



## **CITY OF KIRKLAND**

**Department of Public Works**

**123 Fifth Avenue, Kirkland, WA 98033 425.587.3800**

**www.kirklandwa.gov**

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### **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Ryeon Tuomisto, Water Quality Program Coordinator  
Jenny Gaus, Surface Water Engineering Supervisor  
Kathy Brown, Public Works Director

**Date:** April 21, 2016

**Subject:** Updates to KMC Chapters 1.12 and 15.52 relating to the surface water code enforcement process and minor language changes required by the NPDES Stormwater Permit

### **RECOMMENDATION:**

It is recommended that Council receive a presentation and discuss the attached ordinance that alters KMC Chapters 1.12 and 15.52 to update the water quality code enforcement process and to make other minor changes associated with NPDES Stormwater Permit compliance. After receiving Council review and feedback, a final ordinance will be presented for Council action at the May 17<sup>th</sup> meeting unless the Council needs additional time or information.

### **BACKGROUND AND DISCUSSION:**

#### **1. Introduction**

The purpose of this memo is to detail proposed changes to KMC 15.52, Storm Water Drainage. Changes are proposed to create a code enforcement process by which fines can be assessed in a simple and efficient manner that still provides for an appeal process. In addition, minor changes are proposed to terminology as required by the NPDES Stormwater Permit.

This matter was discussed with the Public Works/Parks/Human Resources Council Committee on December 9, 2015. A summary of questions and discussion items is included as Attachment A.

Code enforcement is one portion of Kirkland's overall stormwater pollution prevention program which includes the following elements:

- Education regarding the impacts and hazards of spills and dumping, and how to prevent and cleanup pollution
- Mapping of the of Municipal Separated Sewer Storm System (MS4)
- Proactive stormwater system screening and training to identify sources of pollution
- Spill response and cleanup of pollution
- Code Enforcement

Attachment B provides additional detail about the City of Kirkland's Stormwater Pollution Prevention Program (Illicit Discharge Detection and Elimination).

## **2. Current Response to Water Quality Problems**

The priorities when responding to water quality problems are to stop and/or cleanup pollution, then to provide education and technical assistance to the responsible party. The goal is to prevent harm to Kirkland's streams and lakes by insuring that the responsible party understands the impacts of their action, and is prepared with the knowledge and tools to prevent future pollution problems.

The number of reported water quality problems has increased dramatically in the last few years, from 21 in 2011 to 140 in 2015. This is not because there are more water quality problems, but instead because increased awareness by both citizens and City staff has led to increased reporting of problems.

Due to increased reporting, City crews now spend significant time and resources cleaning up spilled or dumped materials. Additionally, the City's Water Quality Program Coordinator also spends significant time and effort coordinating spill preparedness and response; among city staff and other government agencies, identifying the responsible party, providing education, and documenting and reporting the spill to the appropriate government agency. This combined effort results in removal and prevention of pollutants including sediment, soap, and oil/hazardous materials from discharging to the nearest stream, wetland, or lake. The main sources of Water Quality pollution have been identified as construction-related projects and mobile businesses (e.g., home repair, pet & carpet cleaning, landscaping).

Although the first response will continue to be cleanup and education, there are instances where it would be useful to conduct code enforcement, both to recover costs and to act as a deterrent to future violations.

## **3. Existing Code Enforcement Process and Issues with Current Process**

Violations of the existing KMC 15.52 that could be subject to code enforcement include the following:

- Discharge of non-stormwater materials to the to the storm drainage system or to the ground (an illicit discharge)
- Creation or maintenance of a pipe connection to the stormwater system that could carry materials other than stormwater (an illicit connection)
- Failure to implement best management practices to prevent stormwater pollution
- Failure to maintain private storm drainage facilities

Code enforcement of a water quality violation uses the process outlined in KMC 1.12. When a significant or on-going violation is identified, and education and technical assistance are not sufficient to resolve the matter and/or there is interest in pursuing cost recovery, the following process is used:

- 1) Issue Notice of Civil Violation, which includes a date for a hearing before the Hearing Examiner (Attachment B)
- 2) Hearing Examiner rules on whether a violation has occurred, and sets compliance timeframe and penalties

The following are issues with the existing code enforcement process:

- Water quality violations are often like tree violations – once a material has been spilled, it is done and gone. As City crews respond and clean materials from the public system, there likely is not an on-going violation. Penalties in the existing KMC 1.12 are based on the failure to address an on-going violation.
- There are instances where the identity of the violator is known. There is currently no written procedures for how to assess the severity and impact of a violation, though staff could probably do this based on professional judgement. Also, the current process requires that the matter be referred to the Hearing Examiner for a decision, which is slow and time-consuming. It would be more efficient to allow staff to assess fines based on a known procedure, while maintaining a process to appeal the matter to the Hearing Examiner if there is disagreement about the severity or impact of the violation.
- The penalties in existing code are minimal (\$100 per day), and do not take into account the severity or impact of the violation. In addition, there is no mechanisms for significant cost recovery. A process that allows for more efficient imposition of fines would offset crew costs without the need to gather specific cost information for every violation.

