



CITY OF KIRKLAND
Department of Public Works
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Bobbi Wallace, Wastewater Division Manager
Pam Bissonnette, Interim Public Works Director

Date: February 6, 2014

Subject: Fats, Oils, and Grease (FOG) Fine Enforcement

RECOMMENDATION:

It is recommended that the City Council adopts the enclosed ordinance update which provides needed language for Fats, Oils and Grease (FOG) fine processing.

BACKGROUND DISCUSSION:

In spring of 2013, after review by the Public Works and Parks Council Committee, the City sent out notices to several FOG generating businesses that were not in compliance with FOG controls. The notice alerted business owners to the violation of FOG regulations and requested installation of the required FOG control devices by January 1, 2014, at which point fines would be assessed.

The City Attorneys' Office recently reviewed KMC 15.36.120 (relating to FOG violations and penalties) and determined that important enforcement procedures were missing. In addition, the Public Works and Parks Council Committee recommended that dischargers be given an option to offset FOG fines against the cost of installing required FOG devices within 45 days of appeal or the end of the appeal period. A fined discharger may apply to the Department of Public Works to offset the amount of the fines assessed against the cost of installing approved FOG pretreatment facilities. Proof of the costs incurred must be provided and an inspection verifying the proper installation must occur before the offset is approved. The amount of the offset shall not exceed the amount of the assessed fines.

This ordinance update provides the necessary enforcement procedures and provides a new opportunity for violators to apply the fine to offset the cost of the installation or correction to capture the FOG prior to it entering the side sewer or public sewer main. FOG is extremely damaging to sewer conveyance systems, restricting flows and creating hazardous sewer plugs which then overflow from the system into the environment. The FOG program is in compliance with the required Capacity, Management, Operation, and Maintenance plan (CMOM) for the wastewater conveyance system, which is mandated under the Federal Water Pollution Act amended in 1972 and implements the National Pretreatment Standards.

ORDINANCE O-4432

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ENFORCEMENT OF REGULATIONS REGARDING DISCHARGE OF FATS, OILS AND GREASE INTO THE CITY SEWER SYSTEM.

The City Council of the City of Kirkland ordains as follows:

Section 1. Kirkland Municipal Code ("KMC") Section 15.36.120 is hereby amended to read as follows:

15.36.120 Standards for discharges and reporting—Enforcement—Penalties.

(a) Those dischargers subject to national pretreatment standards will be subject to enforcement action in accordance with this chapter for any violations of the criteria and limitations specified in the categorical standard or the general pretreatment standards set forth in 40 CFR 403, as currently written or hereafter amended, which standards are hereby adopted by reference.

(b) Maximum Daily Concentration Allowed. The maximum daily allowable concentration for dischargers not regulated under national pretreatment standards is violated under the following circumstances:

(1) The arithmetic mean of concentrations for eight consecutive samples collected within a twenty-four-hour time period over intervals of fifteen minutes or greater is in excess of the limitation.

(2) The concentration value obtained from a composite sample that is representative of the twenty-four-hour discharge is in excess of the limitation.

(3) The concentration of any single sample (whether a single grab sample or a sample within a series) exclusive of any fats, oils, and grease exceeds the limitation by a factor of two and one-half times.

(4) The arithmetic mean of the concentration of fats, oils, or greases for three grab samples, taken no more frequently than five-minute intervals, exceeds the limitation.

(c) Maximum Allowable Poundage Limitations. A violation shall occur if the maximum allowable effluent poundage limitation as established in the private wastewater discharge permit is exceeded. The daily poundage discharged shall be calculated using the volume of effluent discharged that day times the concentration for that day either reported by the discharger or obtained through sampling by the city. The poundage shall be determined utilizing the formula:

$$\text{Lb./day} = \text{conc. in mg/L} \times \text{gal./day} \\ \text{disch./1,000,000} \times 8.34$$

(d) Reporting Requirements. A violation shall occur if any reporting requirements established by permit, accidental discharges, upset

conditions, written request of the city or authorized representative, or as specified by general pretreatment standards (40 CFR 403.12) are not complied with. A violation shall occur when any person knowingly makes any false statement, representation, or certification in an application, record, report, plan or other document filed or required to be maintained pursuant to this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter.

(e) "FOG" Pretreatment Facility—Maintenance. A violation shall occur if there is any failure to install or maintain grease or grit interceptors, or oil/water separators or other required FOG control devices. ~~which causes maintenance on any sewer line to be greater than once every two years caused by excessive oil, grease, or fat buildup in the sewer lines; or excess buildup of sand, gravel or other materials clogging the sewer lines.~~ The lack of any device to prevent discharge of grease, oil, fats, sand, gravel or any other materials which will cause excessive maintenance of the sewer lines shall not relieve the discharger of the responsibility of liability for any costs to city for excessive maintenance and/or other costs incurred by the city.

(f) Discharge of Dangerous Waste. A violation shall occur if any material listed on the discharge chemical products list of the state of Washington (WAC 173-303-9903) is discharged into any public sewer or building sewer tributary thereto.

