



## CITY OF KIRKLAND

City Attorney's Office

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### MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Oskar Rey, Assistant City Attorney

**Date:** April 8, 2013

**Subject:** Updates to Kirkland Municipal Code Title 12 Regarding Traffic Infractions and the Model Traffic Ordinance

#### RECOMMENDATION:

City Council adopts the attached ordinance amending and updating Kirkland Municipal Code ("KMC") Title 12 relating to traffic infractions.

#### BACKGROUND DISCUSSION:

##### Negligent Driving, Second Degree

The Kirkland Prosecutor has informed the City Attorney's Office of a problem relating to the KMC adoption of the infraction of negligent driving in the second degree by reference. Currently, KMC 12.28.010 purports to adopt negligent driving by reference. However, it cites to the session law ("Washington Laws of 1996, Chapter 307, Section 1") instead of the codified RCW section. RCW 46.61.525 ("Negligent driving – second degree") has been amended since 1996, so the reference to the 1996 session law is out of date.

In addition, KMC Chapter 12.61 adopts the State Model Traffic Ordinance ("MTO") by reference. The MTO adopts numerous RCW sections by reference. Kirkland's adoption of the MTO by reference means that the City also adopts the RCW sections incorporated by the MTO.

However, KMC Section 12.61.020 sets forth the RCW Sections adopted by MTO that the City **does not** adopt by reference. One of those RCW sections is RCW 46.61.525 —"Negligent driving – second degree." It is not entirely clear why RCW 46.61.525 was included as one of the RCW sections that the City does not adopt by reference. Perhaps at the time the City deemed the reference to negligent driving in KMC 12.28.010 to be sufficient.

The attached Ordinance would repeal KMC 12.28.010 (which contains the out of date reference to negligent driving) and remove RCW 46.61.525 as one of the RCW sections not adopted by the City by reference. The result would be that the City would adopt RCW 46.61.525 through its adoption of the MTO.

Other RCW Provisions Not Adopted by Reference

In the course of its analysis, City staff reviewed the other provisions of the MTO that Kirkland does not adopt by reference. KMC 12.61.020 lists seven RCW's that Kirkland does not adopt by reference. City staff recommends that all of these provisions be adopted by reference pursuant to the MTO, and therefore recommends that KMC 12.61.020 be repealed. It should be noted that a number of other jurisdictions take the same approach and do not exempt any RCW's from application in their respective jurisdictions.

KMC 12.61.020 was originally adopted in 1994, so it has been difficult to establish why the listed RCW's were not adopted by reference by the City. The RCW provisions at issue are as follows:

**--RCW 46.16.145 Overloading licensed capacity — Penalties.** This provision was recodified as RCW 46.16A.545 in 2010. It sets forth penalties for overloading the registered capacity of a vehicle. Kirkland currently adopts RCW 46.16A.540 by reference, which creates the underlying violation, so staff recommends that the penalty provision be adopted as well.

**--RCW 46.20.410 Penalty—Violation [for violating restrictions on temporary driver's licenses or occupational driver's licenses].** This provision sets forth penalties for violation of certain types of driver's license restrictions. Kirkland currently adopts RCW 46.20.380 through 46.20.400, which set forth the underlying violations, so staff recommends that the penalty provision be adopted as well.

**--RCW 46.37.188 Penalty for violation of RCW 46.37.184 through 46.37.187.** Kirkland currently adopts RCW 46.37.184 through 46.37.187 by reference, so staff recommends that the penalty provision be adopted as well.

**--RCW 42.37.520 Beach vehicles with soft tires -- "Dune buggies" -- Inspection and approval required -- Fee.** Kirkland does not allow the use of motor vehicles on its beaches. However, staff recommends that this provision be retained to cover vehicles stored in or transported through Kirkland.