#### **4. Proposed Code Enforcement Process**

The proposal contained in the attached ordinance would add a step, which would take place prior to the issuance of the Notice of Civil Violation:

- 1) **NEW STEP:** Issue Notice of Surface Water Fines Due and Corrective Action (Attachment D). If fines are not paid and/or corrective action is not completed, then move to Step 2
- 2) Issue Notice of Civil Violation, which includes a date for a hearing before the Hearing Examiner (Attachment C)
- 3) Hearing Examiner rules on whether a violation has occurred, and sets compliance timeframe and penalties

Fines would be developed based on the Penalty Matrix shown below, which assesses the severity and impact of the violation. Corrective actions, if needed, are also noted at this step. If the person in violation pays the fines and makes any corrections needed, the process is done. If not, the matter would proceed to the Hearing Examiner as under the existing process. Attachment E contains examples of how water quality enforcement would proceed for several instances of spills or dumping.

Funds collected as fines would be credited to the Surface Water Utility, which is responsible for flood reduction, water quality improvement, habitat protection and improvement, and maintenance and operation of the public stormwater system.

**Figure 1. Enforcement Penalty Matrix**

<b>Enforcement Evaluation Criterion</b>	<b>No (0 points)</b>	<b>Possibly (1 point)</b>	<b>Definitely (2 points)</b>
1) Perceived Public Health Risk?			
2) Environmental Damage or Adversely Impacting Infrastructure?			
3) Willful or Knowing Violation?			
4) Unresponsive in Correcting Action?			
5) Improper Operation or Inadequate Maintenance?			
6) Failure to Obtain Necessary Permits and Approval?			
7) Economic Benefit to Non-Compliance?			
8) Repeat Violation?			

Once the total amount of penalty points is determined, a rating and a corresponding penalty amount is established (Figure 2).

**Table 2. Penalty Points Rating and Corresponding Penalty Amount**

<b>Rating</b>	1-2	3-4	5-6	7-8	9	10
<b>Penalty</b>	\$250	\$500	\$1,000	\$1,500	\$2,000	\$2,500
<b>Rating</b>	11	12	13	14	15+	
<b>Penalty</b>	\$3,000	\$3,500	\$4,000	\$4,500	\$5,000	

If there is a corrective action needed and it is not taken, or there is interest in collecting damages in an amount larger than that allowed by the Penalty Matrix, a Notice of Civil Violation would be issued, and the matter would be referred to the Hearing Examiner for consideration.

### **5. Language Changes for NPDES Stormwater Permit Compliance**

The State Department of Ecology issued a second NPDES Stormwater Permit that became effective in 2013. Under this Permit, the City is required to “implement an ordinance or other regulatory mechanism to effectively prohibit non-stormwater, illicit discharges into the Permittee’s MS4 to the maximum extent allowable under state and federal law.” The City currently has such a mechanism in KMC 15.52, but the latest version of the Permit includes updates to the list of Prohibited and Allowable discharges in KMC 15.52.090. An example of such a change is that under “Allowable Discharges” the item “water from crawl space pumps” must be updated to read “uncontaminated water from crawl space pumps.” These language changes must be incorporated in KMC 15.52 in by February 2, 2018 order to maintain compliance with the Permit. Because these changes are minor, staff recommends making them along with the proposed changes to the water quality code enforcement process.

**CONCLUSION:**

If Council approves the attached ordinance, Public Works staff will conduct outreach regarding the new process. Staff will continue to use education as the first response to violations, and will use the new code enforcement process in select cases.

Attachment A – Summary of 12/9/2015 Public Works/Parks/Human Resources Council Committee

Attachment B – City of Kirkland Stormwater Pollution Prevention Program

Attachment C – Notice of Civil Violation

Attachment D – Notice of Surface Water Fines Due and Corrective Action

Attachment E – Surface Water Violations – Enforcement Scenarios

**Attachment A**  
**Public Works/Parks/Human Resources Council Committee**  
**December 9, 2015**  
**Summary of Discussion – Surface Water Code Changes**

**1. If a violation is in progress, what authority/ability does staff have to immediately stop the discharge?**

Staff would first approach the violator, ask them to cease the discharge, and explain that the discharge is a violation of Kirkland Municipal Code Chapter 15.52 (KMC 15.52). If they refuse, staff would call the Department of Ecology and the City's Code Enforcement Officer for assistance. The Police are also a resource if there is a public or staff safety concern. It is a very rare instance where a violator refuses to stop – most discharges are accidental.

**2. Does the City have authority to require that someone cease discharge of substances to the ground?**

Yes. KMC 15.52.090 states

- a) Prohibition of Illicit Discharges. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than storm water. Illicit discharges are prohibited and constitute a violation of this chapter. Examples of prohibited contaminants include, but are not limited to, the following:

In most instances of discharge to the ground, the City would notify the Department of Ecology, who would provide assistance with an enforcement action and cleanup requirements associated with soils or groundwater.