(g) Explosion Meter Readings. A violation shall occur if the reading on an explosion meter at any point in the collection system or wastewater treatment plant is greater than ten percent for a single reading or greater than five percent for two successive readings.

(h) Termination of Treatment Services—Permit Revocation. The city shall have the authority to terminate wastewater treatment services of the discharger and revoke any permit issued if it determines that the discharger has:

(1) Failed to accurately report wastewater constituents and characteristics more than once; or

(2) Failed to report significant changes in wastewater constituents, characteristics, flow volumes or types of discharge to the wastewater treatment plant; or

(3) Refused reasonable access to the discharger's premises for purposes of inspection or monitoring; or

(4) Violated conditions of the wastewater discharge permit; or

(5) Violated any of the provisions of this chapter, regulations promulgated hereunder, state law or federal law; or

(6) Violated any lawful order of the city issued with respect to the discharger's permit or this chapter; or

(7) Tampers with, disrupts, damages or renders inaccurate any wastewater monitoring device required by this chapter.

(i) Other Violations.

(1) If reports required by permit, this chapter or state or federal pretreatment regulations are submitted later than thirty days after they are due, the discharger shall be subject to civil penalties as set forth in

KMC Section 5.74.040. In the event the reports have not been submitted at the time the maximum penalty is imposed, the city shall seek remedies under subsection (h) of this section.

(2) If any of the actions prescribed in any compliance schedule established by permit or by order of the city are not complete within thirty days of the time they are required to be complete, the discharger shall be subject to civil penalties as set forth in KMC Section 5.74.040. In the event the actions have not been completed ninety days after the date scheduled in the permit or order, the city shall seek remedies under subsection (h) of this section.

(3) If a discharger fails to maintain grease, oil and/or sand removal systems, which results in the city having to perform the maintenance of the collection system or treatment plant, the discharger shall be subject to the applicable civil penalty set forth in KMC Section 5.74.040, which shall be added to the costs incurred by the city to perform the maintenance. If the city must perform any maintenance for that discharger a second time within a three-year period, the penalty shall be the applicable civil penalty set forth in Section KMC 5.74.040, which shall be added to the costs of maintenance by the city. In the event the city having to perform any maintenance for that discharger continues, the city shall seek remedies under subsection (h) of this section.

(4) Failure to provide accurate or complete information on any wastewater discharge reports or the requirements of a discharge permit shall result in a civil penalty as set forth in KMC Section 5.74.040. Thereafter, the discharger shall be subject to remedies under subsection (h) of this section.

(5) In addition to the assessments described in this section, any costs incurred by the city, including but not limited to attorney's fees, shall be added to the total amount of the civil penalty assessment.

(j) Enforcement Process and Appeals.

(1) In the event the city determines there is a violation of this Chapter, the Public Works Director, or his or her designee, shall issue a written notice of civil infraction to the discharger with the following information:

(a) The name and address of the person(s) responsible for the violation;

(b) The street address or description of the property where the violation is occurring;

(c) A description of the violation and a reference to the provision of this Chapter which has been violated;

(d) The required corrective action and a date and time by which the correction must be completed;

(e) A statement of the fines for failure to comply with the notice of civil infraction by the stated compliance date.

(2) The notice of civil infraction shall be personally served or sent by regular and certified mail to the discharger's address.

(3) The discharger may appeal the issuance of the notice of civil infraction by submitting a written appeal to the city no later than 14 days after receipt of the notice of civil infraction.

(4) Appeals shall be heard by the Hearing Examiner pursuant to the process set forth KMC Section 1.12.050, provided that the hearing shall be conducted as an appeal from the notice of civil infraction issued under this chapter.

(5) If the discharger does not complete corrective action or file an appeal of the notice of civil infraction within 14 days after receipt of the notice of civil infraction, the City shall assess fines against the violator. The fines assessed are set forth in KMC Section 5.74.040; provided that if that Section does not specify a fine for a particular violation, the fine shall be \$100 per day for a maximum of 60 days.

(6) A discharger against whom fines are assessed for failure to maintain approved FOG pretreatment facilities may apply to the Department of Public Works to offset the amount of the fines assessed against the cost of installing approved FOG pretreatment facilities. As part of the application, the discharger shall submit proof of the cost incurred in installing the approved FOG pretreatment facilities. The complete offset application must be filed with the City within 45 days of the Hearing Examiner Decision (if there is an appeal) or within 45 days of expiration of the applicable appeal period (if there is no appeal). The Director of Public Works, or his or her designee, shall review the application and the installation to ensure that the required FOG pretreatment facilities have been properly installed. If so, the Director shall grant the offset in the amount of the documented installation costs, *provided that* the amount of the offset shall not exceed the amount of the assessed fines.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. 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 1.08.017, 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 _____ day of _____, 2014.

Signed in authentication thereof this _____ day of _____, 2014.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4432

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ENFORCEMENT OF REGULATIONS REGARDING DISCHARGE OF FATS, OILS AND GREASE INTO THE CITY SEWER SYSTEM.

SECTION 1. Amends Kirkland Municipal Code Section 15.36.120 relating to enforcement of regulations regarding discharge of fats, oils and grease into the City sewer system.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. 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 _____ day of _____, 2014.

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

City Clerk