**--RCW 46.37.590 Odometers — Purchaser plaintiff to recover costs and attorney's fee, when.** This provision allows for an award of attorney fees if a vehicle purchaser can establish that a vehicle seller sold a vehicle with knowledge that the odometer had been tampered with. Kirkland Police do not enforce this provision—it is a provision that applies to civil court proceedings. There is not an obvious reason why this provision should not be applicable in Kirkland, so staff recommends that it be adopted by reference pursuant to the MTO.

**--RCW 46.48.170 State patrol authority -- Rules and regulations [regarding the transport of hazardous materials by motor carriers].** This provision gives the State Patrol authority to adopt rules relating to hazardous materials transport. This provision should be adopted by reference by the City of Kirkland.

### WAC Provisions Not Adopted by Reference

The MTO also adopts numerous Washington Administrative Code ("WAC") provisions by reference. Currently, KMC 12.61.010 lists 24 WACs that are not adopted in Kirkland. Staff recommends that many of these WAC provisions remain exempted from applying to Kirkland. Kirkland has its own regulations regarding parking payment devices, so it has exempted WAC 308-330-142 through 308-330-148 along with WAC 308-330-600 through 308-330-660 from Kirkland. Similarly, Kirkland regulates snowmobiles and all-terrain vehicles pursuant to KMC Chapter 12.64, so it has exempted WAC 308-330-200 which incorporates state statutes regulating snowmobile use. In addition, Kirkland, along with many other jurisdictions, has chosen not to adopt the MTO provisions regarding the licensing of bicycles (WAC 308-330-250 and WAC 308-330-500 through 308-330-560).

City staff does recommend that two WACs currently exempted in KMC 12.61.010 be made applicable in Kirkland. First, WAC 308-330-127 defines "holiday" and sets forth the days that constitute holidays for the purpose of traffic and parking enforcement. There is not a similar definition in KMC Title 12, so this definition should be adopted by reference.

Second, WAC 308-330-710 provides that in the event a specific penalty is not provided for, the penalty for a traffic infraction is a fine not to exceed \$250. Since this is a "catch-all" penalty provision, staff recommends that it be made applicable in Kirkland to cover situations where a specific penalty amount is not provided for.

### References to 1994 and 1995 Session Laws

KMC 12.61.030 and 12.61.040 cite to session laws from 1994 and 1995 that are adopted by reference. At least some of the statutes cited have been amended in the intervening years. The cited statutes are also included as RCW's adopted by reference in the MTO. Therefore, they do not need to be separately adopted by reference in KMC. As a result, staff recommends that KMC 12.61.030 and 12.61.040 be repealed.

ORDINANCE O-4405

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING AND UPDATING THE KIRKLAND MUNICIPAL CODE RELATING TO TRAFFIC INFRACTIONS AND THE MODEL TRAFFIC ORDINANCE.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code ("KMC") Section 12.28.010 is hereby repealed.

Section 2. KMC Section 12.61.010 is amended to read as follows:

**12.61.010 Model Traffic Ordinance—Sections not adopted.**

Except as otherwise provided, Chapter 308-330 WAC (Washington Model Traffic Ordinance), hereinafter referred to as MTO, is adopted as part of the Kirkland Municipal Code, ~~providing~~ provided that the following sections of Chapter 308-330 WAC are not adopted:

<del>308-330-127</del>	308-330-530
308-330-142	308-330-535
308-330-145	308-330-540
308-330-148	308-330-560
308-330-200	308-330-600
308-330-250	308-330-610
308-330-500	308-330-620
308-330-505	308-330-630
308-330-510	308-330-640
308-330-515	308-330-650
308-330-520	308-330-660
308-330-525	<del>308-330-710</del>

Section 3. KMC Sections 12.61.020, 12.61.030 and 12.61.040 are hereby repealed.

Section 4. 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 5. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2013.

Signed in authentication thereof this \_\_\_\_\_ day of  
\_\_\_\_\_, 2013.

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MAYOR

Attest:

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

Approved as to Form:

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