**3. If there is a violation that causes extensive and expensive environmental harm, does the proposed process still allow the City to recover the cost of cleanup, i.,e. to do more than just fine them?**

Yes, the process as proposed would allow for fines and/or remedial actions and/or cost recovery. All of these items would be included on a Notice of Surface Water Fines Due and Corrective Action. The violator would have the option of a Hearing before the Hearing Examiner if they dispute the required fines actions or recovery costs.

## City of Kirkland Stormwater Pollution Prevention Program (Illicit Discharge Detection & Elimination Program)

Polluted stormwater runoff is a major source of pollution to Puget Sound and Lake Washington. The City's stormwater system, the network of pipes and catch basins that delivers water efficiently to our streams and lakes keep our community safe from flooding, is also a conduit for pollution. Oil, sediment, metals, and even fertilizers and pesticides accumulate on hard surfaces such as parking lots, streets, and rooftops, and then wash into our waterways with each rain storm. These pollutants result from every day activities such as driving a car or constructing a house, and also from the minority of people that make poor choices in disposing of wastes.

### **City of Kirkland Stormwater System**

- 24,667 catch basins, manholes, and cleanouts
- 374.5 miles of pipes
- 1,102 tanks, vaults, and water quality systems
- 52.3 miles of ditches and swales
- 91 detention ponds

The best ways to reduce pollution in our waterways are to prevent pollution from getting into the stormwater system in the first place, and to cleanup materials that do make it into the system. Kirkland has developed a comprehensive pollution prevention and cleanup program that includes:

- **Education** regarding the impacts and hazards of spills and dumping, and on how to prevent and cleanup pollution
- **Mapping** of the of public and private stormwater systems
- **Training** on identification, reporting, and spill response procedures
- Proactive **stormwater system screening** to identify sources of pollution
- **Spill response** and cleanup of pollution
- **Code Enforcement**

This program supports the City Council goal to protect and improve the environment, and is also a requirement of the NPDES Stormwater Permit<sup>1</sup>. In the NPDES Stormwater Permit, stormwater pollution prevention is called *Illicit Discharge Detection and Elimination*, or IDDE.

### **Education**

The most effective way to prevent pollution is to educate residents, businesses, and city staff in the following:

- The impact that pollution has on our local waterways and on Puget Sound
- Awareness of the direct connection between the stormwater system and our waterways ("Puget Sound Starts Here!")
- How to identify and report pollution problems

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<sup>1</sup> 2013-2018 Western Washington Phase II Municipal National Pollutant Discharge Elimination System and State Waste Discharge General Stormwater Permit

- How to prevent pollution when conducting everyday business and residential activities
- How to clean up and report spills

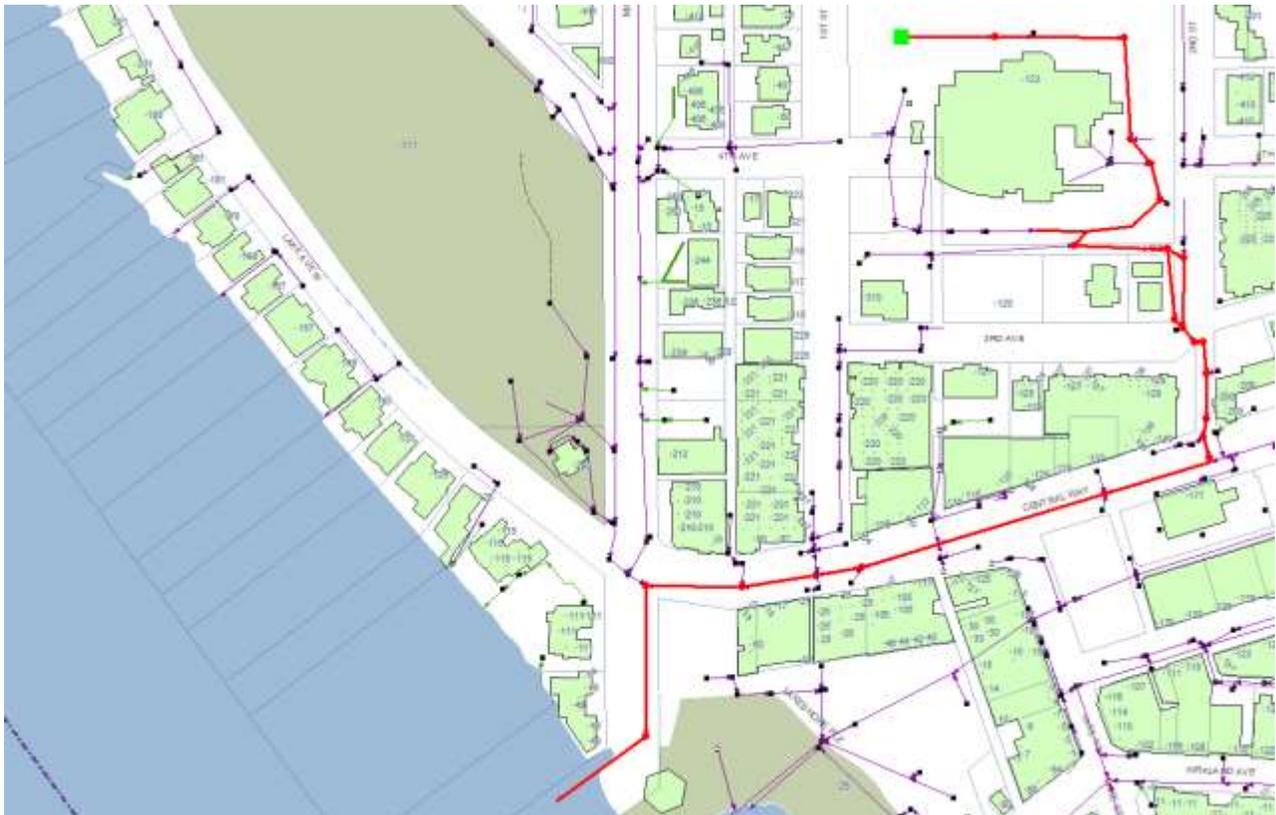
Kirkland develops outreach pieces, materials and curriculum that are tailored to different activity and age groups including schools, single-family properties, businesses, and multi-family properties. A few recent examples include:

