.

On a vacant site involving any amount of material, or on a site with an existing building or an active use involving more than 500 cubic yards of material (or 500 cubic yards of material within each acre, if the subject property is larger than one acre), the land surface modification may be approved if all of the following criteria are met:

- a. The land surface modification is proposed to do at least one of the following:
  - 1) Correct an erosion or storm drainage problem under the supervision of the Department of Public Works; or
  - 2) Create new utility or access corridors required by the City of Kirkland; or
  - 3) Improve to minimum standards, at the expense of the applicant, a deficient water, sewer, storm drainage or transportation system, as determined by the Public Works Department; or
  - 4) Avoid erosion, landslides, or other environmental hazards.
- b. The land surface modification is not located on a site for which a development permit, subdivision, or substantial development permit has been submitted or is under review but has not yet been approved.
- c. The land surface modification will not substantially change the points where the groundwater enters or exits the subject property; and will not change the quality, quantity, or velocity of groundwater.
- d. The land surface modification complies with the criteria in Section 29.20.050.

**29.20.050** General criteria.

The following criteria must be met for any land surface modification approved under Sections 29.20.020, 29.20.030 or 29.20.040:

- a. The land surface modification is consistent with the provisions of the Kirkland Zoning Code, including, but not limited to, regulations regarding streams, lakes, and wetlands and their buffers; geologically hazardous areas; shorelines; and trees.

- b. The land surface modification will not adversely affect the stability of structures or landforms on-site or on adjacent properties.
- c. The land surface modification is consistent with the provisions of the Kirkland Municipal Code, including, but not limited to, the Shoreline Master Program.
- d. The land surface modification is consistent with the provisions of the most current edition of the Public Works Department's Pre-Approved Plans and Policies.
- e. The land surface modification does not violate any policy of the City.

## Chapter 29.24 DEVELOPMENT STANDARDS

### Sections:

#### 29.24.010 Conditions of Permit Approval

#### 29.24.010 Conditions of Permit Approval.

Prior to approving a land surface modification permit, the City may require measures to mitigate impacts, including but not limited to the following:

- a. Implementation of recommendations in the geotechnical report.
- b. Restrictions on the nature of fill materials. All materials used as fill shall be nondissolving and nondecomposing. Fill material shall not contain organic or inorganic material that would be detrimental to water quality or existing habitat, or create any other significant adverse impacts to the environment.
- c. Compliance with the City's rodent abatement standards.
- d. Marking the limit of grading line in the field with a temporary fence and signage as approved by the City.
- e. Installation of temporary protective tree fencing and signage as described in KZC Chapter 95.
- f. Implementation of erosion control measures, including installation of an erosion control siltation fence along required setbacks from streams, wetlands, and steep-sloped areas.
- g. Implementation of measures to control dust.
- h. Maintenance of streets and storm drains so that they are kept clean of debris resulting from the land surface modification.
- i. Limitation on timing of the land surface modification. The land surface modification should be completed between April 1 and October 1st, unless a wet weather erosion control plan has been approved by the Public Works Department.

## Chapter 29.28 BONDS AND RESTORATION

**Sections:**

- 29.28.010 Bonds
- 29.28.020 Restoration

**29.28.010 Bonds.**

The City may require or permit a bond in accordance with KZC Chapter 175 to ensure compliance with any of the requirements of this chapter.

**29.28.020 Restoration.**

If any tree required to be retained or planted as a condition of the land surface modification permit is damaged or destroyed, the applicant shall comply with the restoration requirements of KZC Chapter 95.

The applicant shall stabilize any exposed areas left after the land surface modification with approved vegetation.

**Chapter 29.32  
EXPIRATION**

**Sections:**

- 29.32.010 Time Limitation for Application
- 29.32.020 Permit Expiration

**29.32.010 Time Limitation for Application.**

An application for a land surface modification permit shall expire as described in KMC Section 21.06.

**29.32.020 Permit Expiration.**

A land surface modification permit shall expire as described in KMC Section 21.06.

**Chapter 29.36  
SUSPENSION OR REVOCATION, APPEALS AND  
ENFORCEMENT**

**Sections:**

- 29.36.010 Suspension or Revocation
- 29.36.020 Appeals
- 29.36.030 Enforcement

**29.36.010 Suspension or Revocation.**

The City is authorized to suspend or revoke a permit issued under the provisions of this chapter whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.

**29.36.020 Appeals.**

The decision of the City in approving or denying a land surface modification may be appealed using the appeal provisions, as applicable, of Article XII of KMC Chapter 21.06

**29.36.030 Enforcement.**

Violations of the requirements of this title shall be enforced through the provisions, as applicable, of KZC Chapter 170.

ORDINANCE NO. 4151  
PUBLICATION SUMMARY

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND SURFACE MODIFICATIONS; AMENDING PORTIONS OF THE FOLLOWING CHAPTERS OF ORDINANCE 3719 AS AMENDED, THE KIRKLAND ZONING ORDINANCE: CHAPTER 1—USER GUIDE; CHAPTER 5—DEFINITIONS; CHAPTER 30—WD ZONES; CHAPTER 50—CBD ZONES; CHAPTER 52—JBD ZONES; CHAPTER 60—PLA ZONES; AND CHAPTER 115—MISCELLANEOUS STANDARDS; AMENDING PORTIONS OF THE FOLLOWING TITLES OF THE MUNICIPAL CODE: TITLE 9—HEALTH AND SANITATION AND TITLE 21—BUILDINGS AND CONSTRUCTION; ADOPTING A NEW TITLE 29 ENTITLED “LAND SURFACE MODIFICATION” IN THE KIRKLAND MUNICIPAL CODE; AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION, FILE NO. ZON08-00007.

Section 1. Identifies the specific amendments to Ordinance 3719, as amended, the Kirkland Zoning Ordinance.

Section 2. Identifies the specific amendments to the Municipal Code;

Section 3. Adopts the specific text of a new Title 29 of the Kirkland Municipal Code entitled “Land Surface Modification.”

Section 4. Addresses severability.

Section 5. Establishes that this ordinance will be effective within the disapproval jurisdiction of the Houghton Community Council Municipal Corporation on the effective date only upon approval by the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this 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 ninety days after publication of said summary for all amendments.

Section 7. Directs the City Clerk to certify and forward a complete certified copy of this ordinance to the King County Department of Assessments.

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 regular meeting on the 21st day of October, 2008.

I certify that the foregoing is a summary of Ordinance 4151 approved by the Kirkland City Council for summary publication.

Attest:

Acting Karen R. Swell  
City Clerk