- In 2014-2015, a consultant conducted 145 walk-throughs with businesses in the Forbes Creek Basin to discuss pollution prevention, proper disposal of hazardous materials, and spill cleanup. Over 85 percent of the businesses visited made at least one change in response to the information provided at the visit.
- In 2015, a seminar was held to provide landscaping companies information on proper waste disposal.
- Staff annually conducts outreach at school science nights and farmer’s markets to raise awareness of stormwater issues.
- 78 in-school water quality presentation were held in 2015, reaching 1,993 students.
- Outreach to 38 businesses, 12 secondary schools, and 9 PTA’s in 2015 regarding the impact of fundraiser car washes on the environment and encouraging the use of car wash kits and alternative fundraisers.



## Mapping

The City of Kirkland stormwater system is mapped using field verification, record drawings, and aerial photos. Both public and private systems are mapped, and a complete network is developed. This information helps staff to trace spills upstream to the source of the pollution or trace downstream to find the best location to deploy spill cleanup materials and equipment to prevent pollution from continuing downstream. As illustrated in the example map below, if someone dumped oil into the storm drain on the northwest corner of Kirkland City Hall parking lot, it would discharge directly to Lake Washington through a stormwater outfall pipe under the dock on the north end of Marina Park.



Mapping is also used when pro-actively inspecting the system for evidence of spills and dumping, as well as for pipe connections that could carry materials other than Stormwater into the system.

## Training

All City of Kirkland staff who may come into contact with or observe an illicit discharge and/or illicit connection receive annual training on the identification and reporting procedures and requirements. Workgroups who are more likely to encounter these issues receive a more in-depth training on how to investigate, stop, and cleanup spills. The main types of pollution that have been identified in 2015 by city staff are sediment, soap, and oil/hazardous. Main sources of pollution have been identified from construction related projects and mobile businesses (i.g.,

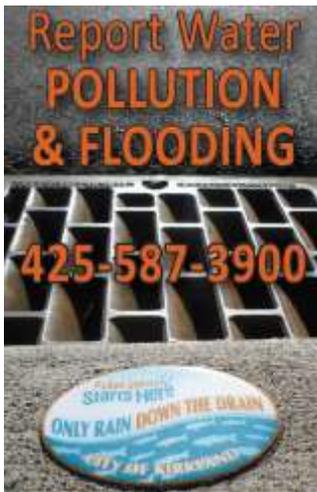
home repair, pet & carpet cleaning, landscaping).

## Stormwater System Screening

Routine inspection of the stormwater system is used to identify maintenance needs and evidence of illicit discharges or connections. The Kirkland Maintenance and Operations Stormwater staff pull lids and inspect, either visually or via mobile camera, each individual stormwater structure within the city limits on a 5-year cycle. NPDES permit requires 40 percent of stormwater system to be "screened" (inspected) starting on August 1, 2013 and completed by December 31, 2017. As of December 31, 2015, 39 percent of the system has been screened, putting us ahead of permitting requirements.

## Spill Response and Cleanup

When a resident or staff member observes pollution, it can be reported through the city pollution hotline: 425-587-3900. Crews respond to reports via this number on a 24-hour basis. The City of Kirkland also manages a reporting email address for non-emergency matters: [stormwater@kirklandwa.gov](mailto:stormwater@kirklandwa.gov).



Spill Response is led by staff from the Public Works Maintenance and Operations division and Engineering division. Maintenance and Operations staff are primarily responsible for containing and cleaning up spill materials. Engineering staff provide education, investigation/follow-up, regulatory notification, and enforcement. Response is also coordinated with the following Kirkland workgroups and outside agencies:

- Standby/After hours Public Works staff
- Police
- Fire
- Tow Truck Companies under contract with Police
- Department of Ecology Spill Response
- King County Marine Patrol

Reports of water quality concerns have increased from 21 cases in 2011 to 140 cases in 2015. The increase in reports is most likely due to increased knowledge and reporting from the public and internal city staff, and not due to an increase in the number of instances of spills, dumping, or other water quality problems.

## Code Enforcement

Code enforcement is a process by which a responsible party is held accountable for the presence and consequences of water quality violations. Examples of violations that could result in code enforcement action include instances of intentional dumping, connection of a pipe that could carry materials other than stormwater to the stormwater system, or failure to maintain a privately owned stormwater facility. The process is designed to be fair and equitable; violators

can be granted a hearing before the Hearing Examiner, and all violations are assessed penalties and corrective actions using the same process.

Code enforcement complements other elements of the IDDE program by providing a deterrent to committing water quality violations. In addition, code enforcement provides consequences for those who do commit such violations, and, mostly importantly, it is a tool for compelling responsible parties to take actions to correct on-going violations. Although it is a last resort, code enforcement is a necessary element of a successful IDDE program.

**CITY OF KIRKLAND**

Planning and Building Department  
 Code Enforcement  
 123 5<sup>th</sup> Avenue, Kirkland, WA 98033  
 (425)587-3225 – Fax: (425)587-3232  
[www.kirklandwa.gov](http://www.kirklandwa.gov)

## NOTICE OF CIVIL VIOLATION

(Kirkland Municipal Code 1.12.040)

Date: @ <b>Person(s) Responsible For:</b> @ Name: @ Address: @ City, State, Zip: @	Case Number: @ <b>Violation Information</b> Site Address: @ City, State, Zip: @ Parcel #: @
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Code Provision(s) Violated and Description of Violation:	@
Inspection Dates:	@
Date(s) of Violation:	@
Property Owner Name & Address:	@
Request for Voluntary Compliance:	@
Corrective Action and Compliance Date:	@
Hearing Date:	@

**HEARING NOTICE:** On @(date) at @(time) the Kirkland Hearing Examiner shall hold a hearing in City Council Chambers, 123 5<sup>th</sup> Avenue, Kirkland, WA, 98033, 2<sup>nd</sup> floor, Kirkland City Hall relating to the above issued Notice of Civil Violation. If the required corrective action is completed AND written approval is obtained from the issuing party at least 48 hours prior to the hearing, the hearing shall be cancelled and no monetary penalty assessed. If you choose NOT to complete the required corrective action by that time, the hearing shall continue as scheduled.

**HEARING EXAMINER HEARING:** At the hearing, staff may request the Examiner to issue an order assessing the monetary penalties in the amounts described below. All costs and expenses of abatement incurred by the City pursuant to KMC 1.12.060(D) and monetary penalties in the amount per day for each violation as specified in KMC 1.12.040(E) may be assessed against the person responsible for the civil violation as listed above.

This is the @ Violation, the fines are \$ @ per day, per KMC 1.12.040. The per-day penalty for repeat violations shall be double the previous per-day penalty amount.

*Payment of a monetary penalty pursuant to Chapter KMC 1.12.040 does not relieve the person to whom the Notice of Civil Violation was issued of the continued duty to correct the violation.*

ISSUED BY: @, Code Enforcement Officer \_\_\_\_\_  
 Phone: (425)587-@ - Email: @@kirklandwa.gov

**METHOD OF SERVICE:**

Hand Delivered     
  Postal Mail     
  Posted at Subject Property Site



## CITY OF KIRKLAND

Public Works Department  
 Code Enforcement  
 123 5<sup>th</sup> Avenue, Kirkland, WA 98033  
 (425)587-3225 – Fax: (425)587-3232  
[www.kirklandwa.gov](http://www.kirklandwa.gov)

## NOTICE OF SURFACE WATER FINES DUE and CORRECTIVE ACTION

(Kirkland Municipal Code 1.12.200)

Date: <b><u>Person(s) Responsible For:</u></b> Name: Address: City, State, Zip:	Case Number: <b><u>Violation Information</u></b> Site Address: City, State, Zip: Parcel #:
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Code Provision(s) Violated:	
Description of Violation:	
Inspection Dates:	
Date(s) of Violation:	
Property Owner Name & Address:	
Fines Due / Corrective Action Compliance Date: (see below for corrective action)	

- FINES PER KMC 1.12.200: \$XXXXX
- CORRECTIVE ACTION PER KMC 15.52:

### NOTE:

If the Fines Due / Corrective Action is not completed and verified by the department, a Notice of Civil Violation may be issued that sets a Hearing Examiner hearing date and monetary penalties per KMC 1.12.040.

ISSUED BY: \_\_\_\_\_

Phone: (425) 587- - Email: @kirklandwa.gov

### METHOD OF SERVICE:

- Hand Delivered       Postal Mail

## Surface Water Violations - Enforcement Scenarios

When a surface water violation is reported, staff investigate immediately, and where appropriate initiate response and cleanup actions. If the responsible party is identified, education and technical assistance is provided to prevent future violations. In addition, the responsible party may be asked to take corrective actions such as removing pollution from private property and the private storm system, and/or putting proper management practices in place to prevent further discharge of pollutants. If the responsible party does not respond in a timely manner and/or the pollution in the private storm system is a threat to the public storm system, city staff will remove the pollution from private storm system. City staff will remove pollution and clean the public stormwater system – private parties are prohibited from doing this work because of safety and union concerns.

If the illicit discharge is a repeat offense or is egregious and/or corrective actions are identified, staff will develop a fine amount based on the penalty matrix (KMC 1.12.200) and will then send the property owner or responsible party a Notice of Surface Water Fines Due and Corrective Actions. If the penalty and/or corrective actions are not completed by designated deadline, staff will then send a Notice of Civil Violation and a date is set with the Hearing Examiner. If Hearing Examiner determines the city has established by a preponderance of the evidence that a violation has occurred, an issue may be ordered to pay assessed penalty (KMC 1.12.200), cost for any city response/cleanup, and/or monetary penalty associated with KMC 1.12.040.



**Scenario #1 - Paint is washed into a private catch basin which drains to the public storm system**





**Scenario #2 - Restaurant kitchen greasy equipment washed onto public street and into the public storm system**



**Scenario #3 - Concrete slurry dumped into private storm system**

ORDINANCE O-4518

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SURFACE WATER DISCHARGE STANDARDS AND THE ENFORCEMENT OF SURFACE WATER REGULATIONS.

1           The City Council of the City of Kirkland do ordain as follows:  
2

3           Section 1. Kirkland Municipal Code Section 15.52.090 is  
4 amended as follows:  
5

6           **15.52.090 Illicit discharges and connections.**

7 (a) Prohibition of Illicit Discharges. No person shall throw, drain, or  
8 otherwise discharge, cause or allow others under its control to throw,  
9 drain or otherwise discharge into the municipal storm drain system  
10 and/or surface and ground waters any materials other than storm water.  
11 Illicit discharges are prohibited and constitute a violation of this chapter.  
12 Examples of prohibited contaminants include, but are not limited to, the  
13 following:

- 14 (1) Trash or debris.
- 15 (2) Construction materials.
- 16 (3) Petroleum products including but not limited to oil, gasoline,  
17 grease, fuel oil and heating oil.
- 18 (4) Antifreeze and other automotive products.
- 19 (5) Metals in either particulate or dissolved form.
- 20 (6) Flammable or explosive materials.
- 21 (7) Radioactive material.
- 22 (8) Batteries.
- 23 (9) Acids, alkalis, or bases.
- 24 (10) Paints, stains, resins, lacquers, or varnishes.
- 25 (11) Degreasers and/or solvents.
- 26 (12) Drain cleaners.
- 27 (13) Pesticides, herbicides, or fertilizers.
- 28 (14) Steam cleaning wastes.
- 29 (15) Soaps, detergents, or ammonia.
- 30 (16) Swimming pool or spa filter backwash.
- 31 (17) Chlorine, bromine, or other disinfectants.
- 32 (18) Heated water.
- 33 (19) Domestic animal wastes.
- 34 (20) Sewage.
- 35 (21) Recreational vehicle waste.
- 36 (22) Animal carcasses.
- 37 (23) Food wastes.
- 38 (24) Bark and other fibrous materials.
- 39 (25) Lawn clippings, leaves, or branches.
- 40 (26) Silt, sediment, concrete, cement or gravel.
- 41 (27) Dyes.
- 42 (28) Chemicals not normally found in uncontaminated water.
- 43 (29) Any other process-associated discharge except as otherwise  
44 allowed in this section.
- 45 (30) Any hazardous material or waste not listed above.

- 46 (b) Allowable Discharges. The following types of discharges shall not  
47 be considered illicit discharges for the purposes of this chapter unless  
48 the director determines that the type of discharge, whether singly or in  
49 combination with others, is causing or is likely to cause pollution of  
50 surface water or groundwater:
- 51 (1) Diverted stream flows.
  - 52 (2) Rising ground waters.
  - 53 (3) Uncontaminated ground water infiltration – as defined in 40 CFR  
54 35.2005(b)(20).
  - 55 (4) Uncontaminated pumped ground water.
  - 56 (5) Foundation drains.
  - 57 (6) Air conditioning condensation.
  - 58 (7) Irrigation water from agricultural sources that is commingled with  
59 urban storm water.
  - 60 (8) Springs.
  - 61 (9) ~~Uncontaminated Ww~~water from crawl space pumps.
  - 62 (10) Footing drains.
  - 63 (11) Flows from riparian habitats and wetlands.
  - 64 (12) Discharges from emergency fire fighting activities in accordance  
65 with S2 Authorized Discharges.
  - 66 (13) Non-stormwater discharges authorized by another NPDES or state  
67 waste discharge permit.
- 68 (c) Conditional Discharges. The following types of discharges shall not  
69 be considered illicit discharges for the purpose of this chapter if they  
70 meet the stated conditions, or unless the director determines that the  
71 type of discharge, whether singly or in combination with others, is  
72 causing or is likely to cause pollution of surface water or groundwater:
- 73 (1) Potable water, including water from water line flushing,  
74 hyperchlorinated water line flushing, fire hydrant system flushing, and  
75 pipeline hydrostatic test water. Planned discharges shall be  
76 dechlorinated to a total residual chlorine concentration of 0.1 ppm or  
77 less, pH-adjusted, if necessary and in volumes and velocities controlled  
78 to prevent resuspension of sediments in the storm water system.
  - 79 (2) Lawn watering and other irrigation runoff are permitted but shall  
80 be minimized.
  - 81 (3) Dechlorinated swimming pool, spa and hot tub discharges. These  
82 discharges shall be dechlorinated to a total residual chlorine  
83 concentration of 0.1 ppm or less, pH-adjusted, and reoxygenized if  
84 necessary and in volumes and velocities controlled to prevent  
85 resuspension of sediments in the storm water system. Discharges shall  
86 be thermally controlled to prevent an increase in temperature of the  
87 receiving water. Swimming pool cleaning wastewater and filter  
88 backwash shall not be discharged to the MS4.
  - 89 (4) Street and sidewalk wash water, water used to control dust, and  
90 routine external building wash down that does not use detergents are  
91 permitted if the amount of street wash and dust control water used is  
92 minimized. At active construction sites, street sweeping must be  
93 performed prior to washing the street.
  - 94 (5) Non-storm water discharges covered by another NPDES permit;  
95 provided, that the discharger is in full compliance with all requirements  
96 of the permit, waiver, or order and other applicable laws and  
97 regulations; and provided, that written approval has been granted for  
98 any discharge to the storm drain system.

99 (d) Failure to Remove Pollutants from Private System. It shall be a  
 100 violation of this chapter for any person who commits an illicit or  
 101 conditional discharge in violation of the section to fail to remove the  
 102 pollutants from a private system that enters the municipal storm system  
 103 and/or surface and ground waters. In addition, it shall be a violation of  
 104 this chapter for any property owner on whose property an illicit or  
 105 conditional discharge occurs to fail to remove the pollutants from a  
 106 private system that enters the municipal storm system.

107 ~~(d)~~-(e) Prohibition of Illicit Connections.

108 (1) The construction, use, maintenance, or continued existence of  
 109 illicit connections to the storm drain system are prohibited and  
 110 constitute a violation of this chapter.

111 (2) This prohibition expressly includes, without limitation, illicit  
 112 connections made in the past, regardless of whether the connection was  
 113 permissible under law or practices applicable or prevailing at the time  
 114 of connection.

115 (3) A person is considered to be in violation of this section if the  
 116 person connects a line conveying sewage to the MS4, or allows such a  
 117 connection to continue.

118 ~~(e)~~-(f) Implementation of structural BMPs shall be required if  
 119 operational BMPs are not effective at reducing or eliminating an illicit  
 120 discharge. Guidance for design of structural BMPs is provided in Volume  
 121 IV of the—2005 Stormwater Management Manual for Western  
 122 Washington, herein incorporated by reference.

123

124 Section 2. A new Kirkland Municipal Code Section 1.12.200 is  
 125 added to read as follows:

126

127 **1.12.200 Special provisions relating to enforcement of KMC**  
 128 **Chapter 15.52 (Surface Water Utility).**

129 (a) General Requirements. This section applies to violations of KMC  
 130 Chapter 15.52, including illicit discharges and connections that  
 131 discharge into the municipal storm drain system and/or surface and  
 132 ground waters. Enforcement shall be conducted in accordance with  
 133 procedures set forth in this chapter. Special enforcement provisions  
 134 related to illicit discharges and connections are set forth in this section.

135 (b) Authority. It shall be the duty of the Public Works Director or  
 136 designee to administer the provisions of this section.

137 (c) Fines for illicit discharges and connections and other violations of  
 138 KMC Chapter 15.52.

139 (1) Each action or omission taken in violation of KMC Chapter 15.52 shall  
 140 constitute a separate violation.

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

143 (3) Fines for a violation shall be determined using the Enforcement  
 144 Penalty Matrix (Table 1) and administered per violation.

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**Table 1. Enforcement Penalty Matrix**

<b>Enforcement Criterion</b>	<b>Evaluation</b>	<b>No (0 points)</b>	<b>Possibly (1 point)</b>	<b>Definitely (2 points)</b>
1) Perceived Public Health Risk?				
2) Environmental Damage or Adversely Impacting Infrastructure?				
3) Willful or Knowing Violation?				
4) Unresponsive in Correcting Action?				
5) Improper Operation or Inadequate Maintenance?				
6) Failure to Obtain Necessary Permits and Approval?				
7) Economic Benefit to Non-Compliance?				
8) Repeat Violation?				

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The Enforcement Penalty Matrix (Table 1) is comprised of a set of criteria formulated as questions for the Director to evaluate and answer. The Director uses the guidelines below to determine the total points to be assessed according to the violation. The civil penalty is determined by the total score of the matrix.

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1. Did the violation result in a public health risk?

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a. Answer "no" if there is no evidence to support a claim of public health risk or adverse health effects.

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b. Answer "possibly" if evidence supports a claim of public health risk and there is a plausible connection between this violation and health effect.

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c. Answer "definitely" if there is direct evidence linking public health risk or adverse effects with the violation.

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2. Did the violation result in environmental damage or adversely impact infrastructure?

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a. Answer "no" if there is no evidence to support a claim of environmental or infrastructure damage.

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b. Answer "possibly" if environmental or infrastructure damage can be inferred from evidence or knowledge of the effects of the violation.

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c. Answer "definitely" if there is direct evidence linking environmental or infrastructure damage with the violation.

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3. Was the action a willful and knowing violation?

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a. Answer "no" if the violator obviously did not know that the action or inaction constituted a violation.

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- 172 b. Answer "possibly" if the violator should have known.  
173 c. Answer "definitely" if the violator clearly knew or was  
174 previously informed of the violation by the City's  
175 inspectors.
- 176 4. Was the responsible party unresponsive in correcting the  
177 violation?  
178 a. Answer "no" if the violation was corrected as soon as the  
179 responsible party learned of it.  
180 b. Answer "possibly" if the violation was corrected in a less  
181 timely and cooperative fashion.  
182 c. Answer "definitely" if the responsible party made no  
183 attempt to correct the violation.
- 184 5. Was the violation a result of improper operation or inadequate  
185 maintenance? ,  
186 a. Answer "no" if the violation was not the result of  
187 improper operation or inadequate maintenance.  
188 b. Answer "possibly" if operation and/or maintenance was  
189 completed but a violation still occurred.  
190 c. Answer "definitely" if the violation was a result of  
191 improper operation or inadequate maintenance.
- 192 6. Did the responsible party fail to obtain and comply with the  
193 necessary permits, certifications and approvals from the agency  
194 with jurisdiction to operate at the time of the violation?  
195 a. Answer "no" if the paperwork was complete and  
196 appropriate for the job or task that caused the violation.  
197 b. Answer "possibly" if the responsible party obtained and  
198 received approval for some but not all of the required  
199 permit(s).  
200 c. Answer "definitely" if the responsible party either did not  
201 obtain the necessary permits or did obtain permits but  
202 did not comply with their conditions.
- 203 7. Did anyone benefit economically from non-compliance?  
204 a. Answer "no" if it is clear that no one gained an economic  
205 benefit.  
206 b. Answer "possibly" if someone might have benefited.  
207 c. Answer "definitely" if the economic benefit is  
208 quantifiable.
- 209 8. Is this violation a repeat violation 5?  
210 a. Answer "no" to indicate that there have been no prior  
211 violations.  
212 b. Answer "possibly" to indicate that there has been one  
213 prior violation.  
214 c. Answer "definitely" to indicate that there have been three  
215 or more prior violations.

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217 Once the total amount of penalty points is determined, a rating and a  
218 corresponding penalty amount is established (Table 2).

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**Table 2. Penalty Points Rating and Corresponding Penalty Amount**

<b>Rating</b>	1-2	3-4	5-6	7-8	9	10
<b>Penalty</b>	\$250	\$500	\$1,000	\$1,500	\$2,000	\$2,500

<b>Rating</b>	11	12	13	14	15+
<b>Penalty</b>	\$3,000	\$3,500	\$4,000	\$4,500	\$5,000

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The Director or designee shall assess the penalty amount against the responsible party in a written notice that sets forth the nature of the violation and the determination of the penalty amount due. The Director or designee may elect not to seek fines if he or she finds that special circumstances do not warrant imposition of fines.

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In addition to penalties, the City may require the responsible party to fully remove pollutants from private storm system which enters into the municipal storm system. In the event the responsible party fails to do so in timely fashion, the City may take summary abatement action in accordance with KMC Section 1.12.060(b).

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(d) Failure to Remove Pollutant or Pay Fines. The City may issue a notice of civil violation to the responsible party who fails to pay fines or to remove pollutants from private storm system which enters into the municipal storm system according to the procedures set forth in this chapter.

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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.

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Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
MAYOR

Attest:

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

Approved as to Form:

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

PUBLICATION SUMMARY  
OF ORDINANCE O-4518

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SURFACE WATER DISCHARGE STANDARDS AND THE ENFORCEMENT OF SURFACE WATER REGULATIONS.

SECTION 1. Amends Kirkland Municipal Code ("KMC") Section 15.52.090 related to illicit discharges and connections.

SECTION 2. Adds a new KMC Section 1.12.200 setting forth Special provisions relating to enforcement of KMC Chapter 15.52 Surface Water Utility.

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 \_\_\_\_\_, 2016.

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

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